# Discipline Corner

## ADMONITIONS

1. An attorney was admonished pursuant to Rule 4.4 (Respect for Rights of Third Persons) for having sent two letters to the opposing counsel in March of 1991 disclosing information unrelated to the issues in the lawsuit the purpose of which was to embarrass the opposing party.

2. An attorney was admonished pursuant to Rule 1.2(a) (Scope of Representation) for failure to exercise reasonable diligence in pursuing his client's interest in a divorce modification action to obtain increase visitation and for violation of Rule 1.1 (Competency) for failure to properly plead his client's cause of action.

3. An attorney was admonished pursuant to Rule 1.14(d) (Declining or Terminating Representation) for having precipitously terminated his representation in a divorce action to the client's detriment. The attorney filed the Notice of Withdrawal on September 18, 1991 with a pretrial settlement conference scheduled for September 23, 1991. Subsequent to termination, the attorney failed to take steps to the extent reasonably practicable to protect the client's interest.

## PRIVATE REPRIMAND

1. An attorney was privately reprimanded for violating Rule 1.3 (Diligence) for failure to exercise reasonable diligence in representing a client in a personal injury action resulting from an automobile accident on March 29, 1985. Client retained the attorney in December 1987. Attorney failed to file the complaint until March 29, 1989 and effectuated service on March 23, 1990. The attorney was also reprimanded for violating Rule 1.4(a) (Communication) for failure to keep the client informed as to the status of the case. In mitigation, the Board of Commissioners of the Utah State Bar considered the attorney's expeditious settlement of the case after the Bar complaint was filed.

## PUBLIC REPRIMAND

1. On November 13, 1991, Joseph R. Fox was publicly reprimanded for violating Rule 1.3 (Diligence), and Rule 1.4(a) (Communication). Mr. Fox was retained to file an answer and counterclaim to a civil complaint filed on April 2, 1988. Mr. Fox failed to file the answer until May 10, 1988. Also on May 10, 1988 a certificate of default was entered against his client and the default judgment was signed on May 11, 1988. The answer that Mr. Fox filed was essentially the same as one prepared by his client and failed to include a counterclaim. On January 2, 1989, Mr. Fox filed a Motion to Set Aside the Default Judgment. No action has been taken on the motion. Further, Mr. Fox failed to respond to his client's repeated requests for information regarding the status of the case. In addition to the public reprimand, Mr. Fox was ordered to make $1,000.00 restitution to his client and reimburse the Utah State Bar for the costs incurred in the prosecution of this matter.

2. On November 14, 1991, Dale E. Stratford was publicly reprimanded for violating Rule 1.3 (Diligence) and Rule 1.4 (Communication). Mr. Stratford was retained in March of 1987 to represent a client in a personal injury action. From May 1987 until August 1989, Mr. Stratford repeatedly reassured his seventy-nine (79) year old client that the lawsuit had been filed. From October 1989 until January 1990, the client telephoned Mr. Stratford repeatedly and Mr. Stratford either refused to take the calls or would state that he was in the process of obtaining a trial date. Mr. Stratford filed the complaint January 23, 1990. In March 1990, the client retained new counsel to pursue the matter.

In mitigation, the Supreme Court considered the fact that Mr. Stratford had suffered a major heart attack in August of 1987 and was hospitalized for three and one half months and for a period of time thereafter was restricted to limited work hours. Also as a mitigating factor, the Court considered the fact that Mr. Stratford had in fact prepared a complaint in August of 1989 but had failed to file it with the trial court.

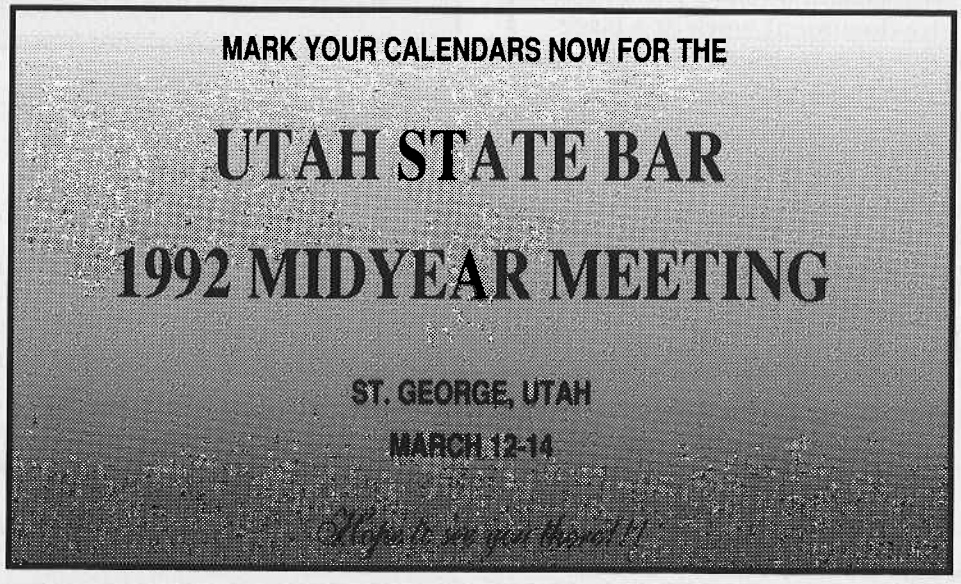
In aggravation, the Court considered Mr. Stratford's failure to promptly forward to the client's new attorney reports and other pertinent data causing further delay in the prosecution of the case the effect of which was compounded due to the client's age.

3. On November 20, 1991, Allen S. Thorpe was publicly reprimanded for violating Rule 1.1 (Competence), Rule 1.3 (Diligence), Rule 1.4(a) and (b) (Communication), and Rule 8.4(c) (Misrepresentation). Mr. Thorpe represented his client in a criminal trial on May 5, 1989. Subsequent to conviction and pursuant to the client's request, Mr. Thorpe filed a Notice of Appeal on June 5, 1989. Thereafter, Mr. Thorpe failed to perfect the appeal and the same was dismissed on August 1, 1989. In July of 1989, Mr. Thorpe misrepresented to his client that the appeal was progressing satisfactorily.

## SUSPENSION

1. On November 22, 1991, Royal K. Hunt was indefinitely suspended from the practice of law for medical reasons. Any attempt to return to the practice of law shall be conditioned upon his making restitution to all his clients, and a sufficient showing his health is restored, and his full compliance with Rule XVIII, Procedures of Discipline.

2. On November 13, 1991, Harold R. Stephens was suspended for one (1) month for violation of Rules 1.2(a) (Scope of Representation), 1.4(a) (Communication) and 8.4(c) (Deceit). Mr. Stephens was retained in June of 1989 to defend against a petition to modify a decree of divorce. At the June 23, 1989 hearing Mr. Stephens appeared without his client and judgment in the amount of $1,500.00 was entered against the client. Immediately thereafter, Mr. Stephens, misrepresented to the client that the Court had taken the matter under advisement. During the subsequent weeks,

## *Discipline Corner*

**RESIGNATION WITH DISCIPLINE PENDING**

On November 3, 1998, the Honorable Richard C. Howe, Chief Justice, Utah Supreme Court, executed an Order Accepting Resignation Pending Discipline in the matter of Michael R. Mueller. In the Petition for Resignation with Discipline Pending, Mueller admitted that he violated Rules 1.4 (Communication), 1.15(b) (Safekeeping Property), 8.4(a), (b), (c) and (d) (Misconduct) of the Rules of Professional Conduct.

In the spring of 1992, a couple retained Mueller to initiate a medical malpractice suit in Guam on behalf of the wife for claims arising from the maltreatment of the injuries she sustained in an automobile accident. The couple had independently initiated negotiations with the negligent driver's insurance carrier. The couple, with the assistance from Mueller, ultimately settled with the negligent driver's insurance carrier, and the carrier issued the check to both the couple and Mueller in December of 1992. Thereafter, on the couple's request and by mutual agreement, Mueller kept the settlement proceeds in his account to finance the medical malpractice lawsuit in Guam.

During the period of 1992 through 1997, the medical malpractice lawsuit in Guam faced two serious problems: (1) difficulties associating local counsel; (2) lack of evidence from collateral sources to support the couple's medical malpractices claims. In February 1997, frustrated and dissatisfied with the lack of progress in the wife's medical malpractice lawsuit in Guam, the couple demanded from Mueller a full accounting for the insurance settlement proceeds in his possession. On March 18, 1998, Mueller sent a letter to the wife which gave a full accounting for the disbursement of the settlement which included a check from Mueller for a portion, made out to the wife, which represented the remaining balance of her share of the settlement proceeds. Approximately two years prior to the couple's letter, Mueller had released the husband's share of the settlement proceeds directly to him, pursuant to his request. Before returning the funds to his clients, Mueller utilized a portion for his own use and benefit.

In March 1997 a client retained Mueller to represent him and negotiate a settlement on his behalf with an insurance company for personal injuries and property damage following an automobile accident. Mueller negotiated a settlement, deposited the proceeds in his trust account, and pursuant to an agreement with the client, withheld disbursement pending negotiation with the health care providers for the reduction of the client's medical bills. After approximately eight weeks of unsuccessful negotiation with the health care providers, and in response to the client's several telephone calls and written demand and intervention of counsel, Mueller released the entire balance to the client. During the eight week period the funds were in Mueller's trust account, Mueller utilized a portion for his personal use and benefit.

**SUSPENSION**

On October 28, 1998, the Honorable Tyrone E. Medley, Third Judicial District Court, entered an Order of Suspension suspending Rex B. Bushman from the practice of law for twelve months for violation of Rule 1.1 (Competence), 1.2 (Scope of Representation), 1.3 (Diligence), 1.4 (Communication), 1.16(d) (Declining or Terminating Representation), 3.1 (Meritorious Claims and Contentions), 3.3 (Candor Toward the Tribunal), 3.5(a), (c), and (d) (Impartiality and Decorum of the Tribunal), 4.4 (Respect for Rights of Third Persons), and 8.4(a) and (d) (Misconduct) of the Rules of Professional Conduct. The suspension was stayed and Bushman was placed on a twenty-four month supervised probation. In addition to other conditions, Bushman is required to attend the Utah State Bar Ethics School. The Order was based on a Stipulation for Discipline by Consent entered into by Bushman and the Office of Professional Conduct ("OPC").

Bushman has been diagnosed with a medical condition, which is controlled with medication. During a medically unsupervised period, Bushman's medication was not properly regulated and this causally contributed to misconduct with regard to his practice of law. During the noted period, Bushman filed frivolous Bar disciplinary complaints and lawsuits against his fellow attorneys only to harass or embarrass the attorneys. In each of these matters it was determined that there were no factual or legal grounds for the filings and they were determined to be without merit.

Additionally, Bushman failed to appear at hearings, misinformed clients regarding certain issues, threatened a judge regarding an order, and filed inaccurate pleadings.

In accordance with Rule 6.3(i) (Aggravation and Mitigation) of the Standards for Imposing Lawyer Sanctions, the OPC weighed Bushman's medical condition as a mitigating factor. Bushman has responded to his medication and as part of the stayed suspension/probation, will be monitored by a care provider to ensure that he continues to take his medication and that it is effective.

**ADMONITION**

On November 5, 1998, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rule 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct. The Order was based on a stipulation entered into by the attorney and the Office of Professional Conduct ("OPC").

A client retained the attorney in April 1992 to obtain the expungement of the client's criminal record. The client paid the attorney a retainer. Thereafter, the attorney determined that an insufficient period had elapsed since the client's conviction and an expungement was therefore not available. The attorney failed to adequately communicate with his client regarding the facts and circumstances of the denial of the expungement. The attorney failed to follow up on this matter and failed to timely proceed with a second expungement request after the appropriate time had elapsed. As a result of the attorney's inaction, the client later completed the expungement on his own with the help of court clerks. The fees paid to the attorney were earned, as the attorney made a good faith effort to expunge the client's record when he was first retained, and paid costs.

The attorney failed to cooperate with the OPC's investigation and failed to attend the screening panel hearing on the matter. By failing to respond to requests for information, the attorney was in violation of his duty to cooperate with the OPC.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*See Rule 8.3(d), Utah Code of Professional Conduct

fit into our new format?

All of these ideas and more should be part of the discussion, but the discussion should proceed quickly.

One in ten people in Utah live below the poverty line. Between 1980 and 1990 the poverty population grew by 30%. 80% of the legal needs of the poor in Utah are unmet. These statistics along with the funding crisis mean we need to act now. Comments, ideas and input from the membership of the Bar will prove critical in formulating a plan to deal with this overwhelming problem. Given the fact that a professional responsibility exists for *pro bono* service,[1] it is time for the Bar to take quick and thoughtful action.

Please consider these issues and be willing to provide input into the process as well as *pro bono* services into the solution. Feel free to contact me (Toby Brown at (801) 531-9095) or one of your Bar Commissioners with comments.

[1]*See* Rule 6.1, Utah Rules of Professional Conduct.

## Public Reprimand

On November 27, 1995, the Third Judicial District Court entered an Order of Discipline Reprimanding John M. Bybee and placing him on unsupervised probation for one year to commence on or about December 31, 1995, which is the day following termination of his probation in a prior disciplinary matter. The Order was entered pursuant to a Discipline by Consent for violating Rules 1.3, 1.4(a), and 1.4(b) of the Rules of Professional Conduct of the Utah State Bar.

On or about November 1992, a client retained Mr. Bybee to collect back due child support. Respondent failed to serve the ex-husband with appropriate documents until approximately June, 1993 and failed to attend hearings that had been scheduled for March and May, 1993. On July 13, 1993, the court awarded the client a judgment, however, Respondent did not prepare an appropriate order to submit to the court for signature until December, 1993. During the period of time Respondent represented this client, he failed and refused to take or return her telephone calls, failed to advise her that certain hearings on her case had been postponed, that he would not attend those hearings, and he failed and refused otherwise to keep her advised of the status of her case.

# Appellate Judges Help Appellate Lawyers Be the Best

With the justice system under attack from all sides, it is refreshing to learn of a special program where appellate judges take time away from their heavy caseloads to help appellate lawyers improve their professional skills. Judge Christine Durham of the Utah Supreme Court is one of a prestigious group of appellate judges who spend three intensive days training lawyers from across the nation in a program to improve appellate advocacy skills. The program is titled the 10th Appellate Practice Institute and will be held May 17-19, 1996 in Washington, D.C.

The judges receive no compensation for their efforts. They participate because they know the justice system is the ultimate beneficiary by having highly trained advocates representing litigants. When courts receive a poorly researched and written brief, judicial and professional court staff time has to be spent on redoing the work — more research and analysis must be done to clearly identify the nature of the appeal. The court feels obligated to go this extra step to insure that no litigant is penalized for inadequate representation. Judges would prefer to spend their time on case analysis. Oral argument gives well-prepared advocates an opportunity to take the judges by the hand and direct them to the desired area or objective in the forensic battle. The judges already know the issues and the game plan, because they have the written brief that has previously been submitted which is designed to educate and inform. What oral argument does is to reinforce what has been said before and focus the court on the significant issues and arguments.

The appellate judges who participate in the 10th Institute realize that the Institute provides them with an opportunity to share with advocates what they look for in briefs and oral argument. Unlike real life where communication between judges and lawyers on specific cases is prohibited, at the 10th Institute judges meet privately with lawyers to critique a brief from the standpoint of issue identification, case analysis, writing clarity, persuasiveness and style. Each lawyer who attends the Institute presents an oral argument before a three judge panel. Immediately following the argument, the judges critique the presentation. Also unlike real life, there are no losers at the 10th Institute. It is a level playing field where each lawyer is sent a real case record and must submit a brief by a specific deadline. The oral arguments are all presented at the same time. The emphasis is not on winning but on improving. Even the most experienced advocate benefits from this educational experience.

To insure a high caliber program, the faculty is recruited from the elite ranks of appellate judges and lawyers. Among the faculty is Justice Stephen Breyer of the U.S. Supreme Court who will head up the judicial panel that will hear the model oral argument of the Institute case. Twenty-four appellate judges from state and federal courts across the nation will be in Washington. Besides the personal brief critiquing and oral argument presentations, panel discussions are presented on brief writing, oral argument and persuasive writing. Several social events are incorporated into the program to maximize the interaction between faculty and students.

Many lawyers hesitate to register because they do not want to make the time commitment required to write a brief in advance of the Institute. They reason that this time is better spent on real clients. The Institute planners' response is that the time spent on writing the brief for the Institute is the best investment a lawyer can make and one that will pay off many times over in the future.

Registration is restricted to keep a student/faculty ratio of 4 to 1. The program is supported solely from tuition revenue and the limited funds are spent on the program, not on marketing. Reliance is on "word of mouth" advertising. Even if you are not interested in participating in this special experience, you probably know someone who is. Spread the word. It is an expensive program to produce and can continue only if registration goals are met, a challenge given the limited marketing resources.

For more information about the Institute or to register, write or call Kristen Taylor at the ABA, 541 N. Fairbanks Ct., Chicago, IL 60611, 312/988-5697, fax: 312/988-5709.

## Discipline Corner

### PRIVATE REPRIMANDS

An attorney was privately reprimanded in September of 1992 for violating Rule 1.3, Diligence, and Rule 5.5(b), Assisting in the Unauthorized Practice of Law. The attorney was retained in June 1987 to represent a client in a bankruptcy matter. The client went to the attorney's office and met with a nonlawyer assistant who interviewed the client, took the information relating to the bankruptcy, advised the client as to the nature of the bankruptcy to be filed, and prepared the bankruptcy schedules. The client informed the nonlawyer assistant of a student loan and provided the assistant with the loan information. The assistant informed the client that a hardship petition to discharge the loan would be filed. The attorney did not meet with the client until the time of the first meeting of creditors, did not review the petition with the client prior to its being filed and did not prepare a hardship petition to discharge the student loan. In March of 1991, the client learned that the hardship petition had not been filed when the IRS attached the client's income tax return to satisfy the student loan. The client, believing the loan had been discharged, did not make payments.

An attorney was privately reprimanded on November 13, 1992, for violating Rule 1.3, Diligence, and Rule 1.4(a), Communication. The attorney was retained in December of 1988 to represent a client in a civil matter. The attorney filed a complaint in January of 1990, interrogatories in March of 1990, a Motion to Compel Discovery in July of 1990, a request for scheduling conference in March of 1991, and a notice to appoint counsel or appear in person in December of 1991. Thereafter, no meaningful legal services were provided. During this entire time period the attorney failed to return phone calls or keep the client informed as to the status of the case. The complaint was filed with the Utah State Bar in February of 1992 and as of the date of filing the attorney had not yet concluded the matter for which the attorney was retained in December of 1988.

An attorney was privately reprimanded on October 7, 1992 for violating Rule 3.4(b), Fairness to Opposing Party and Counsel, and Rule 5.3(b) & (c) (1), Responsibilities Regarding Nonlawyer Assistants. The attorney represents a collection agency and on March 21, 1991, served a Summons and Complaint on the complainant and his former wife for collection of debts incurred by the former wife in 1989-90. The parties had been divorced since 1979. On March 17, 1992, the court dismissed the claims against the complainant and entered a judgment in favor of the collection agency and against the former wife. Respondent prepared the Order. Thereafter, on April 15, 1992, the attorney sent a notice of judgment to the complainant demanding payment. The attorney's defense was that his secretary failed to update the record in the file. The attorney had previously been cautioned for similar conduct and a similar defense.

### SUSPENSION

On November 3, 1992, the Supreme Court suspended Harold R. Stephens for one year and imposed two years of supervised probation commencing upon the expiration of the suspension period. In addition, Mr. Stephens was ordered to pay restitution to two complainants totalling $8,467.90.

Mr. Stephens violated Rule 1.3, Diligence, by failing to file a responsive pleading to a complaint wherein $149,000.00 was alleged to be additionally owed to the lender following the foreclosure and sale of the property in question. A default judgment was entered on February 23, 1990 for the amount of the deficiency. Mr. Stephens and the complainant were served with an order for supplemental proceedings and failed to appear on two occasions resulting in the issuance of a bench warrant against the complainant. On November 30, 1990 Mr. Stephens filed a Rule 60(b) Motion to Set Aside the default judgment which was denied by the trial court for lack of timeliness and affirmed by the Utah Court of Appeals on September 23, 1992 in *Lincoln Benefit Life Ins. Co. set al. v. D.T. Southern Properties; James E. Hogle, Jr.; and Cornelius Versteeg*, Case No. 910366-CA.

Two other cases of less serious neglect were consolidated for the purpose of imposing a single sanction.

### RESIGNATION WITH DISCIPLINE PENDING

On November 5, 1992, the Supreme Court entered an Order of Discipline accepting the Resignation of Sumner J. Hatch with Discipline Pending. Mr. Hatch was retained in 1977 to probate the decedent's estate who had died the previous year. After being retained Mr. Hatch failed to complete the probate of the estate, failed to account to the beneficiaries for assets received from the sale of real property, failed to account for other assets of the estate, and failed to keep his clients informed as to the status of the probate proceeding. The Supreme Court accepted Mr. Hatch's Petition for Resignation with Discipline Pending due to his deteriorated health and mental condition which prevented him from participating further in the pending disciplinary proceedings.

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# Discipline Corner

**ADMONITIONS**

1. An attorney was admonished for violating Rule 1.4(a), 1.13(b) and 8.1(b) by failing to respond to his client's repeated requests for information and requests for an accounting of the retaining fees and for failing to issue a refund of those retaining fees. In addition, the attorney failed to timely respond to the Office of Bar Counsel regarding the complaint.

2. An attorney was admonished for violating Rule 1.3 by failing to timely prepare Findings of Fact and Conclusions of Law and Decree of Divorce. The attorney failed to prepare the documents for a period of three months.

3. An attorney was admonished for violating Rules 1.4(a) and 1.13(c) by failing to maintain appropriate communication with his clients and failing to reach an agreement with his clients regarding fees, so that monies which the client had given to the attorney to hold in trust were used for fees.

4. An attorney was admonished for violating Canon 6, DR 6-101(A) (3) by failing to adequately communicate with his client. The client believed that the attorney was not moving forward on the divorce action and initiated a complaint in the Office of Bar Counsel. The Screening Panel found that the attorney had performed adequately but failed to communicate that fact to the client.

5. An attorney was admonished for violating Rule 3.5(d) by failing to obey a request from a Judge to leave the Judge's chambers and arguing with the Judge after several requests to cease. The Judge felt that the attorney was attempting an ex parte communication and requested that the attorney leave the chambers, which the attorney refused to do.

6. An attorney was admonished for violating Rule 1.4(a) by failing to clearly explain the terms of the fee agreement and adequately inform the client of services to be performed for the fee. Based on the failure of communication, the client believed that the fee would cover all the expenses of an expert witness, when in fact the fee was consumed in an attempt to locate an expert witness.

**PRIVATE REPRIMANDS**

1. For violating Rule 1.3 of the Rules of Professional Conduct of the Utah State Bar, an attorney was privately reprimanded for failing to perfect an appeal for his client and failing to ensure that the judgment of the lower court was stayed pending the appeal. The neglect of the attorney resulted in an Order to Show Cause hearing to which his client was obliged to respond.

2. For violating Rule 1.13(b) of the Rules of Professional Conduct of the Utah State Bar, an attorney was privately reprimanded for executing an agreement wherein he acknowledged a lien against the proceeds of a settlement in behalf of his client and subsequently failing to ensure that the lien holder received payment from the funds. The attorney disbursed the funds to the client who failed to pay the medical provider.

3. For violating Rules 3.2 and 3.4(c) of the Rules of Professional Conduct of the Utah State Bar, an attorney was privately reprimanded for failing to draft the final documents regarding a settlement of divorce after being ordered to do so by the court. The attorney failed to prepare and file the documents for 11 months.

**SUSPENSION**

On October 30, 1990, Benjamin P. Knowlton was suspended for six months with five months stayed pending payment of restitution for violating Canon 1, DR 1-102(A) (4). The actual suspension was to begin on November 13, 1990. Mr. Knowlton was retained to negotiate the sale of a house, which sale was completed in 1982. He was paid $2,000 for his services and an additional $5,599.95 from the proceeds of the sale was deposited into his trust account. The sum held in trust later became a disputed marital asset in his client's subsequent divorce proceeding. Mr. Knowlton was not the attorney in the divorce proceeding. The Judge in the divorce proceeding ordered that Mr. Knowlton hold the proceeds in trust pending a resolution of the dispute. Upon Order of the Court that the proceeds be disbursed to one of the parties, Mr. Knowlton claimed a lien for fees owed him by the other party and intentionally converted those funds. The Hearing Panel found that Mr. Knowlton's intentional conduct was an aggravating factor.

## Annual Law Firm Party Becomes Project for the Homeless

Thursday, November 8, at 6:30 p.m., members of Campbell, Maack & Sessions, a Salt Lake City law firm, hosted and served dinner for families at the Homeless Shelter. The children were gifted with vouchers for shoes and a clown/magician entertained everyone.

What made the evening unique was that the law firm of Campbell, Maack & Sessions decided (1) to turn their annual "firm party" into a community service project and (2) to challenge other law firms in Salt Lake City to help the Shelter as well.

In discussions with the president of the firm, Robert S. Campbell Jr., Mr. Campbell indicated that the firm considered this effort as a very small step but an important one that should be taken by others as well. Mr. Campbell said that the costly role of government in providing social services should be significantly reduced if increased numbers of private citizens would be willing to give a little of their time and resources.

Stacey Bess, Shelter School Director, and Pat Hoagland, Office Manager at the Family Shelter, join Campbell, Maack & Sessions in issuing this "challenge." As you know, the needs are many but—if this challenge succeeds—quite achievable. Needs range from a full-time teacher's salary, camera and slide projector, new desks, units of study, to volunteers who can share their areas of specialization and interest with these disadvantaged children.

The Shelter School, whose children learn under Stacey's leadership and experience caring and concern for the first—and sometimes the only time in their lives (and that time is restricted to 90 days)—provides an especially significant opportunity for making a difference, short and long-term.

The dichotomy between the clean, well-kept facility and the dark human drama at the Shelter can be mitigated if we all help. Any support others can give in responding to this "challenge" would extend the significance of this evening and multiply the resources of the Shelter itself.

*Thank you.*

# Bar Commission Highlights

At its regularly scheduled meeting of October 27, the Board of Bar Commissioners received the following reports and took the actions indicated.

1. Approved with minor modification, minutes of the September 29 meeting.

2. Received the Executive Committee report, including a status report on the space study underway for Law and Justice Center meeting and office spaces, approved a resolution of support for lawyers and judges in Colombia who are battling to maintain the rule of law and to resist the takeover of their country by drug cartels, and acknowledged the Young Lawyers Section for hosting a successful reception for new Bar admittees.

3. Received the Executive Director's report, including an announcement that the ABA will feature the Law and Justice Center during the upcoming Outreach to the Public Conference, noted the final dissolution of Utah Prepaid Legal Services Plan with net proceeds being transmitted to the Utah Bar Foundation, discussed the need for developing a mass disaster response plan, noted the new occupancy of space in the Law and Justice Center by Attorney's Title Guaranty Fund of Utah, and received an update on activities of the ABA Standing Committee on Professional Discipline.

4. Received Associate Director's report noting personnel changes, the time table for the next Bar Commission election cycle, and plans for the Mid-Year meeting.

5. Received the Discipline Report, acting on pending private and public discipline matters as reported elsewhere in this issue. Approved Ethics Opinions #95, #98 and #99 as published in the February *Bar Journal*. Appointed a special screening panel and reviewed various administrative matters of the Office of Bar Counsel.

6. Received a report and appearance by the Legislative Affairs Committee chairperson and discussed policies and roles applicable to the committee. Directed the committee to recommend a lobbyist for use by the Bar during the upcoming legislative session.

7. Received the Admissions Report, approving reinstatements for individuals who had corrected dues deficiencies. Reviewed an extensive report by the Admission Rules Committee and approved the recommendations within the report in concept. Thanked the committee for its extraordinary volunteer effort.

8. Received the report of the Budget and Finance Committee, noting the pending audit for FY89. Authorized the filing of a petition to change the annual dues cycle to coincide with the beginning of the fiscal year, and directed that a specific communication strategy be developed to advise the members of the change in the dues cycle as well as future dues increase proposals.

9. Appointed Janet Hugie Smith to the Judicial Nominating Commission for the Third District to fill the vacancy created by the resignation of Kristine Strachan, after reviewing all applications received from the membership.

10. Received a report of the Admissions Grievance Panel, reviewing the findings and recommendations of the panel on the 12 grievance petitions filed. The Board approved four of the petitions and denied the remainder. The panel also offered recommendations with regard to the need for a study on the limited use of computers during Bar examinations, the need for strict enforcement of sequestration procedures and an increased awareness and sensitivity regarding non-traditional student applicants.

11. Received a report of the Young Lawyers Section and authorized the section to develop plans for sponsoring future CLE programs.

12. Received a litigation report on pending litigation, noting the U.S. Supreme Court's actions taken in unified Bar cases.

13. Met in joint session with the Executive Committee of the Salt Lake County Bar. Matters discussed included the financial condition of the Bar and the proposed change in the dues cycle, the range of County Bar programs including the new pro bono programs, luncheon programs and the Bar and Bench forum. Advised the County Bar leaders of the status of the Judicial Poll and the plans for the upcoming Mid-Year Meeting of the Bar as well as the 1990 Annual Meeting. County Bar leaders noted the schedule for their annual Christmas event on December 9.

A full text of the minutes of this and other meetings of the Bar Commission is available for inspection at the office of the Executive Director.

# Discipline Corner

### ADMONITIONS

1. An attorney was admonished for violating DR 2-106 and Rule 1.5(b) for failing to reasonably and promptly enter into a clearly defined fee agreement. In the future, the attorney must first enter into a representation agreement with his client before rendering any services.

2. For filing a trade name with no intention to transact business under that name, an attorney was admonished for violating Rule 3.1. The sanction was aggravated because the attorney filed the trade name for improper leverage purposes.

3. An attorney was admonished for failing to refund the unearned portion of his fees after terminating his services with his client in violation of DR 2-110(A). The sanction was mitigated by the attorney's willingness to refund the money, and his cooperation with the disciplinary process.

### PRIVATE REPRIMANDS

1. An attorney was privately reprimanded for violating DR-1-102(A)(6) and Rule 8.4(b) because of his failure to secure the payment of workers' compensation benefits for the involved employee. His conduct also led to a criminal conviction on related charges and constituted conduct adversely reflecting on his fitness to practice law. Respondent's failure to pay workmans' compensation also constituted dishonesty in violation of Rule 8.4(c). The sanction was mitigated by the attorney's lack of prior disciplinary history and his belief that, instead of submitting the money to the State for workers' compensation, the employees could use the money for Christmas.

2. An attorney was privately reprimanded for acquiring a personal loan against a client's trust without first disclosing that fact to the client or receiving the client's consent, and for failing to maintain a separate account for the trust funds in violation of DR 5-104(A) and DR 9-102(B)(3).

### SUSPENSION

1. On October 5, 1989, Galen J. Ross was suspended from the practice of law pending the final determination of other disciplinary proceedings against him.

According to Bar President Kent M. Kasting, the data reveals the wide range of experiences and often divergent opinions and expectations held by members of the Bar. For example, white male and handicapped attorneys rank "satisfying the client" as the top priority of personal goals, while female attorneys consider the "intellectual stimulation" of law as most important. On the other hand, "being of service to society" surfaces at the top of minority attorneys' list of goals and objectives.

The study also reveals that it isn't unusual for attorneys to change jobs. With the exception of female attorneys, approximately two-thirds of the respondents switched employers at least once since entering the law profession. Slightly over half of the females did so. Of course, women are also more likely to have attended law school more recently than male attorneys, and differences in values or career patterns may reflect this factor.

Among those attorneys who change employers, white males tended to cite better opportunities (20 percent) dissatisfaction with job or boss (12 percent), or a desire to practice solo (10 percent). Female lawyers who switched employers were often dissatisfied with the former job or boss (16 percent), moved to a different state (14 percent) or were looking for a better opportunity (12 percent).

Mr. Kasting said the study is valuable in helping to design and implement programs which will serve the varying needs of Utah attorneys.

An overview of the study will be presented at the mid-year meeting of the Bar in St. George on March 16, 1989, and future issues of the *Utah Bar Journal* will include articles focusing on particular areas of interest suggested by this study.

# DISCIPLINE CORNER

### PRIVATE REPRIMANDS

1. An attorney was privately reprimanded for violating Rule 8.4(c) for engaging in conduct involving misrepresentation by stating that he would make or had already made payments to a title company, which payments were not forthcoming for a period of four years.

2. For negotiating a settlement check contrary to instructions from opposing counsel, and for failing to release a lien prior to negotiating the check, an attorney was privately reprimanded for violating DR 1-102(A)(3), for conduct involving misrepresentation.

3. For failing voluntarily to notify the court, law enforcement or the prosecutor after learning that he had unknowingly received stolen funds as a portion of his legal fee, and for failing to return any of the legal fee representing the stolen funds after he became aware that they were stolen, although the attorney directed his clients to make immediate repayment to the victims of any and all of the stolen proceeds which they had paid to him for attorney's fees, an attorney was privately reprimanded for violation of DR 1-102(A)(5) and (6) for conduct prejudicial to the administration of justice and conduct adversely reflecting on his fitness to practice law.

4. An attorney was privately reprimanded for neglecting a legal matter entrusted to him under DR 6-101(A)(3) by failing to file a complaint or bring his client's matter to some type of resolution for a period of four years, failing formally to terminate representation of the client or indicate to the client that the case lacked merit, and failing to respond to oral and written communication from the client inquiring as to the status of the case.

5. An attorney was privately reprimanded for violation of DR 1-102(A)(4) for misrepresentation for failure to pay for photographic evidence ordered in anticipation of trial and actually used at trial, for failure to respond to a small claims judgment against him, and for the use of the appellate process in an effort to delay the ability to execute on the judgment.

### DISBARMENT

John H. McDonald has been disbarred from the practice of law in the state of Utah, effective Nov. 8, 1988, for violating: DR 9-102(B)(3) and (4) for failure to render an appropriate accounting with two clients and failure to remit monies owing to the Workers' Compensation Fund; DR 2-110(A)(2) for prejudicing a client's interest by failing to return property and papers to the client upon termination of representation and failing to apprise the client of the current status of his pending actions; DR 6-101(A)(2) for inadequate preparation by failing to timely and appropriately resist a Motion for Summary Judgment; DR 7-101(A)(2) and (3) for intentionally failing to carry out a contract of employment and intentionally causing prejudice to the client by failing to communicate with the client regarding the status of the action and thereafter performing legal services not authorized by the client; DR 1-102(A)(4) for misrepresentation and deceit in representing to a client that medical bills were paid from settlement proceeds when a hospital bill was not paid and continuing thereafter to represent that the bill would be paid and in failing to return to a client a portion of stock proceeds which the attorney sold and which belonged to the client; and DR 1-102(A)(6) by engaging in conduct adversely reflecting on fitness to practice by engaging in a pattern of misconduct as outlined above.

# Mental Disability Law is Focus of ABA Handbook

The American Bar Association's Mental and Physical Disability Law Reporter has released an updated and expanded version of its handbook, "Mental Disability Law: A Primer." This third edition focuses on substantive mental disability law topics, highlighting and citing the relevant case decisions and federal legislation over the past 15 years.

The 75-page booklet explains to legal practitioners how to represent and communicate with persons who have mental disabilities; the meanings of key medical, psychological and disability-related terminology; and reasons attorneys or advocates would want to represent disabled clients as part of their legal practices.

The Primer is designed for lawyers, advocates and judges new to this area of law, law students, and graduate students and professionals in related disciplines.

Issues examined in the Primer include determination in employment; housing and other social services; the right to treatment and the right to refuse treatment; the right to education; involuntary civil and criminal commitments; outpatient commitment; substitute decision-making, including guardianship; and professional liability.

Single copies of the Primer are available for $10; for orders of 10 or more, the charge is $6.50 per copy. There is a $3 charge per order for postage and handling. Checks should be made payable to "ABA/FJE," and orders or inquiries should be directed to the ABA Commission on the Mentally Disabled, 1800 M Street NW, Suite 200, Washington, D.C. 20036.

EDITOR'S NOTE: Review copies of "Mental Disability Law: A Primer" are available by contacting Patricia McCormick at (202) 331-2240.

# *Attorney Discipline*

## UTAH STATE BAR ETHICS HOTLINE

Call the Bar's Ethics Hotline at 801-531-9110 Monday through Friday from 8:00 a.m. to 5:00 p.m. for fast, informal ethics advice. Leave a detailed message describing the problem and within a twenty-four-hour workday period, a lawyer from the Office of Professional Conduct will give you ethical help about small everyday matters and larger complex issues.

**More information about the Bar's Ethics Hotline:** http://www.utahbar.org/?s=ethics+hotline

**Information about the formal Ethics Advisory Opinion process:** www.utahbar.org/opc/rules-governing-eaoc/.

## RESIGNATION WITH DISCIPLINE PENDING

On November 21, 2018, the Utah Supreme Court entered an Order Accepting Resignation with Discipline Pending concerning Gary J. Anderson, for violation of Rules 8.4(c) and 8.4(d) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Anderson was convicted of Communications Fraud, a Second Degree Felony. Mr. Anderson devised a scheme or artifice to defraud a man or to obtain from him money, property, or anything of value by means of false or fraudulent pretenses, representations, promises, or material omissions, and communicated directly or indirectly with the man by any means for the purpose of executing or concealing the scheme or artifice.

## RESIGNATION WITH DISCIPLINE PENDING

On September 4, 2018, the Utah Supreme Court entered an Order Accepting Resignation with Discipline Pending concerning Matthew S. Dunkley, for violation of Rules 1.15(a) and 1.15(d) (Safekeeping Property), Rule 8.4(b) and 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

A couple retained Mr. Dunkley to represent them in a personal injury case. The couple were paid their portion of the settlement funds but learned that Medicare liens had gone to collections. The couple reached out to Mr. Dunkley on several occasions and they were told that the problem was being handled, but ultimately they were forced to pay the liens themselves. The couple reached out to the Nevada State Bar and a grievance was initiated. Mr. Dunkley addressed the grievance and issued payment to the couple. Mr. Dunkley also issued a check for the remaining outstanding amount owed for the Medicare liens. The check for the Medicare liens was returned for insufficient funds.

The Nevada State Bar subpoenaed Mr. Dunkley's bank records and determined that he was consistently transferring large sums of money from his attorney trust account to his operating account for purposes of funding a gambling addiction and other expenses. Mr. Dunkley had hundreds of mobile and internet transfers to his operating account. These transfers were in round numbers and the majority of them did not identify a case or reason for the transfer. A corresponding analysis of Mr. Dunkley's attorney trust account similarly revealed dozens of corresponding repetitive withdrawals of cash, some of which occurred at casinos. An overall analysis of the funds in the attorney trust and operating accounts show that Mr. Dunkley's activities resulted in the misappropriation of client funds. Upon the Nevada State Bar's most recent subpoena of Mr. Dunkley's attorney trust records, they found that Mr. Dunkley continued unauthorized mobile and internet banking transfers to his operating account, demonstrating that despite treatment, he continued to engage in misconduct that resulted in harm to his clients.

## *Discipline Process Information Office Update*

What should you do if you receive a letter from Office of Professional Conduct explaining you have become the subject of a Bar complaint? Call Jeannine Timothy! Jeannine will answer all your questions about the disciplinary process. Jeannine is happy to be of service to you, so please call her.

**801-257-5515 | DisciplineInfo@UtahBar.org**

DISCIPLINE PROCESS INFORMATION OFFICE

## RESIGNATION WITH DISCIPLINE PENDING

On October 25, 2018, the Utah Supreme Court entered an Order Accepting Resignation with Discipline Pending concerning Julie C. Molloy, for violation of Rule 1.1 (Competence), Rule 1.3 (Diligence), Rule 1.4(b) (Communication), Rule 1.15(d) (Safekeeping Property), Rule 8.4(b) (Misconduct), and Rule 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Ms. Molloy practiced in Massachusetts. She was hired to represent a client in a personal injury case arising from a vehicle accident. Ms. Molloy informed the client that the fee was twice the actual amount for the accident reconstruction specialist (expert). The client paid the fee, which was deposited into Ms. Molloy's trust account. Ms. Molloy paid the expert and diverted the other portion for her own purposes unrelated to the client. The expert required an additional fee after completing the report. The client gave Ms. Molloy a check for the remaining balance which she deposited into her trust account. Ms. Molloy did not pay the expert, even after receiving invoices for payment. Ms. Molloy did not inform the expert of the trial date or request that he testify and told her client that the expert was unavailable for trial. The jury returned a verdict favorable to the opposing party.

The expert filed a small claims action and obtained a default judgment against Ms. Molloy. Ms. Molloy entered into a payment plan with the expert. Ms. Molloy made one payment however, the check was dishonored, and she made no further payments.

Ms. Molloy was retained to represent a second client in a divorce matter. The client paid a retainer that was deposited into Ms. Molloy's trust account. Ms. Molloy used the funds for her personal or business purposes unrelated to the client's divorce matter. Ms. Molloy requested an additional amount of money from the client, which the client paid. Ms. Molloy deposited the money into her checking account and used the money for her personal purposes. Ms. Molloy did not file the client's complaint for divorce. The client requested a receipt for the second payment of funds and an itemized statement and accounting of the retainer funds. Ms. Molloy did not respond. The client discharged Ms. Molloy and again requested an accounting of the retainer funds and a refund of the remaining retainer. Ms. Molloy did not respond.

## RECIPROCAL DISCIPLINE

On October 22, 2018, the Honorable James D. Gardner, Third Judicial District Court, entered an Order of Reciprocal Discipline: Disbarment, against Robert R. Morishita, disbarring Mr. Morishita for his violation of Rule 1.1 (Competence), Rule 1.3 (Diligence), Rule 1.4(a) (Communication), Rule 1.5 (Fees), Rule 1.15(a) (Safekeeping Property), Rule 1.16(d) (Declining or Terminating Representation), Rule 8.4(b) (Misconduct), Rule 8.4(c) (Misconduct), and Rule 8.4(d) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
On March 9, 2018, the Supreme Court of the State of Nevada issued an Order disbarring Mr. Morishita from the practice of law.

In August 2009, a client retained Mr. Morishita for the writing and filing of a provisional patent. The client paid Mr. Morishita and in August 2010 the patent was filed with the United States Patent and Trade Office (USPTO). In January 2016, Mr. Morishita informed the client that a Notice of Allowance for the patent was pending requiring an issuing fee. The client paid Mr. Morishita. Mr. Morishita stopped communicating with the client and abandoned his case.

The client contacted the USPTO office and was informed that the one and only office action was in March 2012 and because no response was received, the application was abandoned in October 2012. Mr. Morishita forged communication from USPTO in an effort to mislead the client into believing that the patent application was progressing.

In February 2017, the Nevada State Bar was contacted by a manager of storage units regarding Mr. Morishita's abandoned storage unit. The Nevada State Bar visited the unit and found hundreds of files. Most of the files from the storage unit were very old, but around forty-two files were no more than seven years old. The application number for each file was entered into the USPTO database. About fourteen of the forty-two files had an "abandoned status." The Nevada State Bar contacted each individual who had an "abandoned" application. Three applicants indicated that they had no knowledge that their application had been abandoned.

## SUSPENSION

On September 25, 2018, the Honorable Patrick W. Corum, Third Judicial District, entered an Order of Suspension, against Carlos J. Clark, suspending his license to practice law for a period of six months and one day. The court determined that Mr. Clark violated Rule 1.1 (Competence), Rule 1.3 (Diligence), Rule 1.4(a) (Communication), Rule 1.4(b) (Communication), Rule 1.15(b) (Safekeeping Property), Rule 1.15(d) (Safekeeping Property), Rule 1.15(e) (Safekeeping Property), and Rule

8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

*In summary:*
The case involved Mr. Clark's handling of cases for two separate clients. The first client retained Mr. Clark to represent him in a Worker's Compensation claim. The client was awarded a temporary total disability payment as well as past and future reasonable and necessary medical expenses for the treatment of his injury. The payment for the client's temporary total disability was sent to Mr. Clark on the client's behalf. The client received the money but was not provided a complete accounting.

Two years later, the same client retained Mr. Clark to represent him in a personal injury claim for the injuries and damages he sustained as a result of an automobile accident. Mr. Clark settled the client's personal injury claim with the insurance company for the at-fault party and the client's under-insured motorist claim. Mr. Clark received all of the funds from the insurance companies and told the client that he would pay all outstanding bills with the settlement funds. Mr. Clark did not provide any written accounting to the client, did not inform the client of the exact amount of the settlement funds and did not inform the client of the amount of attorney's fees or costs. Mr. Clark provided payments over several months to the client but not all of the medical providers were paid. Collections actions were initiated against the client because of outstanding medical bills. A default judgment was entered against the client and the court entered a Writ of Continuing Garnishment.

The OPC sent a Notice of Informal Complaint to Mr. Clark. Mr. Clark did not respond.

The second client retained Mr. Clark to represent her in a personal injury claim for the injuries and damages she sustained as a result of an automobile accident. Mr. Clark sent a settlement demand to the insurance company concerning the client's claim but did not forward the offer to his client. One day after the statute of limitations for the client's claim expired, Mr. Clark filed a civil lawsuit against the at-fault driver on behalf of the client. The court entered an order dismissing the case for failure to serve the defendant. The client repeatedly contacted Mr. Clark requesting information on the status of her case. In each of those instances, Mr. Clark either failed to respond or responded by indicating that he would get back to her at a later time to provide information on her case. Mr. Clark did not inform the client that the case had been dismissed instead he informed her that her claim had been preserved because the case had been filed within four years of the date of the accident.

The OPC sent a Notice of Informal Complaint to Mr. Clark. Mr. Clark did not respond.

### PROBATION

On September 28, 2018, the Honorable Glenn R. Dawson, Second Judicial District Court, entered an order of discipline against Mark L. Carlson, placing him on probation for a period of fifteen months or until conditions, including payment of restitution of $ 96,953.48 for contingency fees taken on


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Personal Injury Protection (PIP) claims, are met based on Mr. Carlson's violation of Rule 5.4(a) (Professional Independence of a Lawyer) of the Rules of Professional Conduct. The court also entered two public reprimands against Mr. Carlson for his violations of Rule 1.5(a) (Fees) and Rule 1.5(c) (Fees) of the Rules of Professional Conduct. The probation has ended.

*In summary:*
Mr. Carlson became a partner with a firm in 2012. When he was a partner, Mr. Carlson knew that compensation of some paralegals at the firm included a percentage of the fees obtained from clients on whose cases the paralegals had worked. The practice started at the end of 2012 and ended around March 2014. Further, Mr. Carlson authorized the firm to pay a non-lawyer marketer 2% of attorneys' fees obtained from some of the clients whom she referred to the firm.

Starting in 2012, the firm accepted exclusively personal injury cases. PIP benefits are mandated by statute and are paid regardless of who was at fault in causing the accident by an individual's automobile insurance carrier. Mr. Carlson was aware of the firm's initial policy to calculate attorney fees in contingency fee cases after adding the PIP benefits to the total settlement amount. Later, Mr. Carlson's partner analyzed the attorney fees on the total settlement for reasonableness based on the amount of work performed on the entire case and not specifically the amount of work performed to obtain PIP benefits to determine whether to deviate from the agreed upon policy of taking a contingent fee on PIP benefits. The court analyzed ten cases that would be the focus of evidence related to Rule 1.5(a) and concluded that Mr. Carlson was charging a contingent fee to collect benefits from the firm's clients' own insurers while engaged on a contingent fee basis to handle personal injury claims against third parties. The court concluded that none of the clients whose cases were presented to the court were at risk of having their PIP benefits denied and that the benefits obtained in the cases were obtained by routine filing and collection efforts, and that the recovery of the benefits was never uncertain or disputed, and it was improper for Mr. Carlson to charge a contingent fee on benefits for which there was never a risk of non-recovery.

In one case, the firm took a contingency fee without a written fee agreement specifying the percentage to be paid.

*Mitigating Factors:*
Absence of prior record of discipline; Absence of dishonest or selfish motive; Good faith effort to make restitution; Cooperative attitude; Inexperience in the practice of law; Good character and reputation; Interim reform; and Remorse.

*Aggravating Factors:*
Pattern of misconduct and Multiple Offenses.

## PROBATION

On September 28, 2018, the Honorable Glenn R. Dawson, Second Judicial District Court, entered an order of discipline against R. Matthew Feller, placing him on probation for a period of fifteen months or until conditions, including payment of restitution of $96,953.48 for contingency fees taken on Personal Injury Protection (PIP) claims, are met based on Mr. Feller's violation of Rule 5.4(a) (Professional Independence of a Lawyer) of the Rules of Professional Conduct. The court also entered two public reprimands against Mr. Feller for his violations of Rule 1.5(a) (Fees) and Rule 1.5(c) (Fees) of the Rules of Professional Conduct. The probation has ended.

*In summary:*
Mr. Feller had comparable managerial authority at a firm with another attorney. A third attorney became a partner in the firm in 2012. Compensation of some paralegals at the firm included a percentage of the fees obtained from clients on whose cases the paralegals had worked. The practice started at the end of 2012 and ended around March 2014.

**ETHICS FOR LAWYERS: How to Manage Your Practice, Your Money, and Your Files. Annual OPC CLE**

**January 23, 2019 | 8:00 am – 12:30 pm.**

**4 hrs. Ethics CLE Credit. $150.**

To register visit: https://services.utahbar.org/Events/Event-Info?sessionaltcd=19_9094.

**Join us for the OPC Ethics School**

**March 20, 2019 | 9:00 am – 3:45 pm.**

**Utah Law & Justice Center**
**645 South 200 East, Salt Lake City**

**5 hrs. Ethics CLE Credit, 1 hr. Prof./Civ.**

Cost $245 on or before March 6, 2019,
$270 thereafter.

Starting in 2012, the firm accepted exclusively personal injury cases. PIP benefits are mandated by statute and are paid regardless of who was at fault in causing the accident by an individual's automobile insurance carrier. Mr. Feller and his partner made the firm's initial policy to calculate attorney fees in contingency fee cases after adding the PIP benefits to the total settlement amount. Later, Mr. Feller's partner analyzed the attorney fees on the total settlement for reasonableness based on the amount of work performed on the entire case and not specifically on the amount of work performed to obtain PIP benefits to determine whether to deviate from the agreed upon policy of taking a contingent fee on PIP benefits. The court analyzed ten cases that would be the focus of evidence related to Rule 1.5(a) and concluded that Mr. Feller was charging a contingent fee to collect benefits from the firm's clients' own insurers while engaged on a contingent fee basis to handle personal injury claims against third parties. The court concluded that none of the clients whose cases were presented to the court were at risk of having their PIP benefits denied and that the benefits obtained in the cases were obtained by routine filing and collection efforts, and that the recovery of the benefits was never uncertain or disputed, and it was improper for Mr. Feller to charge a contingent fee on benefits for which there was never a risk of non-recovery.

In one case, Mr. Feller took a contingency fee without a written fee agreement specifying the percentage to be paid.

*Mitigating Factors:*
Absence of prior record of discipline; Absence of dishonest or selfish motive; Good faith effort to make restitution; Cooperative attitude; Inexperience in the practice of law; Good character and reputation; Interim reform; and Remorse.

*Aggravating Factors:*
Pattern of misconduct and Multiple Offenses.

## PROBATION

On September 28, 2018, the Honorable Glenn R. Dawson, Second Judicial District Court, entered an order of discipline against Thaddeus W. Wendt, placing him on probation for a period of fifteen months or until conditions, including payment of restitution of $96,953.48 for contingency fees taken on Personal Injury Protection (PIP) claims, are met based on Mr. Wendt's violation of Rule 5.4(a) (Professional Independence of a Lawyer) of the Rules of Professional Conduct. The court also entered three public reprimands against Mr. Wendt for his violations of Rule 1.5(a) (Fees), Rule 1.5(c) (Fees), and Rule 1.15(d) (Safekeeping Property) of the Rules of Professional Conduct. The probation has ended.

*In summary:*
Mr. Wendt had comparable managerial authority at a firm with another attorney. A third attorney became a partner in the firm in 2012. Compensation of some paralegals at the firm included a percentage of the fees obtained from clients on whose cases the paralegals had worked. The practice started at the end of 2012 and ended around March 2014.

Starting in 2012, the firm accepted exclusively personal injury cases. PIP benefits are mandated by statute and are paid regardless of who was at fault in causing the accident by an individual's automobile insurance carrier. Mr. Wendt and his partner made the firm's initial policy to calculate attorney fees in contingency fee cases after adding the PIP benefits to the total settlement amount. Later, Mr. Wendt analyzed the attorney fees on the total settlement for reasonableness based on the amount of work performed on the entire case and not specifically on the amount of work performed to obtain PIP benefits to determine whether to deviate from the agreed upon policy of taking a contingent fee on PIP benefits. The court analyzed ten cases from the time period in question that would be the focus of evidence related to Rule 1.5(a) and concluded that Mr. Wendt was charging a contingent fee to collect benefits from his clients' own insurers while engaged on a contingent fee basis to handle personal injury claims against third parties. The court concluded that none of the clients whose cases were presented to the court were at risk of having their PIP benefits denied, that the benefits obtained in the cases were obtained by routine filing and collection efforts, that the recovery of the benefits was never uncertain or disputed, and it was improper for Mr. Wendt to charge a contingent fee on benefits for which there was never a risk of non-recovery.

In one case, the firm took a contingency fee without a written fee agreement specifying the percentage to be paid. In three cases, Mr. Wendt failed to promptly deliver funds to which third parties were entitled. The funds were delivered after the non-payments were discovered.

*Mitigating Factors:*
Absence of prior record of discipline; Absence of dishonest or selfish motive; Good faith effort to make restitution; Cooperative attitude; Inexperience in the practice of law; Good character and reputation; Interim reform; and Remorse.

*Aggravating Factors:*
Pattern of misconduct and Multiple Offenses.

# *Attorney Discipline*

## UTAH STATE BAR ETHICS HOTLINE

Call the Bar's Ethics Hotline at 801-531-9110 Monday through Friday from 8:00 a.m. to 5:00 p.m. for fast, informal ethics advice. Leave a detailed message describing the problem and within a twenty-four-hour workday period, a lawyer from the Office of Professional Conduct will give you ethical help about small everyday matters and larger complex issues.

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www.utahbar.org/opc/rules-governing-eaoc/.

## ADMONITION

On November 16, 2017, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rules 1.16(d) of the Rules of Professional Conduct.

*In summary:*
The attorney was appointed to represent a client in his appeal. The client requested a copy of the client's trial file and appellate file. The attorney told the client he would provide the trial transcripts and associated notice of appeal once the opening brief was filed. The court of appeals issued a memorandum decision affirming the district court's decision. Approximately three months later the court of appeals wrote to the client acknowledging the client's difficulties obtaining the file and provided the client with a copy of the appellate file. The attorney failed to return case files to the client after requests from the client.

## PUBLIC REPRIMAND

On November 16, 2017, the Chair of the Ethics and Discipline Committee for the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Alan R. Stewart for violating Rule 1.3 (Diligence), Rule 1.4(a) (Communication), and Rule 1.8(a) (Conflict of Interest: Current Clients: Specific Rules) of the Rules of Professional Conduct.

*In summary:*
Mr. Stewart was retained by a client to represent the client in a property dispute with the client's neighbor. Approximately three months later the court ordered the parties to attend a session of mediation.

Three more months passed and Mr. Stewart filed a request for hearing on the client's verified motion for additional preliminary orders. Counsel for the defendants informed Mr. Stewart that the defendants in the case would be out of the country for the

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summer and requested the hearing be scheduled after their return. The client was not informed that the defendants would be out of the country, and was not informed concerning the agreement Mr. Stewart had with the defendants' counsel.

Approximately ten months later and more than a year after the client retained Mr. Stewart, the court issued an order to show cause. Mr. Stewart did not inform the client about the order to show cause.

Two months later the client loaned Mr. Stewart an amount of money while he was still representing the client. Mr. Stewart did not advise the client in writing to seek advice of independent counsel concerning the loan while he was still serving as the client's counsel. The client did not give informed consent in writing regarding the loan transaction and the full terms of the loan.

Mr. Stewart failed to move the case forward within a reasonable timeframe, and instead caused time delays and frustrations for the client. Mr. Stewart failed to adequately disclose dates and times of court dates, and failed to adequately explain developments in the case to the client. Mr. Stewart failed to move the case forward which resulted in an order to show cause. Mr. Stewart accepted a loan from the client without disclosing a conflict and advising the client to obtain independent counsel.

*Aggravating factors:*
Prior bar actions.

No mitigating factors.

## *Discipline Process Information Office Update*

Eighty attorneys contacted the Discipline Process Information Office for assistance and information during 2017. Jeannine Timothy is ready and available to explain the disciplinary process to all attorneys who find themselves the subject of a Bar complaint. Give Jeannine a call with all your questions about the disciplinary process.

DISCIPLINE PROCESS
INFORMATION OFFICE

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**DisciplineInfo@UtahBar.org**

## PUBLIC REPRIMAND

On October 24, 2017, the Honorable Barry G. Lawrence, Third Judicial District Court entered an Order of Reciprocal Discipline: Public Reprimand against Richard P. Gale for his violation of Rule 8.4(d) (Misconduct) of the Rules of Professional Conduct, and is based upon discipline before the United States Tenth Circuit Court of Appeals (Tenth Circuit).

*In summary:*
The Tenth Circuit issued an Order of public admonishment on April 12, 2017, for Mr. Gale's failure to comply with the court's deadlines, rules, and directives, and his failure to adequately represent his client, which are inconsistent with the standards of practice for the Tenth Circuit.

The Tenth Circuit's public admonishment is equivalent to a public reprimand in Utah.

There were no aggravating or mitigating circumstances.

## PROBATION

On October 16, 2017, the Honorable Mark S. Kouris, Third Judicial District Court, entered an Order of Probation, against Eliza R. Van Orman, placing her on probation for a period of eighteen months or until the end of the criminal probation, whichever comes first, for Ms. Van Orman's violation of Rule 8.4(b) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Ms. Van Orman drove or operated a motor vehicle while having a blood alcohol level of 0.08 or above and caused bodily injury to another. Ms. Van Orman pleaded guilty to a Class A Misdemeanor of driving under the influence of alcohol and was sentenced to probation for eighteen months in Third District Court.

The following mitigating factors were found: absence of prior record of discipline; absence of a dishonest or selfish motive; timely good faith effort to make restitution or to rectify the consequences of the misconduct involved as Ms. Van Orman paid the victim an amount to cover medical expenses; cooperative attitude towards the proceedings; and remorse.

There were no applicable aggravating factors.

## DISBARMENT

On November 3, 2017, the Honorable Royal I. Hansen, Third Judicial District Court, entered an Order Lifting Stay and Imposing Disbarment based upon the November 2, 2015 Findings of Fact, Conclusions of Law and Order of Disbarment, disbarring Susan Rose from the practice of law for her violations of Rule 1.1

(Competence), Rule 1.7(a) (Conflict of Interest: Current Clients), Rule 3.1 (Meritorious Claims and Contentions), Rule 3.2 (Expediting Litigation), Rule 4.2(a) (Communication with Persons Represented by Counsel), Rule 8.2 (Judicial Officials), and Rule 8.4(d) (Misconduct) of the Rules of Professional Conduct. The misconduct was predicated on conduct in two cases.

*In summary:*
In the first matter, Ms. Rose filed a lawsuit in the Navajo Tribal Court against numerous individual defendants and San Juan County. The tribal court issued an order granting the relief requested and directing defendants to pay an amount as a fine per day for each day the mandate was not carried out. Ms. Rose sought to enforce the order of the tribal court in the federal courts.

Ms. Rose filed a Complaint in the United States District Court for Utah on behalf of her clients to enforce the Navajo Tribal Court's order. The claims in the Complaint included civil rights violations, RICO claims, federal antitrust claims, mail fraud, witness tampering, interference with commerce by threats, claims under the Freedom of Access to Clinic Entrances Act, Health Care Quality Improvement Act, Emergency Medical Treatment and Active Labor Act, and the Medical Bill of Rights. The Complaint included numerous state law torts, contract claims, and federal common law claims. The Complaint also sought the entry of sweeping declaratory judgments and writs of mandamus that would require audits of federal funds expended by the county for the previous ten years, an IRS audit of payroll tax withholding, the convening of a federal grand jury investigation, and the immediate seizure or sequestration of the defendant entities' financial records by U.S. Marshals.

Throughout Ms. Rose's representation of the plaintiffs and over a period of several years, Ms. Rose filed numerous pleadings and claims in the District Court and in the Tenth Circuit Court of Appeals that were found to be frivolous and which contained inaccurate information. Ms. Rose also filed a constant stream of motions, corrections to motions, amendments to motions, filed corrected and amended motions after the opposing parties had filed their responses, filed lawsuits in other courts, and filed appeals that were found to have no basis.

At one point, Ms. Rose communicated with and attempted to represent a person she named as a defendant in the same case, whose interests were directly adverse to those of Ms. Rose's client, and whom she knew to be represented by counsel. In the same matter, Ms. Rose filed a motion to recuse a judicial official and in the memoranda supporting the motion, Ms. Rose made disparaging remarks about the judge's integrity and qualifications with reckless disregard as to the truth or falsity of the statements. In addition, Ms. Rose failed to understand the law or follow the Rules of Civil Procedure, the local rules, and the Rules of Professional Conduct. Ms. Rose unnecessarily delayed litigation to the detriment of the parties and the judicial system, and failed to make reasonable efforts to expedite the litigation.

In the second matter, Ms. Rose represented a client in a grandparent visitation case. Ms. Rose filed an appearance in the case and asked for additional time to answer the complaint, which was filed in state court. When the request was denied, Ms. Rose filed a motion to stay the proceedings. The court set a hearing for oral argument on the motion to stay. The morning of the hearing, Ms. Rose faxed a letter to the court indicating she would not attend the hearing due to an order from the tribal court that stated anyone appearing in the state court would be subject to confinement for a year or a $5,000 fine. Also on the day of the hearing, Ms. Rose filed an objection to the proceedings. In addition, Ms. Rose initiated a lawsuit in federal court on behalf of the minor child of her client against the grandparents. The state court went forward with the hearing, but Ms. Rose did not appear. The court issued an order and in the order indicated the quality of pleadings filed in the case on behalf of Ms. Rose's client suggested that her counsel was only marginally competent, if that, to practice law in Utah. The court directed the clerk to make copies of the pleadings and submit them to the Utah State Bar Office of Professional


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Conduct with a copy of his order. The court explained that the claim that Ms. Rose was forbidden to appear in the matter was "entirely self-imposed" because Ms. Rose's client sought and obtained the restriction on her own. Another hearing was set. On the same day as the new hearing, Ms. Rose filed a Motion for Disqualification of the judge. The reviewing judge issued an order indicating the motion was untimely and ruled that all eleven of the allegations "fell woefully short of the standard." Ms. Rose was sanctioned and ordered to pay attorney fees and submit a report regarding the standard for judicial disqualification. The grandparents ultimately dismissed the state court case because they could not afford to continue after Ms. Rose sued them in federal court, and then appealed when her claim was dismissed.

In both matters, Ms. Rose's filings of motions even after being warned and sanctioned caused significant delays and expense to the parties and the judicial system.

The following aggravating factors were found: dishonest or selfish motive; pattern of misconduct; multiple offenses; obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders of disciplinary authority; submission of false evidence, false statements, or other deceptive practices during the disciplinary process; refusal to acknowledge the wrongful nature of misconduct involved either to the client or to the disciplinary authority; and, lack of good faith effort to make restitution or to rectify the consequences of the misconduct involved.

## RESIGNATION WITH DISCIPLINE PENDING

On November 22, 2017, the Utah Supreme Court entered an Order Accepting Resignation with Discipline Pending concerning Andrew A. Stewart, for violation of Rules 8.4(b) and Rule 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Stewart was charged with eight counts of Making and Uttering a False Prescription and three counts of Obtaining a Prescription under False Pretenses, all are third degree felonies in violation of Utah Code section 58-37-8. Mr. Stewart pled guilty to five counts of Falsify/Forge/Alter a Prescription of a Controlled Substance, all class A misdemeanors. The facts of Mr. Stewart's conviction based on a guilty plea were as follows: Mr. Stewart obtained prescriptions for a controlled substance from two providers without disclosing to either physician that the other was prescribing the same controlled substance to him. Mr. Stewart intentionally made false or forged prescriptions by "whiting out" the dates on the original prescriptions, photocopying them, and inserting new dates by hand.


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# Discipline Corner

## ADMONITIONS

1. An attorney was admonished pursuant to Rule 3.3(a) (4) (Candor Toward the Tribunal) for having garnished a debtor's wages in excess of the judgment. The attorney secured the first writ of garnishment on December 19, 1990. He subsequently obtained a second writ of garnishment on January 4, 1991 by proffering an Affidavit which failed to account for that part of the judgment that had been satisfied by the prior garnishment.

## PRIVATE REPRIMAND

1. An attorney was privately reprimanded for violating Rule 1.3 (Diligence) for failure to exercise reasonable diligence in representing a client in a Chapter 7 bankruptcy action filed on May 26, 1989. After the initial filing, the client needed to include additional creditors and on June 19, 1989 paid a fifty ($50.00) change fee and submitted to the attorney the list of the creditors to be added. However the attorney misplaced the list. He was provided a second list but failed to amend the petition resulting in the garnishment of the client's wages and bank accounts in February of 1990. The attorney filed a motion to reopen the matter in March of 1990 but failed to appear at the hearing. His subsequent motion was heard and denied on July 2, 1990. The attorney was also reprimanded for violating Rule 1.4(b) (Communication) for failure to explain to the client that the subsequent filing of a Chapter 13 would provide the discharged creditors in the Chapter 7 a second opportunity to file a claim for payment under Chapter 13. In mitigation, the Board of Commissioners of the Utah State Bar considered the attorney's admission and the fact that he has personally paid some of the debts omitted in the Chapter 13 and has further offered to pay any outstanding debts that should have been included in the Chapter 13.

2. An attorney was privately reprimanded for violating Rule 1.3 (Diligence) for failure to exercise reasonable diligence in representing a client in a civil action involving the wrongful conversion of property. The attorney was retained in 1986 but failed to commence an action prior to the expiration of the statute of limitations. The attorney was further reprimanded for violating Rule 1.4(a) (Communication) for failure to keep the client informed as to the status of the case. In mitigation, the Board of Commissioners of the Utah State Bar considered the $7,000.00 restitution paid by the attorney. In aggravation, the Board considered the attorney's prior disciplinary history involving sanctions for matters of neglect.

## SUSPENSIONS

1. On December 30, 1991, Elizabeth Joseph was suspended from the practice of law for a period of one (1) year for having commingled the $20,000.00 wrongful death settlement of Ramona Denham Crandall with her personal funds in violation of Disciplinary Rule 9-102(A) (prohibiting commingling), Rule 9-102(A) (1) (notification of receipt of funds), Rule 9-102(B) (3) (maintain records and provide accounting), Rule 9-102(B) (4) (promptly paying clients). In mitigation, the Hearing Panel and the Board of Commissioners of the Utah State Bar considered the fact that Ms. Joseph has made restitution and her conduct was reflective of her loyalty to an extended polygamous family in a polygamous community which conflicted with her loyalty to her client. In aggravation, the Board considered that Ms. Joseph made restitution only after being ordered by the Sixth District Court. The Bar was awarded its costs in litigating the matter.

## RULE CHANGE ALERT DISCIPLINE AND SANCTIONS

Rule VII of the Procedures of Discipline of the Utah State Bar was recently amended by adding the following subparagraph:

(K) Resignation with Discipline Pending.

1. An attorney who is the subject of an investigation for allegations of professional misconduct may resign from the bar of the State of Utah with the consent of the Supreme Court and upon such terms as the Court may impose for the protection of the public prior to an adjudication of the charges.

2. The attorney wishing to resign under the provisions of this rule shall submit to the Court a sworn "Petition for Resignation with Discipline Pending" substantially similar to Appendix A of the Procedures of Discipline of the Utah State Bar, wherein the attorney:

(a) Admits the facts upon which all charge(s) are based;

(b) Admits the charge(s) constitute professional misconduct;

(c) States the resignation is freely and voluntarily tendered and that it is being submitted without coercion or duress;

(d) Verifies he or she is fully aware of the implications of submitting the resignation;

(e) Acknowledges the disciplinary matter, including the contents of the resignation, shall become part of the court record available to the public and that notice of the Resignation with Discipline Pending shall be published in the Utah Bar Journal;

(f) Acknowledges and agrees to comply with all provisions of Rule XVIII(a), (b) and (d) of the Procedures of Discipline of the Utah State Bar including notification to clients, disposition of client files and client funds.

(g) A copy of the petition shall be served upon Bar Counsel unless Bar Counsel's consent is indicated by his signature affixed thereto.

3. Upon receipt of the Petition without the consent of Bar Counsel indicated thereon, the court shall notify Bar Counsel of the petition and Bar Counsel may proffer in writing such matters of fact or argument as he may desire within twenty (20) days. The Court shall then enter its order accepting or rejecting the tendered resignation or taking such other action as it deems necessary.

4. The Court, upon accepting the Resignation, shall enter an Order of Discipline specifying the effective date of the resignation and containing any additional or alternative terms and conditions deemed appropriate including conditions precedent to readmission to the bar.

5. Any attorney whose resignation under this Rule is accepted may not apply for readmission to the bar of the State of Utah until 5 years after the effective date of the resignation unless the Supreme Court has specified a shorter period of time in the Order of Discipline. An attorney seeking readmission must comply with any conditions and qualifications set by the Supreme Court in the Order of Discipline and the requirements of Rule XXI, READMISSION AND REINSTATEMENT, of the Procedures of Discipline of the Utah State Bar.

## *Notice of Petition for Reinstatement*

On January 10, 2000, Frank J. Falk filed a Petition for Reinstatement and Pursuant to Rule 25 of the Rules of Lawyer Discipline and Disability, Civil Number 980906892 MI, the Honorable William B. Bohling, Third Judicial District Court, presiding. Pursuant to Rule 25 (Reinstatement Following a Suspension of More Than Six Months; Readmission) of the Rules of Lawyer Discipline and Disability, the Office of Professional Conduct ("OPC") hereby gives notice of the Petition. Any individuals wishing to express opposition to or concurrence with the Petition should file notice with the District Court within thirty days of the date of this publication.

On December 22, 1997, pursuant to a Discipline by Consent and Settlement Agreement, the Honorable Anne M. Stirba entered an Order of Discipline Suspension against Frank J. Falk, a Salt Lake City attorney. Mr. Falk was ordered suspended for a period of one year. The suspension was stayed and Mr. Falk was ordered to be on supervised probation for one year.

On July 17, 1998, pursuant to a Discipline by Consent and Settlement Agreement, the Honorable Leon A. Dever entered an Order of Discipline Suspension (Stayed) against Frank J. Falk. Mr. Falk was ordered suspended for one year following his December 22, 1997, suspension. The suspension was stayed and Mr. Falk was placed on supervised probation for one year.

## *A Fond Farewell to a Wonderful Life in a Noble Profession*

And it, indeed, has been a wonderful life in what, indeed, is a noble profession. After forty-five years at the Bar, I have decided to fade away from the active practice of the law and to yield to younger and more competent lawyers before failing memory and lower tolerance for stress cause me to become an embarrassment to the firm and to the Bar.

I feel extremely fortunate in having begun the practice:

1. Before electric typewriters, copying machines, dictating equipment, calculators, computers, fax machines, and more recently, e-mail and the Internet.
2. When the Bar was so small that every member knew every other member.
3. When patent law was the only true specialty and almost every lawyer was a general practitioner.
4. Before the federal bureaucracy had invaded nearly every aspect of our professional lives.
5. When lawyers were more counselors than "hired guns."
6. Before the billable hour created great inefficiencies in the delivery of legal services.
7. Before airlines became our primary mode of interstate travel.

Also, I am extremely fortunate to have witnessed:

1. The growth of the Bar, in numbers and competence.
2. The growth in the number and stature of our outstanding state and federal judges, some of the best in the land.
3. The competence and professionalism of this vast new crop of lawyers with so very few buffoons and unethical practitioners.
4. The tremendous technical advances made in travel, communications and law practice management.
5. The advances made and the services now performed by the Utah State Bar, the Utah Bar Foundation, the Salt Lake County Bar Association, and the American Bar Association and its many affiliated organizations.
6. The revision of federal tax laws to permit better financial and retirement planning for lawyers.
7. The tremendously favorable impact that the Rule of Law has made in strengthening personal liberties for hundreds of millions of people.
8. And finally, the marvelous camaraderie of my former partners, associates, and staff members at the firm.

In bidding fond farewell, I would like to thank all who have made this wonderful life in this noble profession possible for me. To name each of you out there who have made this possible would take volumes. You are family members, teachers, advisors, partners, colleagues, adversaries and judges, all of whom have contributed to make my professional life so enjoyable.

Thank you all

*Keith E. Taylor*

## *Discipline Corner*

**ADMONITION**

On November 11, 1998, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 1.3 (Diligence) and 1.4 (Communication) of the Rules of Professional Conduct.

A client retained the attorney to defend him in a divorce action. The attorney did no work on the case, and a default judgment was entered against the client. The client repeatedly attempted to communicate with the attorney, but these attempts were usually not successful. The attorney failed to have the default judgment set aside.

On October 8, 1998 a Screening Panel of the Ethics and Discipline Committee heard the matter and determined that an admonition was appropriate discipline.

**ADMONITION**

On November 11, 1998, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 1.3 (Diligence), 1.4 (Communication), and 1.5 (Fees) of the Rules of Professional Conduct. The attorney was also ordered to pay restitution in the amount of $500.

A client retained the attorney to represent her in setting aside a Certificate of Default in a divorce action. The client paid the attorney a $500 retainer fee. Although time was of the essence, the attorney did not perform the work. The attorney failed to adequately respond to communications from the client.

On October 8, 1998 a Screening Panel of the Ethics and Discipline Committee heard the matter and determined that an admonition was appropriate discipline.

**ADMONITION**

On November 24, 1998, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 1.1 (Competence), 1.2 (Scope of Representation), and 1.3 (Diligence) of the Rules of Professional Conduct. The attorney was also ordered to pay restitution, to attend eight hours of Estates and Trusts CLE, and to attend the Utah State Bar's Ethics School. The Order was based on a stipulation entered into by the attorney and the Office of Professional Conduct.

Longstanding clients of the attorney retained him to advise them concerning their estate plan. The attorney prepared various documents for the clients, including a trust document. A provision of the trust was in conflict with another provision, and was inconsistent with what the clients specified that they wanted. The conflict resulted from similar provisions in two places, and after changing one provision to comply with the clients' wishes, the other provision was overlooked and not changed. Additionally, the attorney failed to record a quitclaim deed by which the clients transferred some property to the family limited partnership.

Finally, the attorney delayed opening the account for the Trust until nearly five weeks after the money was transferred to him. The attorney was out of town for the first two weeks of that period. The attorney did not use any portion of the money for any personal purpose.

**ADMONITION**

On November 30, 1998, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rule 1.8 (Conflict of Interest: Prohibited Transactions) of the Rules of Professional Conduct.

The attorney was retained by a client to represent him in the resolution of a divorce action with no written fee agreement for the representation. Thereafter, a dispute developed between the attorney and the client as to what was to be the fee for the legal services.

During the attorney's representation of the client, they discussed a certain piece of real property. The client owned a parcel of land that he had inherited from his mother prior to his marriage. The attorney allegedly told the client that in order to protect the land from any claims that might be made by the client's wife, he should convey the property by deeding it to a corporation that would be owned by the attorney and the client.

In the agreement to acquire and develop the real property, the attorney entered into a business transaction with a client. The terms of the transaction were not fully disclosed and transmitted in writing to the client in a manner that could be reasonably understood by the client and the client was not given a reasonable opportunity to seek the advice of independent counsel.

**ADMONITION**

On December 17, 1998, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 1.3 (Diligence), 1.4 (Communication), and 8.4(a) and (c) (Misconduct) of the Rules of Professional Conduct. The attorney was also ordered to attend the Utah State Bar's Ethics School. The Order was based on a Stipulation as to Findings of Fact, Conclusions of Law and Recommendation of Discipline.

Commencing in 1995, the attorney represented a client in a bankruptcy proceeding, an adversary proceeding ancillary to the bankruptcy proceeding, and a separate civil action relative to these other two matters. In 1997 the attorney left the law firm he was employed by and opened his own practice. He took the client's matters with him and continued to represent the client. Thereafter, the attorney failed to act with reasonable diligence and promptness in representing the client. The attorney also made material misrepresentations to the client regarding the status of the case.

The Office of Professional Conduct determined that the attorney was experiencing extreme family problems that substantially affected his conduct in this matter, and were sufficient to warrant consideration as a mitigating factor within the meaning of Rule 6.3 of the Standards for Imposing Lawyer Sanctions.

**PUBLIC REPRIMAND**

On November 25, 1998, the Honorable William A. Thorne, Third Judicial District Court, entered an Order of Discipline: Reprimand, reprimanding Edward D. Flint. Flint was also ordered to pay $2,000 restitution and to attend the Utah State Bar's Ethics School. The Order was based on a stipulation entered into by Flint and the Office of Professional Conduct.

A client retained a service group (the "Group") to represent him in connection with an immigration matter. The Group employed Flint. Flint was present during some of the client's meetings with the Group. The client paid the Group an attorney's fee of $680. The client was given a "law card" stating that Flint was his attorney. No meaningful legal services were provided to the client. The client was misinformed by the Group as to what he could reasonably expect to achieve in the immigration proceedings.

Another client retained the Group to file a political asylum application on his behalf. The retainer agreement between the client and the Group identified Flint as the client's attorney. The case was delegated to another attorney licensed in the State of Utah who was employed to assist with the immigration cases. No meaningful legal services were performed on the client's behalf.

A third client retained Flint to represent him in a professional license forfeiture matter. Flint failed to timely file a request for reconsideration with the licensing board on the client's behalf. Flint received $3,000 for representing the client in the licensing matter. On November 11, 1997, the client was awarded $2,000 from Flint by the Utah State Bar's Fee Arbitration Committee after a non-binding fee arbitration hearing.

**INTERIM SUSPENSION**

On November 24, 1998, the Honorable Robin W. Reese, Third Judicial District Court, entered an Order of Interim Suspension, suspending Charles C. Brown pending the outcome of disciplinary proceedings. The Order was based on a stipulation entered into by Brown and the Office of Professional Conduct.

On August 6, 1997, the Bar filed a formal complaint against Brown alleging that he committed numerous violations of the Rules of Professional Conduct. The matters raised in the complaint are still outstanding. In approximately the summer of 1998, Brown became incapacitated and unable to practice law. Brown has been intermittently hospitalized under a doctor's care, and is presently unable to practice law.

Charles C. Brown is not in any way related to Charles R. Brown, the president-elect of the Utah State Bar.

**INTERIM SUSPENSION**

On December 10, 1998, the Honorable Darwin C. Hansen, Second Judicial District Court, entered an Order of Interim Suspension, suspending David Young Payne pending the outcome of disciplinary proceedings.

The order was based on a certified judgment of Payne's guilty plea to two counts of knowingly and intentionally attempting to give false or inconsistent material statements in depositions and trials at his two divorce proceedings. The Bar argued that based upon Payne's plea he has been convicted of a crime which reflects on his honesty, trustworthiness or fitness as a lawyer. Based upon this, the judge agreed with the Bar that Rule 19 (Lawyers Convicted of a Crime) of the Rules of Lawyer Discipline and Disability is applicable.

**SUSPENSION**

On December 4, 1998, the Honorable Tyrone E. Medley, Third Judicial District Court, entered an Order of Suspension suspending Lowell V. Summerhays from the practice of law for twelve months for violation of Rules 1.15(a) and (b) (Safekeeping Property), 5.3(b) (Responsibilities Regarding

Nonlawyers Assistants), and 8.4(a) (Misconduct) of the Rules of Professional Conduct. Ten months of the suspension were stayed and Summerhays was placed on ten months of supervised probation, following two months of suspension. Additionally Summerhays is required to attend the Utah State Bar Ethics School. The Order was based on a Stipulation to Discipline by Consent: Suspension entered into by Summerhays and the Office of Professional Conduct ("OPC").

On December 10, 1996 Summerhays issued a disbursement letter to his client. In the letter he stated that a portion of the settlement proceeds was forwarded to the client's physician for medical services. The physician was in fact not paid. Because the physician was not paid for his services, he initiated collection efforts against Summerhays's client through a recovery service. When the recovery service contacted the client, she informed them by letter that the physician should have been paid on or about December 10, 1996.

The OPC's investigation determined that the physician was not paid for services rendered to Summerhays's client and that a paralegal from Summerhays's office attempted to mislead the physician into believing that the client's bill had been paid. Summerhays paid the physician after the OPC informed him that it had begun an investigation.

In another matter, a surgeon operated on a client of Summerhays. The surgeon was not paid a portion of his bill for his services from the settlement proceeds Summerhays received on behalf of the client, despite the fact that Summerhays provided the surgeon a Doctors' Lien. Because the physician was unable to collect his fee from the proceeds of the client's settlement, the surgeon initiated collection action against the client. On March 16, 1998, the surgeon spoke with Summerhays regarding the past due bill. The following day, Summerhays visited the surgeon and presented him a check for the outstanding balance. The check was returned for insufficient funds. Following the return of the check because of insufficient funds, the surgeon contacted the OPC which initiated an investigation into Respondent's failure to honor the Doctor's Lien. In April of 1998, Summerhays paid the surgeon the balance of the outstanding debt.

**SUSPENSION**

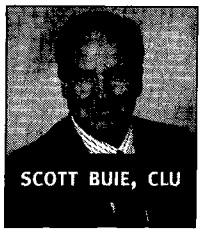
On December 16, 1998, the Honorable John A. Rokich, Third Judicial District Court, entered an Order of Discipline: Suspension suspending Don L. Bybee from the practice of law for eighteen months for violation of the terms of his probation.

The Court conducted a hearing on January 16, 1998 wherein Bybee and the Office of Professional Conduct ("OPC") entered into a Stipulation Regarding Discipline by Consent ("Stipulation"). In the Stipulation, Bybee agreed to accept an eighteen-month stayed suspension, and was placed on supervised probation for eighteen months for his misconduct. Bybee agreed that if he failed to fulfill the conditions of his probation, the stay would be lifted and he would serve the entire eighteen months of actual suspension. On January 16, 1998, the Court entered an Order of Suspension and Probation incorporating the terms of the Stipulation.

The order required Bybee to meet monthly with a supervising attorney, to file a report every three months with the supervising attorney and the OPC regarding each of his cases, to attend the next available Utah State Bar Ethics School, and to provide the OPC with a release authorizing access to information concerning his trust account.

On August 14, 1998, the OPC filed a motion with the Court alleging that Bybee had failed to satisfactorily comply with the terms of his probation and requesting that his probation be revoked and the full eighteen month suspension imposed as agreed by Bybee in the Stipulation and as ordered by the Court.

On September 29, 1998, the Court held a hearing on the OPC's motion and concluded that Bybee failed in every respect to satisfactorily comply with the terms of the Court's Order of Suspension and Probation. The Court issued an Order of Discipline: Suspension on December 16, 1998, suspending Bybee for eighteen months with a thirty-day wind-down period as allowed under Rule 25 of the Rules of Lawyer Discipline and Disability. Bybee's suspension was effective January 15, 1999.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## Discipline Corner

### DISBARMENT

On December 12, 1997, the Utah Supreme Court issued an opinion reversing the Second District Court of Utah's suspension of Jean Robert Babilis, and stating that disbarment was the appropriate sanction for Babilis's misconduct. Babilis violated Rules 1.4 (b) (Communication), 1.5 (Fees), 1.13 (Renumbered in 1995 as Rule 1.15) (Safekeeping Property), 3.3 (Candor Toward the Tribunal), 7.1 (a) (Communications Concerning a Lawyer's Services) and 8.4 (c) (Misconduct) of the Rules of Professional Conduct.

The Utah State Bar appealed a Second District Court order suspending Babilis from the practice of law for three years. The Bar filed a complaint alleging that Babilis had accepted representation of an estate in an uncontested probate matter on the basis of a contingency fee, converted estate funds to his own use, and lied to his clients and a court about his handling of the case. Although the District Court found that Babilis committed serious violations of the Rules of Professional Conduct, it entered an order sanctioning Babilis with a suspension. On appeal, the Bar asserted that the trial court, instead of suspending Babilis, should have disbarred him. Babilis cross-appealed, arguing that the trial court should have imposed a lesser penalty than a three-year suspension. Babilis also contended that the Bar had no right to appeal the trial court's disciplinary order.

The Supreme Court held that the Bar has a right to appeal disciplinary orders imposed by district courts and that Babilis's misconduct warranted disbarment. Moreover, the Court opined:

> Intentional misappropriation of a client's funds is always indefensible; it strikes at the very foundation of the trust and honesty that are indispensable to the functioning of the attorney-client relationship and, indeed, to the functioning of the legal profession itself. *See In re Davis*, 754 P.2d 63, 66 (Utah 1994); *In re Wilson*, 409 A.2d 1153, 1154-55 (N.J. 1979); *Carter v. Ross*, 461 A.2d 675, 676 (R.I. 1983); *cf. In re Smith*, 925 P.2d 169, 174 (Utah 1996). The honesty and loyalty that all lawyers owe their clients are irrevocably shattered by an intentional act of misappropriation, and the corrosive effect of such acts tends to undermine the foundations of the profession and the public confidence that is essential to the functioning of our legal system. Lawyers should be on notice that an intentional act of misappropriation of a client's funds is an act that merits disbarment.

The District Court refused to award restitution, apparently because it decided that the issue had been litigated and resolved by a settlement between the client and Babilis. But the Supreme Court remanded the matter for the purpose of making factual findings and awarding an appropriate restitution designed to compensate the client.

Chief Justice Zimmerman wrote a concurring opinion, which provides as follows:

> I concur in the court's opinion. However, I write to note the importance this court is placing on the terms of the Standards for Imposing Lawyer Sanctions and on trial courts adhering to those standards, both in classifying conduct for purposes of determining the presumptive sanction and in assuring that mitigating and aggravating circumstances are weighed appropriately before any decision is made to depart from the presumptive sanction.
>
> There is good reason for requiring adherence to these standards. One of the failings of the disciplinary regime as it existed before the present one was that when sanction recommendations came to this court from the Bar Commission, there was no set of standards that defined the sanction generally appropriate for any given type of conduct. That meant that the Bar's recommendations had something of an ad hoc character to them, when viewed over the years, and that this court's action on those recommendations had a similar character. In the absence of a detailed set of guidelines, both the Commission and this court were left a bit at sea, which raised the possibility that those similarly situated might not receive similar sanctions. This lack of guidelines was noted by the court and was one of the factors that prompted the adoption of the current standards.
>
> Now that we have standards, we should be vigorous in requiring that trial courts follow them so that all concerned know that each judge across the state before whom disciplinary matters are brought is following the same script. This will lessen concerns on the part of lawyers that the sanction imposed in a given case will depend more on the judge before whom the matter is tried than on the nature of the conduct; it will increase the confidence of trial judges that if they follow the standards, they will not be overturned unexpectedly; and it will lessen the inclination of lawyers to appeal sanctions in the hope that this court will idiosyncratically lessen a sanction that is in accordance with the standards' detailed requirements. These standards are a significant advance in the effort to treat similarly situated persons similarly, something that is essential if the lawyer discipline machinery we have crafted is to retain the confidence of the Bar and the public.

For a full copy of the opinion, see *In the Matter of the Discipline of Jean Robert Babilis*, No. 960167, Filed December 12, 1997, at:
http://www.at.state.ut.us/usctx2n.htm.

### SUSPENSION

On November 13, 1997, the Honorable Timothy R. Hanson, Third District Court, entered an Order of Suspension, suspending Loren D. Israelsen from the practice of law for three years for violation of Rule 8.4 (Misconduct) of the Rules of Professional Conduct. Israelsen was also ordered to pay the Utah State Bar its costs of prosecution of the matter, and to attend the Utah State Bar Ethics School. The Order was based on a Discipline by Consent entered into by Israelsen and the Office of Attorney Discipline.

On October 11, 1996, a Felony Information was filed by Jonathan Goldstein, Assistant United States Attorney for the Eastern District of Missouri, charging Israelsen with one felony count of conspiracy, in violation of Title 18, U.S.C. §371.

The Felony Information alleges, in pertinent part, the following:

> From on or about September 1, 1988, and continuing through on or about March 30, 1992, in the Eastern District of Missouri and elsewhere, Health Products International, Inc., and Loren D. Israelsen, Defendants herein, together with others known and unknown to the United States Attorney, did knowingly and willfully combine, conspire, confederate and agree with each other to enter and introduce into the commerce of the United States, imported merchandise by means of fraudulent and false invoices, declarations, letters, paper and by means of false written and verbal statements, in violation of Title 18, U.S.C. §542(b).

At all times material to the Felony Information, Israelsen performed work for Defendant Health Products, Inc., serving during some part of that period as vice-president, general counsel and director, and retained during some part of that period as outside legal counsel. At various times material to the Felony Information, Evening Primrose Oil ("EPO") was a substance marketed by Defendant Health Products or affiliated companies as a health food supplement for humans. This product was manufactured in Surrey, Great Britain and Nova Scotia, Canada, by a company named Efamol Limited ("Efamol"). On February 12, 1985, and continuing through March 30, 1992, the FDA effected an import alert regarding the EPO. The purpose of the import alert was to inform employees of the United States Customs Service and the FDA that, pursuant to the decision and authority of the FDA, EPO would not be permitted importation and entry into the United States. The import alert regarding EPO instructed government agents not only to inspect entry and shipping documents for the product description "Evening Primrose Oil," but also to inspect these documents for other indicia that the importation contained EPO by other names. On September 1, 1988, and continuing through March 30, 1992, any importation of EPO known to the United States Custom Service or the FDA was either denied entry into the United States, was re-exported after entry, or was destroyed. On approximately six occasions in May 1988, Health Products, alone or with an affiliated company, attempted to import through Chicago, Illinois, certain shipments of merchandise from Efamol. The FDA alerted Health Products that all of the entries were to be refused admission into the country because they were found to contain EPO. During the Summer of 1988, in order to continue importation of EPO, Health Products developed a plan by which the identity of the product EPO would be hidden from the United States Customs Service and the FDA so that the product could be allowed entry into the United States. Both Health Products, Israelsen and others agreed and conspired to hide the identity of the product. In his role as vice-president, general counsel or outside counsel for Health Products, Israelsen participated in the plan to import and distribute EPO into and within the United States of America.

Israelsen pled guilty to violating Title 18, U.S.C. §371, Conspiracy to Import by False Statements; a Class D felony. The United States District Court for the Eastern District of Missouri accepted Israelsen's plea, and sentenced him to two years of supervised probation and a fine of $25,000. The Government agreed not to bring any further charges against Israelsen. The Government further agreed that mitigating factors existed, including: Israelsen did not use sophisticated means; there were no tax losses to the United States or other losses to individuals; Israelsen clearly accepted responsibility for his offense.

Israelsen's actions consisted of criminal acts that reflect adversely on his fitness as a lawyer. Therefore, Israelsen violated Rule 8.4(b) of the Utah Rules of Professional Conduct. In taking the actions for which he was convicted, Israelsen should have known that he was violating his duties and responsibilities as an attorney licensed to practice law in the State of Utah. As a result, Israelsen violated Rule 8.4(a) of the Utah Rules of Professional Conduct. Finally Israelsen's actions consisted of conduct involving deceit or misrepresentation and he thereby violated Rule 8.4(c) of the Utah Rules of Professional Conduct.

**SUSPENSION**

On November 26, 1997, the Honorable G. Rand Beacham, Fifth District Court, entered an Order of Suspension, suspending Thomas A. Blakely, from the practice of law for three months for violation of Rules 8.4(a) and (b) (Misconduct) of the Rules of Professional Conduct. Blakely was also ordered to pay the Utah State Bar its costs of prosecution of the matter, to attend the Utah State Bar Ethics School, and to participate in and successfully complete a counseling program for sexual abuse. The Order was based on a Discipline by Consent entered into by Blakely and the Office of Attorney Discipline.

In August 1996, Blakely summoned his client to his office to have her sign some papers. The client was facing criminal charges for theft. During the consultation, Blakely made sexual advances towards his client. Blakely terminated his sexual advances when he heard a noise in his outer office. The client later filed a complaint with the St. George Police Department.

On November 20, 1996, Blakely was charged with one count of Forcible Sexual Abuse, a second-degree felony. On March 7, 1997, Blakely entered a plea of No Contest in Abeyance to the charge of Gross Lewdness, a Class A misdemeanor. The period of abeyance is eighteen months.

**ADMONITION**

On November 19, 1997, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violating Rules 1.7(b) (Conflict of Interest: General Rule) and 8.4(d) (Misconduct) of the Rules of Professional Conduct.

The attorney represented a client in a custody/visitation matter involving the client's children from a former marriage. In July and August of 1995, the attorney acted unprofessionally when he hugged his client's wife without her consent. The attorney's conduct adversely affected the attorney-client relationship.

On June 6, 1996, a Screening Panel of the Ethics and Discipline Committee voted to direct the Office of Attorney Discipline to file a formal complaint in District Court against the attorney. The Panel also recommended that the attorney be issued an admonition in lieu of formal charges being filed if he attended psychiatric counseling and the Utah State Bar Ethics School. Because the attorney attended counseling sessions with a licensed clinical psychologist and also attended and successfully completed the Utah State Bar Ethics School, the attorney stipulated to an Admonition.

**ADMONITION**

On December 4, 1997, an attorney was

admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violating Rules 1.3 (Diligence) and 1.4 (Communication) of the Rules of Professional Conduct.

In August 1991, an attorney was retained by a client and his family to represent them in an action against doctors and a hospital for the wrongful death of the client's mother. The attorney proceeded with the prosecution of the wrongful death claim, including presenting the case for pre-litigation panel review and attempting to locate experts to testify as to negligence and causation. The attorney had difficulty locating credible experts, and enlisted the aid of another firm. Neither the attorney nor the second firm could find an expert who would testify. On more than one occasion, the case was dismissed for lack of prosecution. The matter was dismissed in 1994 and 1995 and re-filed by the attorney in 1995. The attorney did not inform the client and his family that the matter had been dismissed without prejudice. In 1995, the client attempted on numerous occasions to contact the attorney, but the attorney would not call him. In early 1996, the attorney met with the client and his family; the client and his family decided that they wanted to try to find an expert on their own. In January 1996, the attorney wrote the client a letter stating that the statute of limitations would run on March 30, 1996. In early 1996, the client and his family attempted to find an expert to testify, and located a consulting expert on the east coast who was of the opinion that the malpractice case had merit. On March 29, 1996, the client faxed a letter to the attorney reporting the family's progress in finding an expert. In July 1996 the client sent a letter to the attorney stating that while researching at the court, he had discovered that the matter had been dismissed. The letter demanded a written response within the month of July 1996.

The client consulted another attorney to explain to him the status of the case. The client's new attorney spoke with the original attorney but the original attorney did not withdraw in the matter. In August 1996, an Order To Show Cause why the matter should not be dismissed for failure to prosecute was issued by the Third District Court. A hearing was set for September 18, 1996 and notice was served by mail on the original attorney as attorney for the client and his family. The matter has now been dismissed.

**ADMONITION**

On December 4, 1997, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violating Rules 1.3 (Diligence) and 8.1 (Bar Admissions and Disciplinary Matters) of the Rules of Professional Conduct.

On November 26, 1996, the attorney was retained to represent a client in a


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divorce action filed earlier in 1996 in the State of Georgia. The attorney was not licensed to practice law in Georgia. The attorney prepared an answer for the client to file pro se in Georgia. The court papers, served on the client on November 12, 1996, gave notice that there were hearing dates of November 27, 1996, and January 2, 1997, in Georgia. The attorney informed the client that he did not think that the client needed to attend those hearings because he did not think that the notice was appropriate. The attorney told the client that he would try to get the dates continued. Thereafter, the attorney left messages with the client's wife's attorney in Georgia regarding a continuance of the January 2, 1997 hearing, but never actually discussed the matter with that attorney. The attorney did not try to contact the court in Georgia to obtain a continuance. The client was not aware that the January 2, 1997, hearing date had not been continued. Owing to health reasons and because the attorney told the client that the client need not attend the January 2, 1997, hearing, the client did not attend that hearing. As a result of his not attending the hearing, the client was not present to contest his former wife's claims and a default judgment was entered which disadvantaged and damaged the client.

The default action has not been set aside primarily because the client has been unable to afford another lawyer to set aside the default or to represent him in a foreclosure action caused by his former wife's failure to make payments on the marital residence. When asked by the client after the default to forward his file to him in Georgia, the attorney failed to do so. Additionally, the attorney failed to respond to the Office of Attorney Discipline's investigation until August 7, 1997, after the OAD made requests for information and cooperation.

**ADMONITION**

On December 4, 1997, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violating Rules 1.3 (Diligence) and 1.4 (Communication) of the Rules of Professional Conduct.

In September 1995, an attorney was retained by clients to represent them in an action against a car dealership and a credit corporation following the purchase of an automobile from the dealership. The automobile had significant repair problems and was repossessed by the credit corporation after the clients refused to make further payments. On October 24, 1995, the attorney sent a letter to the car dealership and asked for a response within ten days, stating that if the attorney did not hear from the car dealership, the attorney would "be forced to file a formal complaint in a court of law seeking all available remedies, including punitive damages and attorneys fees." On November 8, 1995, the attorney had her associate prepare a complaint, but the complaint was neither filed nor forwarded to the clients. The clients relocated from Utah to Idaho, but informed the attorney of their new address. They attempted to call the attorney, but the attorney did not return their calls. The only communications from the attorney to the clients were monthly billing statements. The last date of actual contact between the clients and the attorney was on November 2, 1995, during a conference for which the clients were billed $75. Because the attorney did not respond to their calls, in April 1996 the clients retained an Idaho attorney to contact the attorney on their behalf to find out the status of their case. The Idaho attorney sent several letters to the attorney asking for a response. Finally, the Idaho attorney sent the attorney a letter on June 18, 1996, confirming a telephone conversation approximately six weeks prior. In that letter, the Idaho attorney confirmed that the attorney would send a status report to the clients. The attorney did not send that status report.

**PROBATION**

On November 19, 1997, the Third District Court entered an Order of Discipline (Probation) and Limited Disability Status, filed under seal, placing an attorney on a limited disability status pursuant to Rule 25 of the Rules of Lawyer Discipline and Disability. The attorney was placed on probation for a minimum period of twenty-four months for violation of Rule 1.1 (Competence) of the Rules of Professional Conduct.

The attorney admits that she suffers from a mental disability known as bipolar personality disorder. Notwithstanding the attorney's bipolar personality disorder, she has functioned as an attorney and counselor at law without supervision or serious incident since she was initially issued a law license in 1989. In February 1996, the attorney undertook the representation of a client in a domestic relations action which was tried. Prior to, during and immediately following the trial of this matter, the attorney's ability to practice law was adversely affected by her bipolar personality disorder in that she was undergoing a change in medication and during this time the medication was not effective in alleviating the symptoms of the disorder. Since that time, the attorney has made substantial efforts on behalf of the client to request that the court set aside the Findings of Fact and Conclusions of Law and Order. She has admitted to the Bar that her mental condition may have been a significant factor in the client receiving an adverse result at trial. The Bar has received information and records from the attorney's treating psychiatrist, who confirms that the attorney was suffering a psychotic break as a result of her preexisting bipolar personality disorder at the time of the client's trial. The Bar is further informed by her doctor that the attorney's mental condition has been stabilized and she has returned to a functional state by reason of the administration of a medication new to her treatment. The attorney has stipulated to probation, during which time she will report to two supervising attorneys.

# Food and Clothing Drive Participants and Volunteers

We would like to thank all participants, volunteers and the executives of the Utah and Salt Lake County Bar Associations for their assistance and kind support in this year's Food and Clothing Drive. Through these persons' efforts, this was the most successful Drive we have had during the eight years we have been in existence. Over four truck loads of food and clothing and several thousand dollars were contributed and distributed to the participating shelters. The bulk of the clothing was delivered to the Rescue Mission, which has a policy of promptly distributing donated items to homeless families and individuals. The generosity of all in contributions in kind and effort reflected the spirit of Christmas.

Leonard W. Burningham
Toby Brown
Sheryl Ross

## Discipline Corner

### DISBARMENT

On January 4, 1996, the United States District Court for the District of Utah, Central Division disbarred A. Paul Schwenke from the practice before that court based upon the court record of the disbarment proceedings *In re Schwenke,* 865 P.2d 1350 (Utah 1993), *cert. denied,* 115 S.Ct. 93 (1994).

In 1985, Schwenke represented Caren Serr in a personal injury action. In 1987, Serr and her husband Ron Serr filed a complaint with the Office of Bar Counsel ("the Bar") alleging that Schwenke had violated the Rules of Professional Conduct by misappropriating approximately $100,000 in the course of settling Serr's personal injury case. The matter was then held in abeyance pending the outcome of civil litigation between the parties.

On September 19, 1989, the parties entered into a stipulation in the third district court in which Schwenke agreed to a $100,000 judgment against him based on fraud, not dischargeable in bankruptcy. The hearing panel found that pursuant to the $100,000 stipulated judgment entered by third district court, Schwenke had paid $250 and conveyed a Duchesne County property valued at $2500 to Serr, leaving a balance of $97,250. The panel recommended that Schwenke be disbarred and that he make restitution to Serr in the amount of $97,250. On December 1, 1993, the Utah Supreme Court affirmed the order of disbarment and payment of restitution.

### INTERIM SUSPENSION

On December 29, 1995, the Fourth Judicial District Court placed Stott P. Harston on interim suspension from the practice of law. This action was taken as a consequence of the Bar having received approximately 16 complaints from Respondent's clients. The substance of the complaints are that Mr. Harston accepted the complainants as clients, accepted a fee, and then failed to provide any meaningful legal services, return phone calls, appear at hearings, or advise the clients as to the status of their cases. He will remain on interim suspension until further order of the court.

### PROBATION

On November 27, 1995, the Third Judicial District Court entered an Order of Discipline Reprimanding John M. Bybee and placing him on unsupervised probation for one year to commence on or about December 31, 1995, which is the day following termination of his probation in a prior disciplinary matter. The Order was entered pursuant to a Discipline by Consent for violating Rules 1.3, 1.4(a), and 1.4(b) of the Rules of Professional Conduct of the Utah State Bar.

On or about November 1992, a client retained Mr. Bybee to collect back due child support. Respondent failed to serve the ex-husband with appropriate documents until approximately June, 1993 and failed to attend hearings that had been scheduled for March and May, 1993. On July 13, 1993, the court awarded the client a judgment, however, Respondent did not prepare an appropriate order to submit to the court for signature until December, 1993. During the period of time Respondent represented this client, he failed and refused to take or return her telephone calls, failed to advise her that certain hearings on her case had been postponed, that he would not attend those hearings, and he failed and refused otherwise to keep her advised of the status of her case.

### ADMONITION

On December 18, 1995, the Chair of the Ethics and Discipline Committee Admonished an attorney for violating Rule 1.4(a) and 1.4(b), Communication, of the Rules of Professional Conduct based upon the recommendation of a Screening Panel of the Ethics and Discipline Committee. Respondent was retained on or about March 30, 1994 to represent the clients in a landlord tenant matter. The case was tried on December 2, 1994. Thereafter Respondent failed to properly advise his clients of the Final Judgment in the matter.

### NOTICE OF PETITION FOR REINSTATEMENT
### IN THE MATTER OF DISCIPLINE OF JAMES N. BARBER
### CIVIL NO. 930903956
### THIRD DISTRICT COURT

On December 8, 1995, James N. Barber filed a Petition for Reinstatement to the practice of law in Utah pursuant to the terms of Rule 25 of the Rules of Lawyer Discipline. Pursuant to the Order of Discipline entered in the above matter by Judge William B. Bohling, Mr. Barber was suspended from the practice of law for a period of 2 1/2 years beginning on July 6, 1993, for violating Rule 8.4 of the Code of Professional Conduct. He is eligible for reinstatement upon order of the district court on completion of the following conditions: (1) the payment of restitution to all complainants; and (2) the completion of all the terms and conditions imposed by Rule 25 of the Rules of Lawyer Discipline, including attending Ethics School, successfully passing the Multistate Professional Responsibility Examination and not violating the order of suspension.

Also pursuant to the Order of Discipline, after reinstatement, Mr. Barber shall be placed on probation for an additional 2 1/2 years during which time he will be under the direct supervision of attorneys approved by the Bar who will have access to all of Mr. Barber's client files and will make monthly reports to the Office of Attorney Discipline regarding his case load and each of his clients.

Rule 25 of the Rules of Lawyer Discipline requires that notice of the Request for Reinstatement be sent to all complainants and published in the *Utah Bar Journal,* and that any individual who opposes or concurs with Mr. Barber's Petition for Reinstatement may file notice of their opposition or concurrence with the Honorable William B. Bohling of the Third District Court, 240 East 400 South, Salt Lake City, Utah 84101, within 30 days of publication.

## ATTENTION: All State, County and Municipal Courts and Civil Practitioners

Pursuant to Utah Code Ann. § 15-1-4, the postjudgment interest rate for judgments entered between January 1, 1996 and December 31, 1996 is 7.35%. This rate does not apply to judgments based on lawful contracts specifying an interest rate agreed upon by the parties or to judgments for which a statute specifies another rate of interest.

# Discipline Corner

**PRIVATE REPRIMANDS**

An attorney was privately reprimanded for violating Rule 1.4(a) and Rule 8.1(b) of the Rules of Professional Conduct of the Utah State Bar, by failing to return his client's numerous telephone calls regarding the collection matter for which the attorney had been hired to defend the client, for failing to acknowledge that the client had delivered the documents the attorney had requested, for failing to return the client's file to the client within 10 days as requested by the client after being terminated as counsel, and for failing to respond to inquiries from the Office of Bar Counsel regarding the matter.

**PUBLIC REPRIMAND**

On December 4, 1990, Thomas P. Vuyk was publicly reprimanded for violating Canon 1, DR 1-102(A)(6) and Canon 6, DR 6-101(A)(3) Canon 7, DR7-101 (A)(2) and Canon 7, DR7-101(A)(3) of the Revised Rules of Professional Conduct of the Utah State Bar, with respect to two client matters. Both matters pertain to Mr. Vuyk's private practice, and occurred between 1978 and 1984. In the first matter, Mr. Vuyk was retained to represent a couple in taking whatever action necessary to prevent a foreclosure of their home. After a year and a half, the home was foreclosed, and Mr. Vuyk informed the clients that he would be unable to assist them further. Mr. Vuyk alleged that the checks the clients had paid to him for payment on the home had been returned for insufficient funds. Subsequently, the clients filed a malpractice action against Mr. Vuyk, which Mr. Vuyk settled. With respect to the second client, Mr. Vuyk was retained to represent a couple in an action against a contractor for certain defects in the construction of their summer home. Mr. Vuyk prepared but did not file a complaint on behalf of the clients, ultimately resulting in the action being barred by the statute of limitations. Subsequently, Mr. Vuyk executed a promissory note in favor of his clients in the amount that Mr. Vuyk believed they would have been awarded in the underlying lawsuit. Checks issued by Mr. Vuyk in payment on the promissory note were presented for payment by the clients and were returned for insufficient funds, although Mr. Vuyk had requested that the clients refrain from cashing the checks until notified that funds had been deposited to cover them. Mr. Vuyk subsequently settled with the clients for an amount less than the face value of the promissory note.

**SUSPENSION**

Based upon a stipulation between counsel, on December, 4, 1990, C. DeMont Judd Jr. was suspended from the practice of law for two years, which suspension is stayed for three years pending successful completion of probation, for violation of Canon 1, DR 1-102(A)(4), Canon 6, DR 6-101(A)(3), Canon 6, DR 6-101(A)(2), Canon 5, DR 5-105(B), Canon 2, DR 2-106(A), and Canon 7, DR 7-101(A)(2) of the Revised Rules of Professional Conduct of the Utah State Bar and Rule 1.3, Rule 1.4(a) and Rule 8.4(d) of the Rules of Professional Conduct of the Utah State Bar, for matters involving four separate clients. In the first matter, Mr. Judd represented a corporation as well as the president of the corporation in plea bargaining a criminal matter, accepting a plea bargain for his individual client to the detriment of his corporate client, without obtaining the appropriate consent from all parties. In a second matter, Mr. Judd was retained to represent a couple in quieting title to a parcel of property, and subsequently was able to obtain possession for the clients, but never completed the quiet title matter. On a third matter, Mr. Judd was retained to pursue a claim on behalf of a woman against her deceased husband's estate, but failed to make progress on the matter, failed to communicate with the client, and failed to respond to inquiries from the Office of Bar Counsel. On the fourth matter, Mr. Judd was hired to initiate and pursue a post-divorce child custody modification proceeding, subsequently neglecting the matter and neglecting to communicate properly with his client for approximately two years. The sanction was mitigated by the fact that Mr. Judd, during the relevant time periods, was suffering from major depression and dysthymia, and has sought the services of the Lawyers Helping Lawyers Committee of the Utah State Bar, and is currently in treatment.

**REINSTATEMENTS**

On December 4, 1990, Douglas M. Brady was reinstated to the practice of law in the State of Utah, subject to serving a two- year probation under the direct supervision of an attorney licensed to practice in the State of Utah.

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# Bar Commission Highlights

At its regularly scheduled meeting of November 17, the Bar Commission received the following reports and took the actions noted:

1. Approved the minutes of the October 27 meeting.

2. Accepted the resignation of member Neil R. Porter.

3. Accepted with regret the resignation of Christine A. Burdick as Bar Counsel.

4. Re-affirmed Bar support for legislation to increase federal judicial salaries.

5. Approved nominees to the Board of Utah Legal Services.

6. Received a report from Lawyers Helping Lawyers Committee; authorized special fund-raising by the Committee.

7. Received Executive Director's report, noting various administrative items, a possible strategy for future fund-raising for the Law and Justice Center, and the petition filed with the Supreme Court to change the dues cycle. Re-affirmed indemnification policy of the Bar. Denied staff recommendation to upgrade one staff position from part-time to full-time.

8. Received a report by Dr. Amir Noshirivan regarding his activities in the international law community, and his request for licensing of foreign-trained lawyers.

9. Received a report of the Legislative Affairs Committee, including approval of John T. Nielsen as new Bar Legislative Representative. Approved Bar support for bill to amend Uniform Limited Partnership Act.

10. Received Budget and Finance report. Reviewed Client Security Fund and monthly financial reports. Noted excess expense on litigation budget and need for mid-year budget adjustments. Approved a procedure to maintain fund in separate bank account.

11. Received status report on 1990 Annual Meeting. Re-affirmed practice of annual report presentations and awards.

12. Received internal affairs report, noting incidental administrative items and reviewing program for Mid Year Meeting.

13. Received Admissions report. Approved a re-admission application, list of applicants who had passed the October attorney bar exam, and incidental MPRE waivers. Rejected an appeal from prior denial of a re-admission application.

14. Received the monthly report of the Office of Bar Counsel, approving or otherwise reviewing discipline matters as are reported in the *Bar Journal.*

15. Reviewed the status of pending litigation.

16. Received report of the ADR Committee.

17. Referred a Letter to the Editor to the *Bar Journal* Editor.

A full copy of the minutes of this and other meetings of the Board of Bar Commissioners is available for inspection by members of the Bar and the public at the Office of the Executive Director.

# Discipline Corner

**PRIVATE REPRIMANDS**

1. An attorney was privately reprimanded for violating Rules 8.4(c) and (d) for conduct involving dishonesty and conduct prejudicial to the administration of justice by filing a frivolous lawsuit against his minor son's dentist in an attempt to avoid payment of a judgment which the dentist had taken against the attorney for past-due dental bills. The sanction was aggravated by the attorney's failure to respond to the Screening Panel's requests for information.

2. For violation of Rules 1.1 and 1.3 for failure to provide competent representation and failure to act with reasonable diligence, an attorney was privately reprimanded for failing to counsel his client as to her alternatives with respect to delinquent bankruptcy payments, failing to give his client sufficient notice of an upcoming bankruptcy hearing, and failing to notify her that her bankruptcy had been dismissed when she did not attend the hearing.

3. For failing to pursue a modification of his client's bankruptcy payments as requested, for failing to attend the client's bankruptcy hearing, for failing to notify the client that the bankruptcy had been dismissed, and for failure to return the client's numerous telephone calls requesting information, an attorney was privately reprimanded for violating Rules 1.3 and 1.4(a) and (b). The sanction was aggravated by the attorney's prior discipline history of similar neglect.

**PUBLIC REPRIMANDS**

1. On September 19, 1989, Dean Becker was publicly reprimanded for violating Rules 1.3 and 1.4(a) by failing to initiate a lawsuit on behalf of his clients for approximately seven months although promising on several occasions to do so, and by failing to respond to his client's numerous inquiries as to the status of the matter.

## UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
## OFFICE OF THE CLERK
## NOTICE TO THE BAR AND THE PUBLIC

### ADMINISTRATIVE FEE ASSESSMENT FOR COURT REGISTRY FUNDS PLACED IN INTEREST-BEARING ACCOUNTS

As a result of new appropriation authority from the Congress, and with the approval of the Judicial Conference of the United States—the policy-making body for the Judicial Branch of the United States Government—the Director of the Administrative Office of the U.S. Courts has established an assessment for funds that are placed in a United States Court's registry and that are invested in an interest-bearing account. The rate of the assessment has been established at an annual 1.5 percent of the amount held in each case, and the charge is to be paid from interest earnings in accordance with a detailed schedule to be issued by the Director.

The purpose of the assessment is to cover the costs to the Federal Judiciary of handling registry funds placed in interest-bearing accounts. The fee shall apply to all monies and, if applicable, property held in the court registry and invested in interest-bearing accounts, except unclaimed monies held in accounts for individuals or persons whose whereabouts are unknown. The fee will be computed at the time of withdrawal from the date of receipt into the registry through the date of withdrawal based on the average daily balance in the account. Payment of the fee will be deducted from the balance on deposit at the time of distribution.

Assessment of this fee will commence on all applicable funds in the court's registry that are withdrawn on or after December 1, 1988. To minimize the retroactive impact of this assessment, funds that were placed in the custody of a Federal Court prior to September 30, 1988, will be assessed only for the time they are held after that date, September 30, 1988, to the actual date of withdrawal. Thus, for example, if funds were invested by the court on July 30, 1979, and withdrawn on January 3, 1989, the assessment would apply only to the period of October 1, 1988, to January 3, 1989.

For additional information, please contact the Office of the Clerk.

# Discipline Corner

ADMONITIONS:

1. An attorney was admonished for violating DR 6-101(A)(3) and Rule 1.3 for neglect of a client's probate matter for a period of over four years.

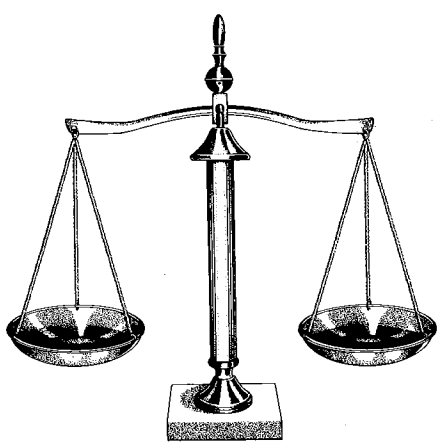
2. For neglect in failing to appropriately investigate and researching a client's prior bankruptcies so as to be able to properly advise him, and for failure to appear before the Screening Panel to discuss the matter with them, an attorney was admonished for violating DR 6-101(A)(3) and Rule 1.3.

PUBLIC REPRIMAND:

1. Roland Uresk was publicly reprimanded for neglect of a legal matter entrusted to him in violation of DR 6-101(A)(3), by failing to take steps for a client to secure money owed to her by her ex-husband by failing to attach a portion of the ex-husband's equity in real estate prior to its sale.

REINSTATEMENT:

1. Effective December 13, 1988, the Utah Supreme Court reinstated Phil L. Hansen to the practice of law from his prior Interim Suspension.



# Federal Bar Seminar

The Federal Bar Association will present a seminar on Federal Criminal Law on February 10, 1989, at the Little America Hotel in Salt Lake City. The registration fee is $90 for Federal Bar members and $125 for non-members.

The program will feature a luncheon address by the Hon. Bruce S. Jenkins. Other topics in the day-long seminar include "Survey and Impact of Recent Tenth Circuit Criminal Law Decisions" by Hon. Ronald N. Boyce, "The Ethics of Fees-Forfeiture and Reporting" by G. Fred Metos, "Bail Reform Act" by Edward K. Brass, "Grand Jury Representation for the Uninitiated" by Samuel Alba, "Recent Developments in Narcotic Cases" by Michael Stephanian, "Tax Fraud" by Stewart C. Walz, "RICO" by Michael Goldsmith, "Search and Seizure Profiles" by Stephen R. McCaughey, "Defense Contractor Fraud" by Gregory C. Diamond, "Sentencing Guidelines" (if applicable) and "Pitfalls of Criminal Trial" by Judges Greene, Winder, Anderson and Sam.

For further information, contact C.F. Soltis at 364-6474.

# Mineral Development on Indian Lands

The Rocky Mountain Mineral Law Foundation and the A.B.A. Committee on Native American Natural Resources Law are cosponsoring a three-day Special Institute on Mineral Development on Indian Lands. The institute will take place on February 15 to 17, 1989, at the downtown Marriott Hotel in Albuquerque, N.M.

This institute is designed to bring together the legal and land management issues and concerns of Indian tribes, industry, government officials, corporate counsel and private practitioners relative to the future course of natural resources development on Indian lands. The presentations will provide comprehensive, balanced and objective practical and legal analyses of current topics of concern to all parties. This straightforward consideration of the unique concerns of the tribes, industry and government over the development of Indian mineral resources will be of mutual advantage to all registrants and participants.

For additional information, contact the Rocky Mountain Mineral Law Foundation at (303) 321-8100.

## *Discipline Corner*

**RESIGNATION WITH DISCIPLINE PENDING**

On September 30, 1998, the Honorable Richard C. Howe, Chief Justice, Utah Supreme Court, executed an Order Accepting Resignation Pending Discipline concerning Steven Brad Jacobs. The Petition for Resignation with Discipline Pending was tendered pursuant to Rule 22 of the Rules of Lawyer Discipline and Disability.

On December 31, 1997, the Office of Professional Conduct opened an investigation based on information from the California Bar regarding disciplinary measures imposed by the Supreme Court of the State of California against Jacobs. On December 10, 1997, the Supreme Court of the State of California entered an order accepting the voluntary resignation with disciplinary charges pending of Steven Brad Jacobs.

On August 21, 1996, an attorney filed a disciplinary complaint against Jacobs with the California Bar on behalf of Jacob's former client. In November 1994, the client, who lost his foot and part of his leg while working for the railroad, in anticipation of receiving a large personal injury settlement, consulted with Jacobs for the purpose of constructing a family trust. At Jacob's direction, an SS-4 was prepared for a limited partnership, but was not properly filed until February 16, 1995. On December 5, 1994, the client's family limited partnership entered into a contract with the law offices of Steven B. Jacobs for the purposes of managing the family financial affairs. Robert Eon Marshall, identified as the firm's paralegal and C.F.O., Trust Department, executed the document on behalf of the firm.

Jacobs employed Marshall knowing that he was an ex-convict who pled guilty to counterfeiting $300,000 and served time in prison for the counterfeiting and for the unauthorized practice of law. Other allegations regarding Marshall's trustworthiness were noted as well. Marshall embarked on a scheme over approximately the next eight months to defraud the client of his funds. The complaint and discovery documentation demonstrated that Jacobs knew that Marshall was a felon and that he had served time in prison for crimes involving fraud and deceit, and both Jacobs and Marshall benefited from misrepresentations made to the client, and the misuse of the client's funds. On June 27, 1997, Jacobs submitted his resignation to the California Supreme Court pursuant to Rule 960, Resignation of Members of the State Bar with Disciplinary Charges.

Jacobs violated Rule 22(a) (Duty to Notify Disciplinary Counsel of Discipline) of the Rules of Lawyer Discipline and Disability when he failed to notify the Utah State Bar of the Disciplinary Resignation in California.

**INTERIM SUSPENSION**

On October 28, 1998, the Honorable William A. Thorne, Third Judicial District Court, entered an Order of Discipline: Interim Suspension, suspending Kim David Olsen pending the outcome of disciplinary proceedings. The Order was entered pursuant to Rule 19, Rules of Lawyer Discipline and Disability ("RLDD").

Olsen was convicted of multiple counts of Fraudulently Obtaining a Controlled Substance, a third degree felony and Escape from Official Custody, a class B misdemeanor. These convictions reflect adversely on Olsen's trustworthiness or fitness as a lawyer within the meaning of Rule 19, RLDD.

**ADMONITION**

On September 1, 1998, an attorney was admonished and placed on probation by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rule 1.15 (Safekeeping Property) of the Rules of Professional Conduct. The attorney was also ordered to attend the Utah State Bar Ethics School. The Order was based on a stipulation entered into by the attorney and the Office of Professional Conduct.

On October 8, 1997, the OPC received notification from the attorney's bank that a check had been presented for payment on the attorney's trust account and that it had caused an overdraft in the trust account. Previous to this notification, the OPC had received another notification from the bank stating that checks presented on August 13, 1997; August 14, 1997, and August 18, 1997, had caused an overdraft in the attorney's trust account.

At the OPC's request, the bank forwarded copies of checks written by the attorney on his trust account which indicated that the attorney had written checks for his personal or business use.

During the time of the overdrafts in his trust account the attorney charged flat fees for his legal services. The attorney considered that these flat fees were earned upon receipt of the fee. The attorney maintained a trust account because he thought he was required to maintain one.

The attorney mistakenly thought that since he was charging flat fees, he could put the earned fee into his trust account and then write checks for personal or business use. The attorney mistakenly and unnecessarily continued to deposit his earned fees into his trust account. In addition, the attorney also deposited monies received from sources unrelated to his legal work into his "trust account." The attorney did not accept retainers from clients to be billed against but only charged flat fees for the services the clients requested. The attorney in his ignorance of the requirements of Rule 1.15 of the Rules of Professional Conduct to maintain a separate account for client funds, operated his trust account as if it were a general operating account. At the times that the attorney wrote checks for his personal or business use, there were no client funds in his trust account.

After review of the attorney's bank records, it did not appear to the OPC that the attorney either intentionally or unintentionally misappropriated client funds. It appeared that the attorney simply failed to maintain a trust account separate from his business operating account.

The following mitigating factors were considered in the settlement:

- absence of prior record;
- absence of a dishonest or selfish motive;
- timely good faith effort to rectify the consequences of the misconduct involved;
- remorse;
- cooperative attitude toward proceedings;
- inexperience in the practice of law; and
- good character and reputation.

**ADMONITION**

On October 16, 1998, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 1.2 (Scope of Representation), 1.3 (Diligence), 1.4 (Communication), 3.3 (Candor Toward the Tribunal), and 8.4(c) and (d) (Misconduct) of the Rules of Professional Conduct. The attorney was also ordered to attend the Utah State Bar Ethics School. The Order was based on a stipulation entered into by the attorney and the Office of Professional Conduct.

The Office of Professional Conduct received two orders from the Utah Court of Appeals addressing the attorney's handling of a criminal appeal. One order established that the trial court appointed the attorney to represent a client in his appeal to the Court of Appeals. The mailing certificate indicated that a copy of the order was forwarded to the attorney. The clerk of the Court of Appeals sent a letter to the client and the attorney advising them that the attorney had been appointed to represent the client and that a brief was due. On July 30, 1996, the Court of Appeals dismissed the case due to the client's failure to file a brief. A copy of the dismissal order was sent to the attorney. The client requested information from the Court of Appeals regarding the status of his case and stating that he had requested information from the attorney numerous times and had not received a response. Included with the request was a letter from the attorney to the client dated June 21, 1996, disclaiming knowledge of his appointment to represent the client but agreeing to review the court file and pursue any appropriate motion. The Court of Appeals held an Order to Show Cause hearing requesting the attorney show cause why he had not represented the defendant in the appeal. The attorney appeared and advised the Court that he had a substantial conflict of interest representing the client. He claimed he verbally advised the Eighth District Court of the conflict, and had been advised by the clerk of the Eighth District Court that the matter would be remedied. The attorney acknowledged his oversight in failing to take appropriate action to set aside the appointment, and failing to advise the Court of Appeals of his conflict of interest. The Court ordered that the attorney provide a sworn statement detailing his conversations with the Eighth District Court. The attorney failed to file the statement timely.

The Court concluded that the attorney had either neglected his obligations in the client's appeal and/or had made misrepresentations to the court regarding his failure to represent his client and that the attorney's conduct fell below the objective standard of reasonableness, prejudiced the client's appeal and constituted ineffective assistance of counsel. The Court ordered that the attorney pay a fine of $500 to the court, and discharged him as counsel for the client.

The OPC determined that the Court imposed sanctions against the attorney were sufficient to warrant consideration as a mitigating factor within the meaning of Rule 6.3 of the Standards for Imposing Lawyer Sanctions, and thus, chose not to pursue public discipline against the attorney.

# Commission Highlights

During its regularly scheduled meeting of October 4, 1996, held in Provo, Utah, the Board of Bar Commissioners received the following reports and took the actions indicated.

1. The Board approved the minutes of the August 26, 1996 Commission meeting.
2. Bar President Steve Kaufman reported that he attended the New Mexico and Colorado Annual Bar Conventions.
3. Kaufman indicated that most section and committee chairs were present at the recent Bar Leadership luncheon where he reported on current Bar initiatives including the public education campaign.
4. Kaufman reported that during the recent Bar Commission retreat, two subcommittees were formed to review in more detail the Client Security Fund and Fee Arbitration Rules.
5. The Board voted to accept the Executive Committee's recommendation to raise the threshold for fee arbitrations heard by one person.
6. The Board appointed Jim Gilson as chair of the Lawyers Helping Lawyer Committee.
7. Steve Kaufman indicated that the comment period ends November 15 on the proposed amendments to Supreme Court rules.
8. John Baldwin reviewed a request from a failing Bar examination applicant for a policy change to allow rereading of bar examination essay answers when an examinee receives a score of 128. The Board voted no to change the policy.
9. Dave Nuffer reported on the recent meeting of the Electronic Law Project and indicated that standards will be reviewed at the next meeting.
10. Budget & Finance Committee Chair, Ray O Westergard, reported that the Budget & Finance Committee met with Deloitte & Touche to review the audit results. Westergard noted that the Bar received a high review and no exceptions were noted. The Board voted to accept the 1995-96 audit report by Deloitte & Touch and to print a summary in the *Utah Bar Journal.*
11. Westergard reviewed the August financial reports including budget highlights and answered questions.
12. Executive Director John Baldwin reported on department activities and noted that the Law & Justice Center continues to be busy. He indicated that, since there has been an amazing response to the CLE seminar on legal research on the Internet, several more seminars are planned to accommodate everyone interested.
13. Baldwin reported that Petty Lawden, Chair of the Legal Assistants Division, will be proposing Bylaws for this new division and making an appointment to the Bar Commission.
14. General Counsel, Katherine A. Fox, reported that the number of unauthorized practice of law complaints continues to climb.
15. Baldwin referred to Carolyn B. McHugh's letter of August 20, 1996 requesting the Bar's support of legislation to limit the liability for pro bono attorneys. The Board agreed that Baldwin should submit the request to the Legislative Affairs Committee for their review and recommendation.
16. Baldwin indicated that accolades continue to come in on the Centennial Play and the Executive Committee voted to present a token of appreciation next month to Lisa Michele Church to appropriately thank her for her work.
17. Debra Moore presented the final report of the Equal Administration of Justice Committee. The Board voted to have the Bar Commissioners take some time to study the report and vote to accept or reject the recommendations at next month's meeting.
18. Chief Disciplinary Counsel, Stephen R. Cochell, reported on current litigation matters.
19. Young Lawyers Division President, Daniel D. Andersen, reported that the Young Lawyers Division is co-sponsoring with the YWCA "a week without violence" which will include short events, seminars and activities in coordination with Washington Elementary School.
20. James C. Jenkins reviewed the Judicial Council meeting of September 4. He noted that voting on the Family Court issue has been postponed until 1998, and confirmed Scott Daniels appointment to the Judicial Performance Evaluation Committee.

A full text of minutes of this and other meetings of the Bar Commission is available for inspection at the office of the Executive Director.

## *Discipline Corner*

### SUSPENSION

On November 4, 1996, the Honorable Tyrone Medley entered an Order of Discipline By Consent suspending Elliott Levine ("Levine") from the practice of law for a period of three (3) years effective September 6, 1995. Levine was also ordered to attend Utah Ethics School and pay costs.

The attorney discipline case arose out of two criminal cases in which Levine represented two defendants in separate cases on unrelated charges of aggravated murder. In 1987, Levine was appointed to represent James R. Holland on a capital homicide charge. In 1990, Levine was appointed to represent Von Lester Taylor ("Taylor") in an unrelated capital murder case.

During Taylor's death penalty hearing, Levine attempted to have James Holland ("Holland"), who was in prison and whose appeal of the death sentence was still pending, testify in the Taylor case for the purpose of comparing Holland's background and criminal activities with those of Taylor to demonstrate that Holland did not deserve the death penalty. The State objected to allowing Holland to testify in the Taylor case, and the trial court excluded the testimony. Taylor was subsequently sentenced to death, and an appeal was taken which Levine argued that the trial court erred in excluding Holland's testimony.

On appeal in Taylor's case, Levine argued that the trial court should have permitted Levine to present Holland's testimony to support an argument that a person such as Holland "who has committed multiple murders, had been incarcerated for nearly his whole life, comes from an abusive background, and who has little, if any

# Court of Appeals Responds to Appellate Operations Task Force Report Recommendations

*By Marilyn M. Branch, Clerk of the Court*

As described in the preceding article by Task Force Chairman Alan Sullivan, the Appellate Operations Task Force has recommended that the Court of Appeals increase its dispositions of cases at issue by use of more judge-authored, brief memorandum decisions, issued after consideration by a three-judge panel but typically without oral argument. While the judges of the Court of Appeals urge approval of the implementing changes to the Utah Rules of Appellate Procedure suggested by the Task Force, they believe the findings of the Task Force are so compelling as to necessitate immediate action to reduce the case backlog. Accordingly, the Court of Appeals will implement certain changes in its day to day operations in an effort to increase dispositions in a fair and responsible manner, consistent with the latitude presently provided it under the Utah Rules of Appellate Procedure.

As defined in the report of the Appellate Operations Task Force, a "fully reasoned opinion" is one in which the grounds for the decision are fully explained, the facts of the case are presented in detail, and the applicable law is authoritatively reviewed. Consistent with the recommendations of the Task Force, commencing January 1, 1995, the Court of Appeals will dispose of appeals by published, fully reasoned opinion after oral argument only in those cases involving the development of the law, significant constitutional issues, complex issues of law or issues of important or broad public impact. Cases which do not meet the foregoing criteria but which require a judge-authored rather than per curiam disposition, will be disposed of by an unpublished memorandum decision usually without oral argument. In this regard, as of January 1, 1995, the Court of Appeals will dispense with a formal Rule 31 calendar and will ordinarily treat cases which in the past would have been placed on that calendar by memorandum decision without oral argument.

As with a case placed on the court's oral argument calendar, memorandum decision cases will be decided by a panel of three judges. The memorandum decisions will be authored by a named judge and will include the grounds for the result, albeit in summary terms. On a rotating basis, judges will be meaningfully involved in the important screening process by which cases are earmarked for either oral argument or memorandum disposition.

The court is confident that with the time saved by writing fewer full opinions and hearing argument in fewer cases, its overall number of dispositions will increase markedly. The judges of the Court of Appeals would like to take this opportunity to commend the Task Force members for their hard work and dedication, and thank them for their constructive recommendations.

# MEMORANDUM

### NOTICE OF PETITION FOR REINSTATEMENT

Clayne I. Corey has filed a Petition for Reinstatement to Practice Law with the Third Judicial District Court, Civil No. 940906771. Mr. Corey was suspended from the practice of law on June 28, 1993, by the Utah Supreme Court, for violating Rule 1.3, Diligence, 1.4(a) Communication, Rule 1.5(a), Fees, and Rule 1.13(b), Safekeeping of Property. In accordance with Rule 25 of the Rules of Lawyer Discipline and Disability individuals desiring to support or oppose this Petition may do so within 30 days of the date of the publication of this edition of the Bar Journal by filing a Notice of Support or Opposition with the Second Judicial District Court. It is also requested that a copy be sent to the Office of Attorney Discipline, 645 South 200 East, Salt Lake City, UT 84111.

# Notice

The Utah State Bar is accepting applications to fill a staff position to administer a program to facilitate pro bono services voluntarily provided by members of the Bar. The position will oversee a one-year project intended to encourage and recruit lawyers to volunteer to represent those on waiting lists of Utah Legal Services and Legal Aid of Salt Lake City, and to participate in the Third District Court's Pilot Domestic Victims Assistance program.

Applicants should be aware that the Bar is currently soliciting comments from Bar members regarding their support or criticisms of the project and that the project is currently authorized by the Bar Commission as a one-year pilot which may be continued past that year depending upon its success.

Resumes should be sent to John C. Baldwin, Executive Director, 645 South 200 East, Salt Lake City, UT 84111. Applicants should be familiar with the legal profession and the Utah Bar membership, be highly self-motivated with excellent written and oral communication skills, and committed to public service. Applications will be accepted through December 30th.

# MCLE Reminder

Attorneys who are required to comply with the even year compliance cycle will be required to submit a "Certificate of Compliance" with the Utah State Board of Continuing Legal Education by December 31, 1994. In general the MCLE requirements are as follows: 24 hours of CLE credit per two year period plus 3 hours in ethics, for a combined 27 hour total. Be advised that attorneys are required to maintain their own records as to the number of hours accumulated. Your "Certificate of Compliance" should list all programs that you have attended that satisfy the CLE requirements, unless you are exempt from MCLE requirements. A Certificate of Compliance for your use is included in this issue. If you have any questions concerning the MCLE requirements, please contact Sydnie Kuhre, Mandatory CLE Administrator at (801) 531-9077.

## Discipline Corner

**ADMONITIONS:**
(formerly known as
"PRIVATE REPRIMAND")

On September 14, 1993, an attorney received an Admonition for violating Rules 1.3, DILIGENCE, 1.4(a), COMMUNICATION, and 1.5(a), FEES, of the Rules of Professional Conduct of the Utah State Bar. The Attorney was retained in May 1992, to represent a client in a divorce action in which, after the filing of the complaint, paternity became a contested issue. From June 1992, through January 1993, the client made twenty-four (24) attempts to contact the attorney but was able to speak to the attorney on only two or three occasions. During the entire period of representation, June 1992 through March 1993, the attorney sent only one letter to the client concerning the status of the case. The attorney failed to provide any meaningful legal service to address the paternity issue. The client, who has since moved out of state and is on public assistance, had to be placed on a waiting list for free legal assistance to start her divorce anew. In addition to the Admonition, the Ethics and Discipline Committee recommended that the attorney make $200.00 restitution payment to the client. In mitigation, the Ethics and Discipline Committee considered the fact that the attorney had no prior discipline history and has since implemented office procedures to prevent similar problems in the future.

On September 14, 1993, an attorney received an Admonition for violating Rules 1.1, COMPETENCE, 3.3(a), CANDOR TOWARD THE TRIBUNAL, 3.4(c), FAIRNESS TO OPPOSING PARTY, and 8.4(c & d), of the Rules of Professional Conduct of the Utah State Bar. The attorney was retained in July 1992, to represent a client in a divorce modification action. In October 1992, the attorney, without service, sought an entry of default in the Petition to Modify Decree of Divorce. The clerk of the court notified the attorney of the Court's inability to enter a default. In aggravation, the Ethics & Discipline Committee considered the attorney's prior discipline history which includes a Private Reprimand in December 1992, for failure to communicate with the opposing counsel and communication with person represented by counsel. The attorney acknowledges the error and, to some extent, attributes it to unclear instruction from the Court.

**PUBLIC REPRIMAND & SUPERVISED PROBATION:**

On October 26, 1993, Attorney Steven Lee Payton was publicly reprimanded and placed on a one (1) year supervised probation, effective upon entry of the order, for violating Rule 1.3, DILIGENCE, of the Rules of Professional Conduct. Mr. Payton received $1,500.00 in fees and was retained on August 2, 1988 to represent a client in a divorce action. Mr. Payton failed to file his client's Answer in the divorce action in a timely manner and consequently his client's default was entered. Thereafter, he moved to set aside the default and represented to the court that within five days he would file a memorandum in support of his motion. He failed to do so. Consequently, the court denied his motion and Mr. Payton's client was assessed $350.00 in attorney's fees for the opposing party's expense of having responded to the motion. Mr. Payton then filed a Notice of Appeal. The Court of Appeal requested that the parties submit memoranda in support of their respective positions in response to the Court's notice to summarily dispose of the case. Mr. Payton failed to comply. The Court of Appeals then affirmed the lower court's ruling. In addition to the public reprimand and one (1) year supervised probation, Mr. Payton was also ordered to pay restitution in the amount of $5,000.00 for unearned legal fees and to compensate for the adjustment to the property settlement for the legal fees incurred by the appellee in responding to the appeal and pay costs in the amount of $526.65.

**INTERIM SUSPENSION:**

On September 24, 1993, James M. Barber was suspended from the practice of law pending the appeal of his conviction on March 9, 1993 in the United States District Court of the District of Utah of violating 18 U.S.C. 505, Seals of Courts, and 18 U.S.C. 1503, Obstruction of Justice, by knowingly forging and counterfeiting the signature of a judge of the United States Court of Claims. Mr. Barber's sentence included confinement for a term of ten months on each count, to run concurrently, fined $1,000.00 and ordered to make restitution in the amount of $5,000.00. This conviction resulted when Mr. Barber signed the name of a judge of the Court of Claims to a document entitled Findings of Fact, Conclusions of Law and Order of Dismissal dated April 16, 1991, and gave the document to his client representing it to be genuine.

# Utah Appellate Courts Discontinue "Brief Lodging" Policy

The Utah Supreme Court and Court of Appeals have announced that, effective January 1, 1994, the courts will discontinue the policy allowing a party to lodge an appellate brief.

The lodging policy was designed to allow a party to submit a brief on the due date, although the brief did not meet all of the technical requirements of the Utah Rules of Appellate Procedure (e.g. improper spacing, inappropriate binding, single rather than double-sided print). The court considered the brief timely filed if the party corrected the errors within five days and submitted the corrected brief.

The courts have discontinued the policy because it resulted in confusion regarding the calculation of time to file a brief.

# MCLE Reminder

Attorneys who are required to comply with the odd year compliance cycle, will be required to submit a "Certificate of Compliance" with the Utah State Board of Continuing Legal Education by December 31, 1993. In general the MCLE requirements are as follows: 24 hours of CLE credit per two year period plus 3 hours in ETHICS, for a combined 27 hour total. Be advised that attorneys are required to maintain their own records as to the number of hours accumulated. Your "Certificate of Compliance" should list all programs that you have attended that satisfy the CLE requirements, unless you are exempt from MCLE requirements. A Certificate of Compliance for your use is included in this issue. If you have any questions concerning the MCLE requirements, please contact Sydnie Kuhre, Mandatory CLE Administrator at (801) 531-9077.

## Discipline Corner

**ADMONITIONS**

1. An attorney was admonished pursuant to Rule 8.1(b) of the Rules of Professional Conduct for not replying for five (5) months to Bar Counsel's request for information regarding a complaint. The attorney was also admonished for violation of Rule 1.14(d) for failure to promptly return the corporate books and other documents over which he asserted no valid lien upon his termination as counsel. Respondent was terminated as counsel on or about August 14, 1990, but did not return the documents to his former client until sometime after the complaint was filed with the Utah State Bar on September 24, 1990.

2. An attorney was admonished pursuant to Rule 1.3 of the Rules of Professional Conduct for failure to exercise reasonable diligence and promptness in reviewing the accuracy of the proposed Findings of Fact, and the Decree in a divorce action. These documents were prepared by the opposing counsel on or about February 19, 1990 and served upon Respondent on or about February 21, 1990. The proposed Findings and Decree contained significant factual error. The decree of divorce was entered on February 28, 1990 containing these errors due to Respondent's failure to file an objection with the court.

**PUBLIC REPRIMAND**

1. On October 28, 1991, D. Karl Mangum was publicly reprimanded for violating Rule 1.3 and Rule 8.1(b) of the Rules of Professional Conduct of the Utah State Bar. Mr. Mangum was retained in May of 1986 to defend a claim for back child support. Mr. Mangum, subsequently, assigned the case to an associate in his office. The client was aware of the fact that an associate was working on her case but believed that Mr. Mangum would remain the supervising attorney and would be ultimately responsible for the prosecution of the case. The court subsequently dismissed the case with prejudice for failure to prosecute.

In mitigation, the Court considered Mr. Mangum's acknowledgment of wrongdoing and his reasonable belief that an associate was pursuing the case.

2. On October 28, 1991, G. Blaine Davis was publicly reprimanded for violating Canon 6, DR 6-101(A)(3) of the Code of Professional Conduct and/or Rule 1.3 and Rule 1.4(a) of the Rules of Professional Conduct of the Utah State Bar. Mr. Davis was retained in January of 1982 to represent the estate of the Complainant's father in a probate action. Mr. Davis failed to have the appropriate tax returns prepared and filed for approximately six (6) years; nine (9) months of which was properly allocated for the preparation and subsequent amendments of the returns.

In mitigation, the Court considered the fact that Mr. Davis reimbursed the estate for all penalties, reimbursed the Complainant for a portion of his attorney fees incurred in his attempt to conclude the matter, and that Mr. Davis has accepted employment in the public sector and is no longer engaged in private practice.

Mr. Davis has no prior discipline history.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MARCH 12-14

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# Discipline Corner

DECEMBER 1990
(Discipline for September 1990)

**PRIVATE REPRIMANDS**

For violating Rule 8.1(b) an attorney was privately reprimanded for knowingly failing to respond to the Office of Bar Counsel and the Screening Panel of the Ethics and Discipline Committee in connection with a disciplinary matter. The attorney failed to appear before the Screening Panel and the Panel at that time voted to subpoena the attorney. The attorney failed to respond to the subpoena. After approximately 10 months, the attorney provided documentation to the Screening Panel which responded adequately to the substantive allegations of the complaint.

For violating Rule 8.1(b) an attorney was privately reprimanded for failing to respond to the disciplinary process. Over a period of 12 months, the Office of Bar Counsel, by written correspondence, requested on numerous occasions that the attorney respond to the disciplinary process. On each occasion the attorney failed to respond. After considering the matter, the Screening Panel requested that the attorney submit monthly status reports regarding the underlying complaint. The attorney failed to submit the monthly status reports.

For violating Canon 6, DR 6-101(A)(3) and Canon 7, DR 7-101(A)(1) and Rules 1.3 and 1.4(a) an attorney was privately reprimanded for agreeing in November of 1987 to represent his client in a Petition to Modify a Decree of Divorce regarding child support, failing to file the petition until February of 1988 and subsequently failing to appear at the Order to Show Cause hearing in April of 1988. The attorney failed to schedule a second Order to Show Cause hearing until September of 1988 after which hearing, the attorney failed to respond to his client's numerous requests for information resulting in the complaint against the attorney in April of 1989. Trial in the child support issue was finally set for June of 1990.

# Bar Will Hold Mid-Year Meeting March 14 to 16 in St. George

The 1991 Mid-Year Meeting of the Bar will return to St. George, Thursday, March 14 through Saturday, March 16. According to Ogden attorney Dave Hamilton, Chairman of the 1991 meeting, the major thrust will be to provide useful continuing legal education for Utah attorneys.

"Our primary focus in this meeting will be to offer varied, interesting CLE. We have asked several of the Bar's sections to participate on the committee as we plan our agenda so that Bar members will have timely, practical presentations in St. George to help them fulfill their MCLE obligations," Mr. Hamilton said.

In addition to the educational component, the Mid-Year Meeting in St. George, headquartered at the Holiday Inn, will offer a full array of activities, including golf, tennis and socials. The Holiday Inn has been recently expanded, with additional guest rooms and meeting facilities.

Registration materials will be mailed to Bar Members after the first of the year.

Mark Your Calendars for the
1991 Meetings of the Utah State Bar
Mid-Year in St. George
March 14 to 16
Annual Meeting in Sun Valley July 3 to 6

# Claim of the Month

## Lawyers Professional Liability

**ALLEGED ERROR AND OMISSION**

The Insured neglected to obtain certified copies of the signed findings within a reasonable period after the judgment.

**RESUME OF CLAIM**

Insured attorney successfully defended his client in a Bench only trial. The court's final judgement referred to the "signed findings of fact and conclusions of law in file." Several months later the presiding judge died. In preparing his appeal, the plaintiff attorney discovered there were no signed findings in the court file. The judge assigned to the case refused to sign the deceased judge's findings and ultimately the judgment was vacated. The Insured attorney again represented his client in a re-trial, this time before a jury, and the plaintiff won a verdict in excess of $1,000,000.

**HOW CLAIM MAY HAVE BEEN AVOIDED**

The Insured should have obtained a complete copy of the judgment, including the signed findings, soon after verdict. In the real world, parts of complete judgments may not be instantaneously available. Thus, insureds should make written requests to clerk for those papers. Had this Insured done so, they may have discovered the findings were unsigned and the problem could have been corrected by the trial judge.

**HOW THE DAMAGE COULD HAVE BEEN MINIMIZED**

The Insured, having discovered that no signed findings existed and that the judge was now deceased, should have withdrawn from the case and advised his carrier of the potential for a claim against him. Insured and carrier could then have monitored the ongoing litigation and, in particular, any settlement offers from plaintiff. The Insured and the carrier would then have had the option of offering to fund a settlement. If their former client refused such an offer, the Insured would have been in a strong position to argue that their liability, if any, in the malpractice suit was limited to the amount at which the underlying case could have settled.

*"Claim of the Month" is furnished by Rollins Burdick Hunter of Utah, Administrator of the Bar Sponsored Lawyers' Professional Liability Insurance Program.*

# Attorney Discipline

**ADMONITION**

On April 17, 2009, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.4(a) (Communication), 5.3(b) (Responsibilities Regarding Nonlawyer Assistants), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In Summary:*

An attorney was hired to represent a client in a Social Security Administration matter. After the briefing schedule was set, the attorney missed the first deadline to file the brief on behalf of the client. The attorney asked for an extension and was given one. The attorney missed the deadline and asked for extensions six additional times. Ultimately, when the brief was not filed after the seventh extension of time, the Commissioner filed a Motion to Dismiss for failure to prosecute the claim. The attorney did not respond to the Motion to Dismiss on behalf of the client. The attorney failed to notify his client of the Motion to Dismiss. The case was dismissed. Although the attorney filed an appeal of the dismissal, the U.S. District Court upheld the dismissal. The attorney's explanation for not filing the pleadings was that he had delegated preparation of the documents to his paralegal.

**ADMONITION**

On April 10, 2009, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 5.3(a) (Responsibilities Regarding Nonlawyer Assistants), Rule 5.5(a) (Unauthorized Practice of Law; Multijurisdictional Practice of Law), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In Summary:*

An attorney assisted a nonlawyer in the unauthorized practice of law. The attorney acknowledged that the nonlawyer had been in trouble in the past for the unauthorized practice of law. The attorney was aware that the nonlawyer was using business cards with the words "Legal Representative" on them. In spite of this, the attorney agreed to meet with the "clients" of the nonlawyer. The attorney was aware of at least one letter sent to a client which by the letterhead implied that the nonlawyer was a lawyer and wherein the nonlawyer purports to provide legal advice to a client. The nonlawyer was clearly associated with the attorney. The attorney failed to supervise the nonlawyer's activities.

**INTERIM SUSPENSION**

On March 30, 2009, the Honorable James R. Taylor, Fourth Judicial District Court, entered an Order of Interim Suspension Pursuant to Rule 14-519 of the Rules of Lawyer Discipline and Disability, suspending Richard J. Culbertson from the practice of law pending final disposition of the Complaint filed against him.

*In Summary:*

On June 19, 2008, Mr. Culbertson pleaded guilty to and was convicted of three counts of Communications Fraud – 2nd Degree Felony, Utah Code Annotated § 76-10-1801, and one count of Pattern of Unlawful Activity – 2nd Degree Felony, Utah Code Annotated § 76-10-1601. The interim suspension is based upon the felony convictions.

**PUBLIC REPRIMAND**

On March 16, 2009, the Honorable Kevin K. Allen, First District Court, entered an Order of Public Reprimand against Raymond

# Mandatory CLE Rule Change

Effective January 1, 2008, the Utah Supreme Court adopted the proposed amendment to Rule 14-404(a) of the Rules and Regulations Governing Mandatory Continuing Legal Education to require that one of the three hours of "ethics or professional responsibility" be in the area of professionalism and civility.

**Rule 14-404. Active Status Lawyers**

(a) Active status lawyers. Commencing with calendar year 2008, each lawyer admitted to practice in Utah shall complete, during each two-calendar year period, a minimum of 24 hours of accredited CLE which shall include a minimum of three hours of accredited ethics or professional responsibility. One of the three hours of ethics or professional responsibility shall be in the area of professionalism and civility. Lawyers on inactive status are not subject to the requirements of this rule.

N. Malouf for violation of Rules 1.2(a) (Scope of Representation and Allocation of Authority between Client and Lawyer) and 8.4(a) (Misconduct) of the Rules of Professional Conduct. Mr. Malouf was further ordered to attend Ethics School, pay attorneys fees and costs to the OPC, and turn over disputed funds held in his trust account to a bankruptcy trustee for resolution of ownership of the funds.

*In Summary:*
After a car accident, Mr. Malouf was hired to pursue a personal injury action on his client's behalf. Mr. Malouf received an offer from the attorney for the opposing party's insurance company to settle the matter for the policy limits. Mr. Malouf advised his client to accept the settlement offer but his client rejected the offer. In a later meeting, the client informed Mr. Malouf that he would get back to Mr. Malouf on whether to or not to settle the matter. Before the client responded back to Mr. Malouf, Mr. Malouf accepted the settlement and deposited the settlement funds into his trust account. Mr. Malouf believed that a better resolution was not possible. Mitigating factor: Absence of a dishonest or selfish motive. The Court found that Mr. Malouf acted in what he thought was in the best interest of his client.

**PUBLIC REPRIMAND**
On April 10, 2009, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against R. Bradley Neff for violation of Rules 1.15(a) (Safekeeping Property), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In Summary:*
Mr. Neff's attorney trust account was deficient when a check was presented for payment. The account was deficient again one week later. Mr. Neff and his employee each wrote checks from the account for the same amount. Only one check should have been written. Mr. Neff determined he was entitled to the excess money as earned fees. Mr. Neff made this determination without verifying the account balance or the amount owed to him. Therefore, Mr. Neff failed to keep his funds separate from those of his client. Mr. Neff failed to maintain accounting records for the account. Mr. Neff failed to respond to the OPC's lawful request for information.


# THAT'S ENTERTAINMENT!

## How to grab AND KEEP a jury's attention

**September 16, 2009**
**8:30 a.m. - 4:45 p.m.**
**Wyoming State Bar**
**Annual Meeting**
**& Judicial Conference**
**Roundhouse & Railyards**
**Evanston, Wyoming**

wyoming STATE BAR

**Mike Cash** WOWED Wyoming attorneys last year, so we invited him back! Come and spend a few days with your neighbors and learn some tactics that have proven effective for Cash and others in courts across America.

Don't expect the trite or familiar from Mike Cash - who is also a stand-up comic. He respects your experience and celebrates your already-proven abilities as a trial lawyer. Cash's presentation is designed to take you to the next level in the courtroom.

Spend a fruitful day with Mike Cash as he explores and exposes:

- pre-trial tips that will allow you to shut down your opponent at trial
- illuminating direct examinations of witnesses that will hold a jury's attention
- decisive cross-examination, which will unravel a witness
- show stopping demonstrative evidence
- closing arguments that move the jury to action

**This is just one of many spectacular programs at the Wyoming State Bar Annual Meeting. For more information, visit www.wyomingbar.org.**

# Attorney Discipline

**PUBLIC REPRIMAND**

On November 26, 2008, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Roy D. Cole for violation of Rules 1.8(a) (Conflict of Interest: Current Clients: Specific Rules), 1.15(a) (Safekeeping Property), 1.15(d) (Safekeeping Property), 1.16(d) (Declining or Terminating Representation), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Cole was hired by a client that gave Mr. Cole Power of Attorney entrusting items of personal property to Mr. Cole. Mr. Cole accepted property from his client without the proper safeguards in place; without keeping records; and without keeping the client's property separate from his property. Mr. Cole did not provide an accounting which was full, accurate, and timely to his client. Mr. Cole failed to take steps to protect his client's interests upon termination of the representation.

**SUSPENSION**

On November 26, 2008, the Honorable David L. Mower, Sixth District Court entered an Order of Discipline: Suspension for one year against Stony V. Olsen for violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.4(a) (Communication), 1.4(b) (Communication), 1.5(a) (Fees), 1.5(b) (Fees), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Olsen was hired to represent a client's interests in a bankruptcy action by objecting to the debtors' discharge on the basis of fraud. Mr. Olsen was paid $1000. Mr. Olsen failed to provide his client with written notification of the basis or rate of his fee. Mr. Olsen attended the creditors' meeting but did not file the objection. Mr. Olsen did not inform his client that he did not file the objection and of the subsequent discharge. After the client received the notice from the bankruptcy court, the client attempted to reach Mr. Olsen but was not immediately successful.

Later, Mr. Olsen filed a lien against the debtors' property on behalf of his client even though the debtors had filed a bankruptcy action and their obligations had been discharged. The debtors' counsel sent a letter to Mr. Olsen and his client informing them that the lien was improperly filed and demanded its release. Mr. Olsen's client was at first unsuccessful in reaching him regarding the lien. Mr. Olsen did finally release the lien but did not return unearned attorney fees.

**SUSPENSION AND PROBATION**

On November 19, 2008, the Honorable Randall N. Skanchy, Third District Court entered an Order of Discipline: Suspension of two years and Probation of one year against Russell S. Hathaway for violation of Rules 1.1 (Competence), 1.2(a) (Scope of Representation), 1.3 (Diligence), 1.4(a) (Communication), 1.4(a)(2) (Communication), 1.4(a)(3) (Communication), 1.4(a)(4) (Communication), 1.4(b) (Communication), 1.5(a) (Fees), 1.15(b) (Safekeeping Property), 1.16(a) (Declining or Terminating Representation), 3.2 (Expediting Litigation), 3.4(c) (Fairness to Opposing Party and Counsel), 3.4(d) (Fairness to Opposing Party and Counsel), 8.1(b) (Bar Admission and Disciplinary Matters), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

# Lawyer Referral Directory

On July 1, 2008, the Utah State Bar created a new directory for lawyer referrals. Participation in the introductory "**Find a Utah Lawyer Directory**" is voluntary and free of charge. The directory provides potential clients with an on-line listing of each lawyer's name, address, admission date, law school, and telephone number within specific geographic areas and practice types as identified by the search criteria. It includes a lawyer's email address only if specifically authorized. Lawyers are permitted to list up to five practice types. You may sign up for the **Find a Utah Lawyer Directory** at www.utahbar.org/LRS.

*In summary there are six matters:*
The six matters involved representation in two post divorce matters; two civil matters; a civil litigation matter; and a Qualified Domestic Relations matter. In the Qualified Domestic Relations matter, Mr. Hathaway did nothing after approximately seven months of representation.

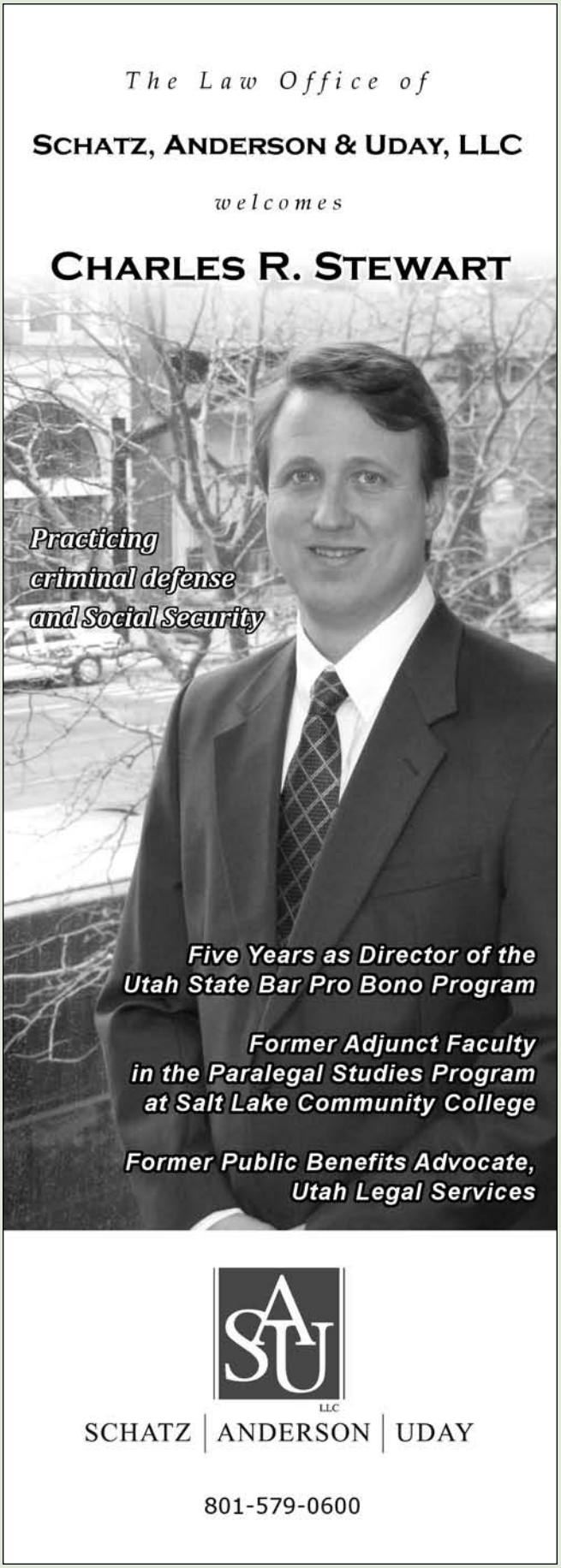
In the divorce matters, Mr. Hathaway had inadequate communication with his clients; he had none in one case and a failure to notify of discovery requests in the other case. He also failed to respond to the discovery requests and motion to compel in the one divorce case.

In the two post divorce matters he was less than diligent in his work on the cases and his communication with the clients. In one case he sent a demand letter to the defendant's wrong address and after having issues with an assistant, which affected his communication with clients and representation; he ceased work on the case; returned the file to the client but failed to return the retainer. In the second post divorce case, Mr. Hathaway mailed a demand letter but failed to communicate to the client on the status of anything else subsequent, including the failure to give an accounting.

In the civil litigation matters, Mr. Hathaway failed to file a counterclaim or answer in the case; failed to respond to discovery and failed to notify his client about the subsequent order compelling discovery and judgment for attorney fees. Mr. Hathaway's client learned of a Default Judgment entered in the case from the client's subsequent attorney.

In four of the six matters, Mr. Hathaway failed to timely respond to the Office of Professional Conduct's Notice of Informal Complaint.

**CLARIFICATION**
There are two Bruce Nelsons licensed with the Utah State Bar. In the last edition of the *Bar Journal,* the attorney discipline listed a Public Reprimand for Bruce L. Nelson, not to be confused with Bruce J. Nelson who has not been disciplined.

# *Attorney Discipline*

**PUBLIC REPRIMAND**

On October 23, 2008, the Honorable Robert K. Hilder, Third District Court, entered an Order of Discipline: Public Reprimand against Samuel J. Conklin for violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.4(a) (Communication), 1.5(a) (Fees), 1.5(b) (Fees), 1.16(d) (Declining or Terminating Representation), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Conklin was hired to protect his client's current wife's assets. Mr. Conklin was given a retainer. Mr. Conklin set up a trust but would not relinquish the trust documents until he was paid additional money.

Mr. Conklin was also hired to do paperwork to establish his client's current wife's business. Mr. Conklin made errors in the Limited Liability Company (LLC) papers. However, Mr. Conklin failed to address the mistakes he made in establishing the LLC. Mr. Conklin requested and received additional money. Mr. Conklin did not give his clients a receipt for the monies. On numerous occasions Mr. Conklin's clients requested an accounting of their funds, but were never given one. Mr. Conklin also failed to timely respond to the OPC's Notice of Informal Complaint.

**DISBARMENT**

On October 17, 2008, the Honorable James R. Taylor, Fourth District Court, entered an Order of Discipline: Disbarment against Troy L. Crossley for violation of Rules 1.1 (Competence), 1.2(a) (Scope of Representation), 1.3 (Diligence), 1.4 (Communication), 1.16(d) (Declining or Terminating Representation), 3.1 (Meritorious Claims and Contentions), 3.3(a) (Candor Toward the Tribunal), 3.4(a) (Fairness to Opposing Party and Counsel), 3.4(c) (Fairness to Opposing Party and Counsel), 8.1(b) (Bar Admission and Disciplinary Matters), 8.4(c) (Misconduct), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

In one matter, Mr. Crossley was hired to file a bankruptcy. Mr. Crossley's clients asked that the equipment they purchased for their restaurant be listed in the bankruptcy. Mr. Crossley informed his clients that the bank could not collect on the equipment after it was discharged. His clients sold the equipment back to the dealer they had purchased it from. The bank had a lien against the equipment and filed an adversary proceeding seeking a judgment against Mr. Crossley's clients. Mr. Crossley put the incorrect amount of the equipment on the bankruptcy. Mr. Crossley did not explain to his clients how this error could effect their bankruptcy. Mr. Crossley notified his clients of the adversary proceedings. Mr. Crossley left the law firm he was working for and did not notify his clients. Mr. Crossley sent his clients discovery requests that had been served on him by the bank. His clients responded and sent the documents back to Mr. Crossley. Mr. Crossley failed to answer the bank's discovery requests and failed to conduct any discovery on behalf of his clients. Mr. Crossley failed to meet with the bank's counsel to discuss the pretrial orders. Mr. Crossley failed to respond to the proposed Pretrial Order and the subsequent motion to compel. Mr. Crossley was present when the trial date was set. Three days before trial Mr. Crossley filed a motion to continue. One day before trial Mr. Crossley filed a motion to set aside the pretrial order arguing that his mistakes were excusable neglect under the federal rules. Mr. Crossley stipulated, via telephone conference, that his clients owed the bank over $20,000.00. Judgments were entered against Mr. Crossley's clients. The clients did not approve of the stipulation. Mr. Crossley's clients learned of the judgment when they were closing on their home. When confronted by his clients, Mr. Crossley indicated they had lost and there was nothing they could do about it.

In the second matter, Mr. Crossley was hired to pursue a discrimination suit and a bankruptcy. Mr. Crossley failed to include the discrimination suit as an asset in the bankruptcy. After the bankruptcy was discharged, the court granted a motion from the trustee to reopen the case. The client attempted to reach Mr. Crossley several times but Mr. Crossley failed to return the calls. Mr. Crossley faxed his client the signature page of the interrogatories. The client requested a complete copy of the interrogatories but was never given one. During a deposition, the client was provided a copy of the interrogatories, and it was discovered that the signature on the interrogatories was not that of the client. Mr. Crossley had forged the signature and notarized the document. Thereafter, Mr. Crossley was dismissed as counsel from the discrimination suit. Mr. Crossley failed to provide his client's file to the new counsel.

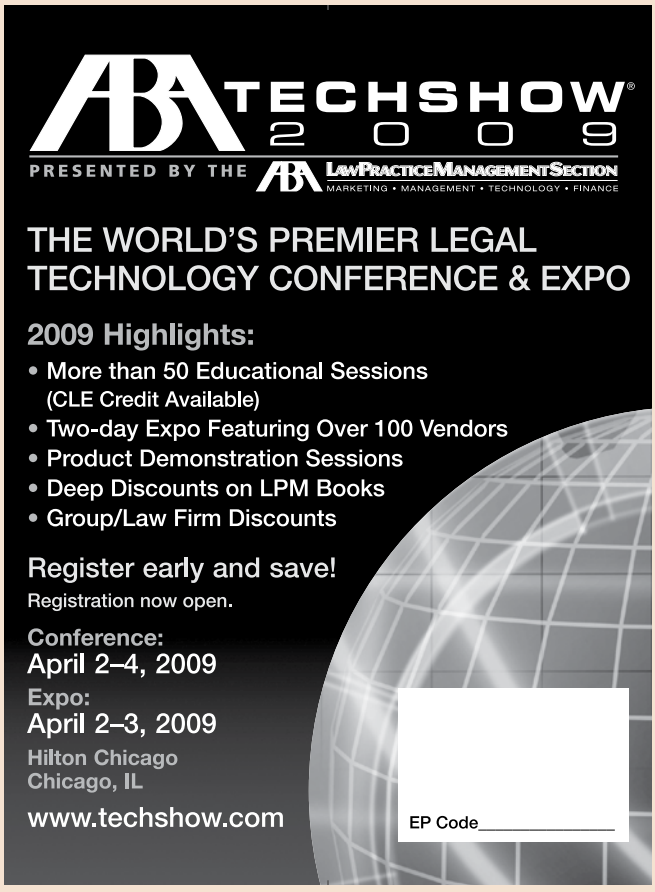
**PUBLIC REPRIMAND**

On October 20, 2008, the Honorable John P. Kennedy, Third District Court, entered an Order of Discipline: Public Reprimand against F. Kevin Bond for violation of Rules 1.5(a) (Fees), 1.8(a) (Conflict of Interest: Prohibited Transactions), 1.15(a) (Safekeeping

Property), 1.15(b) (Safekeeping Property), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Bond represented a client in a divorce and other legal matters. Mr. Bond deposited money from his client into his firm's trust account for unpaid legal work and a non-refundable flat fee for a slander and libel suit the client was contemplating filing in the future. Mr. Bond did not timely withdraw the earned attorney fees from his client trust account. Given the work performed, Mr. Bond collected an excessive fee in the slander matter. Mr. Bond performed some initial work on the slander matter but the client told him to hold off on pursuing the matter further. Mr. Bond did not refund any of the non-refundable flat fee to the client. Mr. Bond paid a couple of his client's support payments to the client's former spouse as loans to his client. Mr. Bond did not inform his client of the loan terms in writing, he did not obtain the client's written consent to the transactions at the time of the transactions, and he did not inform the client of the client's right to seek independent counsel concerning the transactions.

Several months later, Mr. Bond's client petitioned for a Chapter 7 bankruptcy. Mr. Bond was served a subpoena duces tecum to produce documents related to the funds he received from his client when he was deposed as a witness in the bankruptcy matter. Mr. Bond objected to the first deposition because he was not paid the witness fee with the subpoena. Mr. Bond did not file an objection to the subpoena duces tecum for the second deposition or produce all of the documents requested although he asserted that some documents not produced were protected by attorney-client privilege. Mr. Bond did not promptly deliver funds to the Trustee or provide the Trustee an accounting upon the Trustee's request regarding funds in his trust account. However, about two months later, Mr. Bond accepted a settlement from the Trustee, that was approved by the court, regarding the Trustee's claim to the funds in Mr. Bond's trust account. Mr. Bond's client did not complain about Mr. Bond's representation.




**PUBLIC REPRIMAND**
On September 29, 2008, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against John E. Cawley for violation of Rules 1.1 (Competence), 1.2(a) (Scope of Representation), 1.3 (Diligence), 1.4(a) (Communication), 1.4(b) (Communication), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Cawley was hired to represent a company in collection matters. In one case, Mr. Cawley was given complete information and asked to file and serve a debt collection action. Mr. Cawley had the case for over a year and within that time did not file or serve a complaint. During the time that Mr. Cawley had the file, the statute of limitations ran. During the course of the representation, Mr. Cawley failed to adequately review, diligently keep track of the matter, and files were lost by his office. Mr. Cawley failed to respond to numerous letters from his client requesting status reports on the case. Mr. Cawley did not contact his client's representative before the statute of limitations ran to tell him of his difficulties in completing the work, thereby giving his client an option to hire another attorney before the statute of limitations ran. Mr. Cawley's actions caused potential and actual damages to his client.

**PUBLIC REPRIMAND**
On August 19, 2008, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Bruce L. Nelson for violation of Rules 1.2(a) (Scope of Representation), 1.3 (Diligence), 1.4(a) (Communication), 1.4(b) (Communication), 1.5(a) (Fees), 1.15(a) (Safekeeping Property), 3.2 (Expediting Litigation), 3.3 (Candor Toward the Tribunal), 4.1 (Truthfulness in Statements to Others), 8.1(b) (Bar Admission and Disciplinary Matters), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the

Rules of Professional Conduct.

*In summary:*
Mr. Nelson was hired to obtain a Temporary Restraining Order (TRO) against a business associate of his clients. Mr. Nelson did not file an action for a TRO, even though his clients made it clear this was their primary objective. Instead of filing and seeking a TRO, Mr. Nelson got an informal, "hypothetical" opinion from a sitting judge. Mr. Nelson's clients believed that the opinion was from the same judge that would be hearing the case. Mr. Nelson then told the clients that a hearing date had been set in the matter. Mr. Nelson's representations that a TRO hearing was scheduled and that he had spoken to the judge deciding the matter were knowingly false. Mr. Nelson failed to correct his clients' misapprehensions, which he had created by his misstatements. Mr. Nelson charged his clients for work he claimed to have performed but did not perform. Mr. Nelson deposited attorney fees in his personal account without having first earned the fees. Mr. Nelson failed to respond to the requests of the OPC, failed to disclose facts necessary to correct his clients' misapprehensions, and was less than candid with the Screening Panel.

**PROBATION**
On September 3, 2008, the Honorable W. Brent West, Second District Court, entered an Order of Discipline: Probation against W. Gregory Burdett for violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.4(a) and 1.4(b) (Communication), 1.5(a) (Fees), 1.16(a), 1.16(c), 1.16(d) (Declining or Terminating representation), 8.1(b) (Bar Admission and Disciplinary Matters), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
In one matter, Mr. Burdett was hired to represent his clients in a property rights dispute. Mr. Burdett quit private practice but did not tell his clients. Mr. Burdett allowed his clients' case to be dismissed by the court and Mr. Burdett failed to notify his clients that their case had been dismissed. Additionally, Mr. Burdett failed to promptly give his clients their file and failed to respond to the OPC's Notice of Informal Complaint.

In another matter, Mr. Burdett was hired to represent a client in a suit filed by beneficiaries of her father's trust, of which his client is trustee. Mr. Burdett failed to respond to the motion for summary judgment filed against the client and failed to withdraw in a manner that protected his client's interests. Additionally, Mr. Burdett failed to promptly comply with his client's reasonable requests for information regarding her case, including repeatedly failing to respond to communication from his client and notifying his client that a motion for summary judgment had been filed. Mr. Burdett's client terminated his representation in mid-August 2005, but Mr. Burdett failed to make any attempt to withdraw until October 20, 2005. Mr. Burdett failed to return his client's file as requested and failed to refund to his client the unearned portion of the attorney's fees that she paid him in advance. Mr. Burdett also failed to respond to the OPC's Notice of Informal Complaint.

**PUBLIC REPRIMAND**
On September 23, 2008, the Honorable Jon Memmott, Second District Court, entered an Order of Discipline: Public Reprimand against Brent E. Johns for violation of Rules 1.2(a) (Scope of Representation), 1.4(a) and 1.4(b) (Communication), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Johns received a Qualified Domestic Relations Order (QDRO) for his approval as to form related to a divorce case in which he had represented the husband about nine years prior. After the divorce case had ended, Mr. Johns had no further contact with his former client. The ex-wife's new attorney left the QDRO with Mr. Johns's office for his signature even though the ex-husband had represented himself pro se in the last court matter between the parties. Mr. Johns' office later called opposing counsel to pick up the QDRO with Mr. Johns's approval as to form. Mr. Johns did not contact his client before or after approving the QDRO as to form. The QDRO was filed with the Court leading to an increase in the amount of retirement benefits received by the ex-wife.

After the former client retired and became aware of the QDRO, he confronted Mr. Johns about the QDRO and later pursued the matter in small claims court. Mr. Johns stated that he did not believe the signature on the approval as to form of the QDRO was his signature. Mr. Johns failed to investigate the signature on the QDRO which led him to negligently make a false statement to the small claims court that was prejudicial to the administration of justice.

**STAYED DISBARMENT**
On September 22, 2008, the Honorable Samuel D. McVey, Fourth District Court, entered an Order of Discipline: Stayed Disbarment, including license suspension of three years, and Probation against Craig M. Bainum for violation of Rules 1.2(a) (Scope of Representation), 1.3 (Diligence), 1.4(a) (Communication), 1.5(b) (Fees), 1.15(a) (Safekeeping of Property), 5.3(b) (Responsibilities Regarding Nonlawyer Assistance), 5.4(a)

(Professional Independence of a Lawyer), 8.1(b) (Bar Disciplinary Matters), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary there are eight cases:*
In two of the cases, while at a law firm Mr. Bainum was hired by clients and accepted a retainer fee. In one of the cases, he deposited the retainer fee into his own trust account and in the other case he deposited the retainer into his personal account. In neither case did Mr. Bainum deposit the money into the lawfirm's trust account.

In two of the cases, one in which Mr. Bainum was hired to seek post-conviction relief on behalf of his client's son and one in which Mr. Bainum was hired to help corporate counsel prosecute a case in federal court, Mr. Bainum was paid $5,000.00 in fees. However, in the post-conviction relief case, Mr. Bainum failed to communicate to the client in writing the basis or rate of his fees; only met with the client's son several times at the prison; and upon termination of the representation failed to justify his fee. And, in the corporate counsel case, after a return of the file, there was no evidence that Mr. Bainum had performed any work. Mr. Bainum also failed to timely respond to the OPC's Notice of Informal Complaint in both cases.

In two of the cases, one involving the representation of a client in an assault defense and one involving the criminal defense of a client, Mr. Bainum failed to appear at scheduled court hearings. More specifically, Mr. Bainum did not appear at the trial in the assault case forcing the court to reschedule, and in the criminal defense case, Mr. Bainum failed to appear at two status conference hearings and an Order to Show Cause hearing. In the criminal defense case, Mr. Bainum made no effort to check the correctness of his address or the status of the matter with the court.

In one case, Mr. Bainum was hired to pursue a claim arising from an assault. The client tried to contact Mr. Bainum regarding the status of the case, however, Mr. Bainum did not notify the client of his departure from his law firm, did not provide the client with new business contact information, and failed to return the client messages left on his cell and home phones.

In another case, Mr. Bainum was performing credit repair services for clients and contracted with a non-attorney to assist him with these services. Mr. Bainum had direct supervising authority over the non-lawyer, yet failed to meet with each of the clients at the start of the representation. Some clients signed engagement agreements without first meeting with Mr. Bainum and Mr. Bainum did not meet with the clients to explain the legal consequences of the engagement agreement and the legal work to be performed. In fact, Mr. Bainum never met with some of the clients he performed legal work for and Mr. Bainum paid the non-lawyer 90% of the fees that he collected from credit repair clients.

**PUBLIC REPRIMAND**
On November 10, 2008, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Kent Snider for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.4(b) (Communication), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Snider was hired to pursue a domestic matter for his client. When the case settled, Mr. Snider failed to timely prepare the order reflecting the parties' settlement. Mr. Snider submitted the order to the court without permitting the client to review it for inaccuracies. Mr. Snider also failed to respond timely and candidly to the OPC's inquiries and to the NOIC.

The Panel found mitigating circumstances as follows: respondent was candid with the tribunal and seemed to accept responsibility for his conduct. The Panel found aggravation of: the respondent had prior discipline history.

**ADMONITION**
On November 10, 2008, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.7(a)(2) (Conflict of Interest: Current Clients), 1.7(b) (Conflict of Interest: Current Clients), 1.9(a) (Duties to Former Clients. Conflict of Interest: Former Clients), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
An attorney represented two clients concurrently and sent a demand letter on behalf of one client while representing the other. Consent of both clients was obtained; however, the consent that was obtained was belated and uninformed. Additionally, at the same time the attorney's firm represented one client, the firm represented the opposing client at a deposition. It was unclear when the representation of the adverse client ended.

The Panel found mitigating circumstances as follows: lack of prior disciplinary history, absence of any improper motive, and attorney's relative lack of experience.

# *Attorney Discipline*

**ADMONITION**

On June 23, 2008, the Vice-Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 3.2 (Expediting Litigation), 3.3(d) (Candor Toward the Tribunal), 7.3(a) (Direct Contact with Prospective Clients), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
The attorney solicited professional employment from a person in a nursing home without invitation and without contacting the person's family members. The attorney filed an Ex-Parte Motion for Appointment of Counsel along with a Request for Guardianship and Conservatorship for the person in the nursing home. The attorney did not disclose all material facts to the tribunal in his ex-parte communications including how the attorney was in contact with the client; the fact that Adult Protective Services (APS) was not investigating all of the children of the client, and that his client was not in imminent harm. The attorney continued to fight over the appointment of counsel with his client's children after APS determined there was no exploitation. The attorney's response to the OPC and personal attacks toward his client's children were unprofessional and detrimental to the administration of justice.

Mitigating factor: isolated incident and not a pattern.

**ADMONITION**

On May 22, 2008, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 4.4(a) (Respect for Rights of Third Persons), 8.4(e) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
The attorney's client, a government agency, inadvertently sent confidential information to a person who had an open case with the agency. When the person did not return the documents on request, the attorney called the person leaving a message that threatened to have the police come to retrieve the documents, to seek criminal charges or to get a warrant in order to affect the return of the documents, however the attorney had no creditable legal recourse for these threats. The Committee determined that the attorney's voicemail was inappropriate and unprofessional.

**PUBLIC REPRIMAND**

On May 12, 2008, the Honorable Robert P. Faust, Third District Court, entered an Order of Discipline: Public Reprimand against Jeanne T. Campbell Lund for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.16(a) (Declining or Terminating Representation), 3.2 (Expediting Litigation), 5.3(a) (Responsibilities Regarding Nonlawyer Assistants), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
On or around October 2002, Ms. Lund and her husband were retained to pursue a personal injury case. On April 17, 2003, the Utah Supreme Court accepted her husband's resignation with discipline pending from the Utah State Bar. Ms. Lund's husband became her office manager and/or legal assistant. Ms. Lund did not timely pursue settlement or litigation of her client's personal injury case. During the representation, Ms. Lund failed to timely communicate with her client concerning the status of his case. At the end of 2003 or the beginning of 2004, Ms. Lund left the practice of law to work in the mortgage business. Ms. Lund failed to notify her client that she was not pursuing his personal injury case. Ms. Lund did not notify the insurance company for the opposing party that she was withdrawing as counsel from the case. After Ms. Lund began working in the mortgage business, she failed to supervise her husband's access to the client's file. In or around March 2004, her husband engaged in settlement negotiations with the insurance company in the personal injury case. Her husband accepted a settlement offer for the client, but did not inform the client of the settlement offer. Her husband did not receive the client's authorization for the settlement offer prior to accepting the final settlement. On or about March 16, 2004, the insurance company issued a settlement check payable to Ms. Lund's husband and the client. Although the settlement check was endorsed and cashed the client did not endorse the settlement check and did not receive any of the monies from the settlement check. At the time of the settlement negotiations with the insurance company, Ms. Lund did not directly supervise her husband's work.

**RECIPROCAL DISCIPLINE**

On May 12, 2008, the Honorable Eric A. Ludlow, Fifth District Court entered a Reciprocal Order of Discipline: Public Reprimand against Rulon J. Huntsman for violation of Rules 1.3 (Diligence), 5.3 (Responsibilities Regarding Nonlawyer Assistants), 5.5 (Unauthorized Practice of Law), and 8.4(a) (Misconduct) of the Rules of Professional Conduct, based upon his conduct in Nevada.

*In summary:*
Mr. Huntsman and a non-lawyer presented to the public as a single business entity, being housed in the same building and lacking signs indicating that they were separate businesses. One client hired the non-lawyer believing that the non-lawyer was an attorney. When the client requested his attorney appear on his behalf, Mr. Huntsman appeared, but was not familiar with the

case. Mr. Huntsman relied on the non-lawyer to collect the fee and prepare documents for the client.

On September 6, 2007, a Public Reprimand was issued in Nevada by the State Bar of Nevada Southern Nevada Disciplinary Board. Based on the findings of the Nevada Board, the Fifth District Court entered an order of equivalent discipline.

**SUSPENSION**

On May 30, 2008, the Honorable Sandra N. Pueler, Third Judicial District Court, entered Findings of Fact and Conclusions of Law and Order of Discipline: Suspension against Frank J. Falk for violation of Rules 1.1 (Competence), 1.2(a) (Scope of Representation), 1.3 (Diligence), 1.4(a) (Communication), 1.4(b) (Communication), 1.5(a) (Fees), 3.2 (Expediting Litigation), 8.1(b) (Bar Admission and Disciplinary Matters), 8.4(c) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct. The suspension is effective June 30, 2008. Mr. Falk is suspended for three years.

*In summary:*

In one case, Mr. Falk was hired to initiate an action against Salt Lake County (County) for injuries his client sustained in an automobile accident. The client hired Mr. Falk on or around January 2, 2003. During four years of representation, Mr. Falk had infrequent contact and did not routinely make himself available for telephone calls from his client. Mr. Falk failed to consult with his client concerning the process of the case, settlement of the case or what was necessary for trial. He also failed to prepare her case and to prepare her to testify. When an offer was made, Mr. Falk failed to notify his client who eventually found out from a third party months later.

In another matter, Mr. Falk was retained to handle some collection matters. Mr. Falk was the responsible attorney on the cases. During the course of Mr. Falk's representation, Mr. Falk handled at least 11 cases. Mr. Falk received checks for fees and costs to be performed on the cases. The files were removed by the client because of inaction and failure to communicate. In some cases the statute of limitations were missed due to the inactivity of Mr. Falk.

**DISBARMENT**

On June 24, 2008, the Honorable Judith S. Atherton, Third Judicial District Court, entered a Reciprocal Order of Disbarment disbarring Dennis F. Olsen from the practice of law in Utah based upon his disbarment in Washington.

*In summary:*

On September 19, 2006, the Supreme Court of Washington ("Washington") entered an Order disbarring Mr. Olsen from practicing before that court based on his conduct in violation of Rules 1.1, 1.3, 1.4, 3.2, 8.4(b), 8.4(c), 8.4(i), and 8.4(l).

The findings of the Washington adjudicatory body are summarized as follows:

Mr. Olsen knowingly withheld taxes from an employee but did not remit the withheld taxes to the proper federal and state agencies. Mr. Olsen also committed theft by not remitting the withheld taxes to the proper authorities in that he did not return the money to the employee. After Mr. Olsen fired the employee, Mr. Olsen attempted to coerce the employee into taking a case, using the withheld taxes as leverage. Thereafter, the employee filed a complaint with the Washington State Bar. During the investigation of the Bar complaint, Mr. Olsen attempted to mislead the Bar concerning his wrongful conduct with regard to the taxes.

## *Nominations Sought for the Peter W. Billings Sr. Award for Excellence in Dispute Resolution*

To honor the memory of Peter W. Billings, Sr., a pioneer and champion of alternative dispute resolution in our state, the Dispute Resolution Section of the Bar annually awards the Billings' Award for Excellence in Dispute Resolution. The DR Section is seeking nominations for this award, which will be presented at the Fall Forum. The award may be given to a person or an organization.

Past recipients of this prestigious recognition are Gerald Williams, Michael Zimmerman, William Downes, Hardin Whitney, James Holbrook, Diane Hamilton, Karin Hobbs, Palmer DePaulis, Brian Florence, and Paul Felt.

Please submit nominations by Friday, September 19, 2008 to Joshua F. King at jfking@kingmediation.com.

## Discipline Corner

### RESIGNATION WITH DISCIPLINE PENDING

On October 23, 1997, the Utah Supreme Court, executed an Order Accepting Petition for Resignation with Discipline Pending in the matter of Stephen Cronin.

Pursuant to Rule 22 of the Rules of Lawyer Discipline and Disability, the Office of Attorney Discipline gave notice to Cronin that it intended to seek reciprocal discipline against him based on an Order Imposing Discipline against Cronin in the Superior Court of Guam for the Territory of Guam.

Thereafter, Cronin expressed a desire to resign from the Utah State Bar in lieu of further disciplinary proceedings in Utah. Pursuant to Rule 21 of the Rules of Lawyer Discipline and Disability, Cronin filed a Petition for Resignation with Discipline Pending. In that Petition, Cronin admitted to the allegation made against him by the Bar of Guam Ethics Committee.

An Amended Petition filed with the Bar of Guam Ethics Committee on September 22, 1986 alleged that Cronin, representing King's Supermarket, filed a complaint in the Superior Court of Guam against three defendants. The complaints alleged that the three defendants owed the estate of King's Supermarket the sum of $1008. At the time the complaint was filed, the obligation allegedly owed by the named defendants had previously been satisfied in full by payments made through Cronin's law office. Although confronted with this fact by one of the defendants subsequent to the filing of the complaint, Cronin refused to terminate the proceedings until the defendants paid and additional sum of $80.00. Cronin submitted a sworn statement admitting to the Amended Petition, and affirmed the sworn statement in open court.

Additionally, the complaint alleged that Cronin entered into a contingent fee agreement with another client. The client was to provide payment to Cronin based on the outcome of litigation involving the client's legal right to child support. Cronin was to receive a percentage of all child support collected. Cronin submitted a sworn statement and affirmed these facts in open court.

Lastly, the complaint alleged that Cronin, a court appointed attorney for a client convicted in the Superior Court of Guam of aggravated murder and other crimes, was assigned to prosecute the appeal. After filing the notice of appeal, Cronin failed to take any further action on the appeal, and failed to communicate with his client regarding the abandonment of the appeal. Cronin allowed the appeal to be dismissed on motion from the government without appearing in court to oppose the motion or provide an explanation. Cronin admitted to this conduct in his sworn statement, and further admitted his statement in open court.

Based on these admissions and on an agreement between Cronin and the Committee, the Bar of Guam Ethics Committee ordered Cronin to wind down his practice and tender his resignation from the Guam Bar Association no later than ninety days from September 22, 1986. Cronin would not be eligible to reapply for readmission to the Guam Bar Association for a period of not less than two years from the day following the date the resignation was tendered. Further, Cronin was ordered to make restitution to the second client of all sums obtained from her as a result of the contingent fee agreement.

### ADMONITION

On July 29, 1997, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violating Rule 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct. The attorney was also ordered to attend and successfully complete the Utah State Bar Ethics School.

On October 8, 1995, the attorney was involved in an automobile accident with the complainant. The attorney was driving drunk, without a driver's license, and without automobile insurance. The attorney fled the scene of the accident.

Criminal charges were filed in the Sandy Justice Court. The attorney pled guilty to Driving Under the Influence and Reckless Driving, and agreed to pay restitution to the complainant as part of the plea bargain. After the complainant had difficulty obtaining the restitution the Court ordered and other money the attorney had promised to him to cover the deductible for his insurance, he complained to the Bar.

The Office of Attorney Discipline wrote to the attorney on three occasions requesting a response to the complaint. The attorney failed to respond or otherwise cooperate with the Office of Attorney Discipline.

There were no aggravating circumstances noted by the Screening Panel. The mitigating factors found by the Screening Panel were that the attorney acknowledged an alcohol problem, and regularly attended AA meetings after he completed a program with the Betty Ford Clinic. The attorney also provided proof of full, albeit tardy, restitution to the complainant.

### ADMONITION

On October, 1, 1997, an attorney was admonished in four matters by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violating Rules 1.2(a) (Scope of Representation), 1.3 (Diligence), and 1.4(a) (Communication) of the Rules of Professional Conduct. The attorney stipulated to an admonition and the Order was entered pursuant to a Discipline by Consent.

The four complaints filed against the attorney alleged that the attorney was not diligent in the representing the attorney's clients in personal injury matters. The complaints further alleged that the attorney failed to communicate with the clients regarding the status of their cases.

The attorney established that the clients had not been materially prejudiced, and that he would cooperate with their new attorneys to assure that the clients' interests were protected.

### ADMONITION

On October 3, 1997, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violating Rules 1.7 (Conflict of Interest: General Rule) and 1.9 (Conflict of Interest: Former Client) of the Rules of Professional Conduct. The Order was entered pursuant to a Discipline by Consent.

On April 10, 1995 the attorney met with a client regarding a divorce matter. The client paid $250 for the attorney's services. The attorney proceeded to initiate the divorce. On October 3, 1995, the client's spouse met with another attorney from the attorney's office regarding the divorce. On October 5, 1995, both clients met with the attorney to discuss their divorce, which was contested. At this meeting the attorney

acknowledged that he was prohibited from representing both clients, but agreed nevertheless to assist the couple with their divorce. The attorney failed to fully inform either client about potential adverse effects that might be caused by the conflict, and failed to secure from them informed consent to the dual representation. The attorney later rendered legal services for both clients by preparing divorce papers on behalf of each. The conflict of interest issue was later used successfully by the first client through his new attorney to challenge and modify the divorce decree prepared by the attorney.

The attorney agreed to stipulate to an admonition for the violation of Rules 1.7 and 1.9, and agreed to attend the Utah State Bar's Ethics School.

**ADMONITION**

On October 3, 1997, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violating Rules 1.1 (Competence), 5.4(a), (b) and (c) (Professional Independence of a Lawyer), 5.5 (Unauthorized Practice of Law), and 8.4(a) (Misconduct) of the Rules of Professional Conduct. The Order was entered pursuant to a Discipline by Consent.

On November 17, 1990, a financial planner contacted the attorney. The financial planner wanted the attorney to assist him in preparing a will and trust agreement for his client, the complainant. The attorney accompanied the financial planner to the client's house where he drafted several documents for the client's signature using a portable computer. These documents included a will, trust, various deeds, and other papers. The client paid the financial planner $350 for these services. The attorney later received a portion of this fee. The client later became suspicious about the documents the attorney had prepared and took them to another attorney. The second attorney advised the client that the documents were inadequate, and drafted new documents for the client.

The attorney agreed to stipulate to an admonition for the violation of Rules 1.1, 5.4(a), (b) and (c), 5.5, and 8.4(a). The attorney established that he has retired from the legal profession and agreed not to re-enter the profession without first completing appropriate ethics and estate planning courses approved by the Office of Attorney Discipline at his own expense.

**ADMONITION**

On October 24, 1997, Judge Timothy R. Hansen, Third District Court, entered an Order of Discipline admonishing an attorney for violating Rules 1.1 (Competence), 1.3 (Diligence), and 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct. The attorney was also ordered to attend Ethics School, to pay $800 restitution within one year of the date of the Order, and to pay costs in the amount of $100 to the State Bar.

In December 1991, a client retained the attorney to represent him in a civil matter in which the client was the name defendant. In July 1992, after a discovery dispute where the Plaintiff Filed a Motion to Compel, the Court granted Plaintiff's Motion for Sanctions, which included granting a judgment against the Defendant.

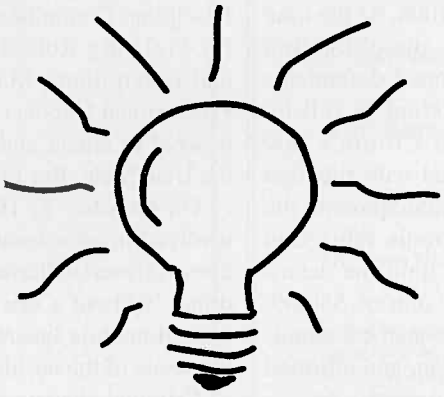
At some time after the entry of the judgment against him, the client retained a new attorney to represent him. The new attorney failed to file a Motion to Set Aside and the Plaintiff obtained a Default Judgment in the amount of $1862.65. However, it appears that the client could not have successfully resisted the plaintiff's claims for money owed.

**MINUTE ENTRY ON ORDER TO SHOW CAUSE**

On June 27, 1997, the Honorable Anne Stirba, Third District Court, entered a Minute Entry ordering Lynn Spafford to serve thirty days in jail for each of three counts to which he pled guilty for practicing law while suspended, in violation of his Resignation with Discipline Pending. The time served was ordered to run consecutive to a federal sentence Spafford served in another matter. Spafford was further ordered to pay a $1000 fine, plus a 35% surcharge for each count, and to pay a $500 recoupment fee.

The Court stayed the sentence and placed Spafford on probation under the following conditions:

Spafford is on probation for twelve months and is ordered to abide by all terms and conditions of federal probation, including all drug and alcohol provisions. Spafford is not to engage in the unauthorized practice of law. Spafford is to complete sixty hours of community service, doing at least ten hours per month. Spafford is to write a letter of apology to the Utah Supreme Court. Spafford is to pay a $500 recoupment fee, with monthly payments of at least $50 per month. Spafford is to report any violation of probation to the Supreme Court, the Utah State Bar, and counsel.

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# *Attorney Discipline*

**ADMONITION**

On July 18, 2008, the Vice-Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.2(c) (Scope of Representation and Allocation of Authority Between Client and Lawyer), 1.2(d) (Scope of Representation and Allocation of Authority Between Client and Lawyer), 8.4(c) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

An attorney represented a client in a real estate transaction. Attorney was left alone with the closing documents after the documents, including a deed, had been executed. The attorney removed the original, two-page version of the legal description and attached an altered version of the property's legal description to the quit claim deed. The attorney made the changes while alone with the executed documents. The attorney altered a signed deed, delivered to be recorded, by changing property description, and by whiting out the stated number of pages on the deed's face. The attorney did not intend to misrepresent or defraud anyone, but was attempting to correct what he understood to be a ministerial error that had been made when the wrong description was attached.

**PROBATION**

On July 16, 2008, the Honorable Dino Himonas, Third District Court entered an Order of Discipline: Probation for one year against Mark R. Emmett for violation of Rules 1.3 (Diligence), 1.4(b) (Communication), 1.16(d) (Declining or Terminating Representation), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Emmett represented a debtor in a Chapter 7 bankruptcy matter. Mr. Emmett failed to file papers required to advance the bankruptcy matter, including the Statement of Financial Affairs and Schedules. Mr. Emmett did not inform his client that he had ceased work on her case. Due to Mr. Emmett's failure to file the required papers, the court dismissed his client's bankruptcy case, and Mr. Emmett failed to inform his client of the dismissal. Mr. Emmett suffered from depression. Mr. Emmett did not withdraw from his representation of his client once it became apparent his mental condition was impairing his ability to pursue the matter.

**RESIGNED WITH DISPLINE PENDING**

On May 16, 2008, the Honorable Christine M. Durham, Chief Justice, Utah Supreme Court, entered an Order Accepting Resignation with Discipline Pending concerning Wesley F. Sine.

*In summary:*

On February 4, 2005, Mr. Sine was found guilty of four counts of mail fraud pursuant to United States Code, Title 18, section 1341. Mr. Sine was sentenced to serve 70 months in prison and ordered to pay $2,294,000.00 in restitution to the victims.

## *Notice of Petition for Reinstatement to the Utah State Bar by Russell T. Doncouse*

Pursuant to Rule 14-525(d), Rules of Lawyer Discipline and Disability, the Utah State Bar's Office of Professional Conduct hereby publishes notice of Respondent's Verified Petition for Reinstatement and Affidavit of Compliance ("Petition") filed by Russell T. Doncouse in *In the Matter of the Discipline of Russell T. Doncouse,* Second Judicial District Court, Civil No. 020900608. Any individuals wishing to oppose or concur with the Petition are requested to do so within thirty days of the date of this publication by filing notice with the District Court.

## *Request for Comment on Proposed Bar Budget*

The Bar staff and officers are currently preparing a proposed budget for the fiscal year which begins July 1, 2008 and ends June 30, 2009. The process being followed includes review by the Commission's Executive Committee and the Bar's Budget & Finance Committee, prior to adoption of the final budget by the Bar Commission at its May 30, 2008 meeting.

The Commission is interested in assuring that the process includes as much feedback by as many members as possible. A copy of the proposed budget, in its most current permutation, is available for inspection and comment at www.utahbar.org.

Please contact John Baldwin at the Bar Office with your questions or comments.

Telephone: (801) 531-9077
Email: jbaldwin@utahbar.org

## Tenth Circuit 2008 Bench & Bar Conference The Broadmoor • September 4 – 6, 2008

**The Honorable Carlos F. Lucero, Circuit Judge for the United States Court of Appeals for the Tenth Circuit, is pleased to invite you to attend the *Tenth Circuit 2008 Bench & Bar Conference*.**

The 2008 Bench and Bar Conference will be held the week of Labor Day, **September 4-6, 2008**, in Colorado Springs, Colorado at the Broadmoor Hotel. The block for hotel reservations is not yet open, but an announcement will be posted as soon as it is open with favorable room rates for the conference.

- The conference will offer you an opportunity to earn approximately 14 to 16 hours of CLE credits including two hours of ethics credit.
- A welcoming reception will be held Thursday evening at the Penrose House.
- The conference will feature appearances by Justice Stephen Breyer, Jeffrey Rosen, Jan Greenburg, Stuart Taylor, Erwin Chemerinsky, Stephan Saltzberg, Douglas Berman, and many other professionals and experts in their fields.
- The program will offer substantive sessions on: Electronic Discovery Islamic Law, *Daubert* Issues, Indian Law, Developments in Constitutional Law Bankruptcy, Criminal Procedure Criminal Sentencing, The New Tenth Circuit Electronic Judicial Misconduct, Filing Requirements
- Please check our website periodically for updates on the program and other details: http://www.ca10.uscourts.gov/judconf/index.php.

**If you have any questions, please call the Judicial Resources team at the Tenth Circuit Office of the Circuit Executive: 303.844.2067 or call these individual team members: Julie 303.335.2826 • Kaitlin 303.335.3038 • Sheila 303.335.3014**

# *Attorney Discipline*

**ADMONITION**

On May 19, 2008, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.15(c) (Safekeeping Property) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

After several years of employment at a law firm, the attorney left, taking several clients. One of the clients had previously signed an agreement with the law firm giving the firm one-third of the most recent settlement offer prior to leaving the firm. The attorney obtained a settlement for the client. The law firm placed the attorney and insurance company on notice of their lien. The attorney instructed the insurance company to issue the settlement checks without the law firm name on them. The attorney failed to hold the disputed portion of the funds separately in the trust account. The attorney withdrew the funds before a severance or accounting occurred.

**ADMONITION**

On May 12, 2008, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.4(b) (Communication), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

An attorney was hired to represent a client in divorce proceedings. Opposing counsel filed a Motion for Bifurcation and the attorney failed to notify the client of the motion or oppose the motion. The client was unaware that a divorce decree had been entered or that the proceedings had been bifurcated. The attorney did not diligently communicate with the client about the Motion to Bifurcate or the Decree of Divorce being entered. The attorney did not explain the ramifications of the bifurcation of the divorce in advance so that the client could make decisions about the issues in the case.

**ADMONITION**

On March 20, 2008, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.15(a) (Safekeeping Property), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

An attorney wrote a check to a business partner for a personal transaction from his client trust account. The check was returned for insufficient funds. The attorney failed to respond to the OPC's Notice of Informal Complaint or provide any documentation to the OPC or to a Screening Panel when it was requested of him.

**PUBLIC REPRIMAND**

On April 30, 2008, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Christopher D. Greenwood for violation of Rules 4.1 (Truthfulness in Statements to Others), 8.4(c) (Misconduct), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Greenwood was representing a client in a post-divorce modification matter. After an agreement had been reached between the parties, Mr. Greenwood prepared a stipulation and order. The stipulation was sent to opposing counsel and signed. The Order was approved as to form. Mr. Greenwood then submitted a second Order with different terms to opposing counsel's client and to opposing counsel who had by then withdrawn. This second Order contained a material change. Mr. Greenwood sent no cover letter or explanation as to the change in the Order, thus amounting to a misstatement of fact.

**PUBLIC REPRIMAND**

On May 12, 2008, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Boyd K. Dyer for violation of Rules 8.2 (Judicial Officers), 8.4(c) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Dyer filed a motion for summary judgment on behalf of his clients. The district court denied Mr. Dyer's motion and granted the opposing party's motion for summary judgment. Mr. Dyer filed a second motion for summary judgment that was also denied. Mr. Dyer appealed to the Utah Court of Appeals. The Court of Appeals unanimously upheld the trial court's decision. Mr. Dyer filed Petitions for Rehearing in both cases; the petitions were denied. Mr. Dyer filed Petitions for Writ of Certiorari with the Utah Supreme Court. Certiorari was granted in both cases. The Utah Supreme Court dismissed both appeals and struck the briefs in both cases. In its opinion, the Court stated that it had failed to reach the merits of the cases because, "petitioners' briefs in each case are replete with unfounded accusations impugning the integrity of the court of appeals panel that heard the cases below." The Court further noted, "[t]hese accusations include allegations, both direct and indirect, that the panel intentionally fabricated evidence, intentionally misstated the holding of the case, and acted with improper motives." The Court found Mr. Dyer in violation of rule 24(k) of the Utah Rules of Appellate Procedure.

Mr. Dyer recklessly made statements impugning the integrity of the Court of Appeals both in pleadings submitted to the Utah Supreme Court and arguments made before the Utah Supreme Court.

**PUBLIC REPRIMAND**

On May 13, 2008, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Richard S. Nemelka for violation of Rules 1.6 (Confidentiality of Information), 1.16(d) (Declining or Terminating Representation), and 8.4(a) (Misconduct) of the Rules of Professional Conduct. Mr. Nemelka has filed a Petition for Review and a Motion for Stay with the Utah Supreme Court.

*In summary:*

Mr. Nemelka was hired to pursue a divorce. Mr. Nemelka provided opposing counsel with his client's unedited personal notes attached to his discovery responses without his client's consent. Mr. Nemelka refused to promptly provide his client with a copy of her file after she terminated representation. Mr. Nemelka later requested his client personally appear at his office to pick up the file. At that time Mr. Nemelka served his client with a complaint for unpaid attorney's fees. Aggravating factors that were considered were: a pattern of misconduct; multiple offenses; refusal to acknowledge the wrongful nature of the misconduct involved; vulnerability of the victim and substantial experience in the practice of law.

**SUSPENSION and PROBATION**

On May 5, 2008, the Honorable Ann Boyden, Third Judicial District Court, entered Findings of Fact and Conclusions of Law and Order of Discipline: Suspension and Probation against Cheri K. Gochberg, effective March 5, 2008. Ms. Gochberg is suspended for six months and one day and will be placed on 36 months probation.

*In summary:*

Ms. Gochberg pled guilty to Driving Under the Influence of Alcohol/Drugs (with priors) pursuant to Utah Code Annotated section 41-6A-502, a third degree felony.

## *Volunteer Opportunity*

**Interested in a very unique and rewarding legal experience?**

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*"My experience in Ukraine was, without a doubt, the highlight of my legal career as an attorney and judge. To witness firsthand the burgeoning freedoms of Ukraine, and the eager aspirations of hundreds of young law students, was a powerful experience."* –Judge Daniel Gibbons, Holladay City Justice Court Judge

The program is partially self-funded. The approximate cost for the volunteer is $3000. CLE credit may be available for the teaching experience. To learn more go to www.leavittinstitute.org or contact Chelom Leavitt at chelom@nebonet.com

## Juvenile Law Section Organizational Meeting

Join us to elect officers and plan future CLE events. Martha Pierce of the Guardian Ad Litems Office and Carol Verdoia Assistant Attorney General Child Protection Division will provide a case law and legislative update.

April 23, 2008 • 12:00–1:00 pm
1 hour CLE (pending bar approval)
$15 Lunch will be provided
Register by April 18 by e-mail: sections@utahbar.org
or by fax at: (801) 531-0660

## Notice of Ethics & Discipline Committee Vacancies

The Bar is seeking interested volunteers to fill four vacancies on the Ethics & Discipline Committee of the Utah Supreme Court. The Ethics & Discipline Committee is divided into four panels, which hear all informal complaints charging unethical or unprofessional conduct against members of the Bar and determine whether or not informal disciplinary action should result from the complaint or whether a formal complaint should be filed in district court against the respondent attorney. Appointments to the Ethics & Discipline Committee are made by the Utah Supreme Court.

Please send a resume, no later than May 2, 2008, to:

Utah Supreme Court
c/o Matty Branch, Appellate Court Administrator
P.O. Box 140210
Salt Lake City, Utah 84114-0210

## 2008 Annual Convention Awards

The Board of Bar Commissioners is seeking nominations for the 2008 Annual Convention Awards. These awards have a long history of honoring publicly those whose professionalism, public service and personal dedication have significantly enhanced the administration of justice, the delivery of legal services and the building up of the profession. Your award nominations must be submitted in writing to Christy Abad, Executive Secretary, 645 South 200 East, Suite 310, Salt Lake City, Utah 84111, no later than Friday, April 18, 2008. The award categories include:

1. Judge of the Year
2. Distinguished Lawyer of the Year
3. Distinguished Section/Committee of the year

## Notice of Petition for Reinstatement to the Utah State Bar by Harold J. Dent

Pursuant to Rule 14-525(d), Rules of Lawyer Discipline and Disability, the Utah State Bar's Office of Professional Conduct hereby publishes notice of Respondent's Verified Petition Requesting Reinstatement to the Practice of Law ("Petition") filed by Harold J. Dent in In re Dent, Fifth Judicial District Court, Civil No. 040500436. Any individuals wishing to oppose or concur with the Petition are requested to do so within thirty days of the date of this publication by filing notice with the Fifth District Court.

## Mandatory CLE Rule Change

Effective January 1, 2008, the Utah Supreme Court adopted the proposed amendment to Rule 14-404(a) of the Rules and Regulations Governing Mandatory Continuing Legal Education to require that one of the three hours of "ethics or professional responsibility" be in the area of professionalism and civility.

**Rule 14-404. Active Status Lawyers**
(a) Active status lawyers. Commencing with calendar year 2008, each lawyer admitted to practice in Utah shall complete, during each two-calendar year period, a minimum of 24 hours of accredited CLE which shall include a minimum of three hours of accredited ethics or professional responsibility. One of the three hours of ethics or professional responsibility shall be in the area of professionalism and civility. Lawyers on inactive status are not subject to the requirements of the rule.

## Steve Kaufman Receives Lifetime Achievement Award

The Weber County Bar Association has awarded Ogden attorney Steve Kaufman its Lifetime Achievement Award for 2007 in recognition of his invaluable service to the legal community. During his 30 year career Mr. Kaufman has mentored many young attorneys, founded the largest law firm in Weber and Davis Counties, and has always been very active in bar functions. In addition Mr. Kaufman served as the 1981-82 Weber County Bar President, was a Utah State Bar Commissioner from 1992 through 1998, and was the 1996-97 President of the Utah State Bar.

## *Attorney Discipline*

**ADMONITION**

On February 25, 2009, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.9(a) (Conflict of Interest: Former Clients) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

An attorney was hired to represent a client in a divorce matter. The attorney's office sharing arrangement was the functional equivalent of being in the same firm as a family member. The attorney took a case against a former client of his family member.

**RESIGNATION WITH DISCIPLINE PENDING**

On February 11, 2009, the Honorable Matthew B. Durrant, Associate Chief Justice, Utah Supreme Court, entered an Order Accepting Resignation with Discipline Pending concerning David W. Snow for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.4(b) (Communication), 1.15(a) (Safekeeping Property), 1.15(d) (Safekeeping Property), 1.16(d) (Declining or Terminating Representation), 8.4(c) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary there are three cases:*

Mr. Snow was hired to help his client resolve various debt issues. Mr. Snow was given a large sum of money to resolve the client's outstanding debt. Mr. Snow was to receive 15% of the amount he was able to reduce his client's debt. Mr. Snow failed to pursue the work he was hired for in a timely matter. Mr. Snow failed to communicate with his client and failed to return the unused funds that should have remained in his trust account. Mr. Snow commingled his client's funds with his own funds and used his client's funds to pay his own expenses.

In another matter, Mr. Snow was given a large sum of money to assist a client in resolving various debts. Mr. Snow was to receive 15% of the amount he was able to reduce his client's debt. Mr. Snow negotiated with a creditor and the client approved payment to settle the debt. Mr. Snow did not mail the check to the creditor until after the settlement offer had expired. Mr. Snow's client expressed frustration communicating with Mr.

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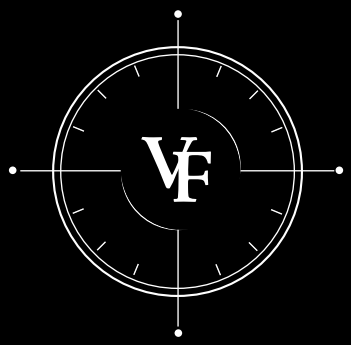


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Snow. Many of the client's creditors had not had contact with Mr. Snow. A new fee arrangement was negotiated with Mr. Snow and his client. After some time had passed, and Mr. Snow had only settled one more account, the client indicated he would handle the remaining accounts himself. Mr. Snow has yet to return the unused portion of his client's money. Mr. Snow failed to keep his client's money in his trust account and used the client's money to pay his own debts.

In the last matter, Mr. Snow was hired to represent a client in a bankruptcy proceeding. Mr. Snow filed the bankruptcy petition and then had no contact with his client for several months. Mr. Snow filed an objection to the trustee's Motion to Dismiss and stated the failure to file the declaration was because of his delay. Mr. Snow failed to timely file notices of two creditors, causing his clients to be unable to include the two creditors in their bankruptcy, and failed to respond to his client's inquiries.

**DISBARMENT**

On January 14, 2009, the Honorable David N. Mortensen, Fourth Judicial District Court, entered an Order of Disbarment disbarring Paul J. Young from the practice of law for violations of Rules 8.4(b) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

On December 27, 2005, Mr. Young was found guilty of one count of Conspiracy to Defraud the United States in violation of 18 United States Code, section 371. Mr. Young was sentenced to incarceration for a period of 45 months, followed by supervised release for a period of three years.

**PUBLIC REPRIMAND**

On January 28, 2009, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Daniel V. Irvin for violation of Rules 1.3 (Diligence), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Irvin failed to appear at a previously scheduled trial in a client's case. Mr. Irvin failed to appear at a previously scheduled pretrial hearing in another client's case. Mr. Irvin failed to take necessary steps to follow-up on client matters after his computer crashed and he lost computer data regarding upcoming hearing dates.


# Small Firm Section is Open To All

The Solo, Small Firm and Rural Section invites all Utah lawyers and support staff to join this wonderful section. Our section is filled with lawyers dedicated to helping the smaller law practice capture and leverage the vast experience and learning available amongst its members.

Our section offers free CLE courses nearly every month of the year and works very hard to focus on the needs of the small firm lawyer. For example, recent CLE topics have included:

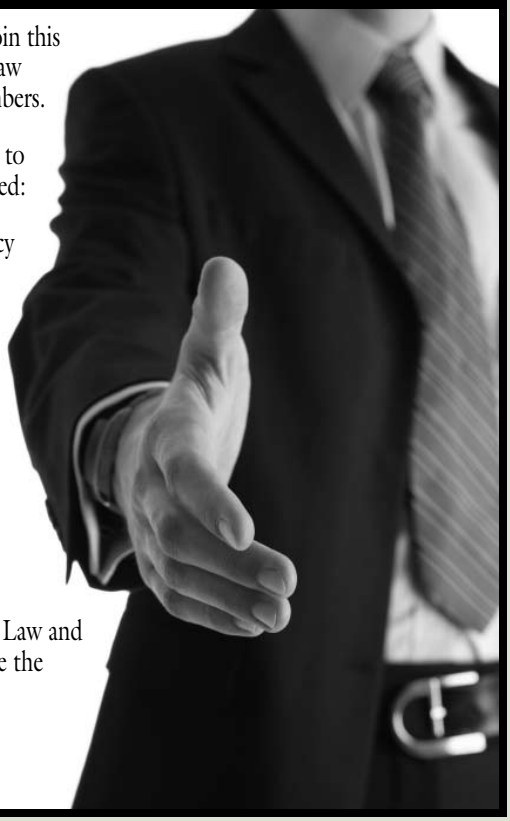
- how to utilize outsourced legal assistants and paralegals to create profit and efficiency in your law office;
- using search engine optimization and pay-per-click campaigns to increase your online visibility;
- how to better handle stress in the legal profession;
- using social media, or Web 2.0 as a marketing tool; and
- how to capture referral income for your practice from personal injury cases.

**Future topics currently scheduled include:**

- counseling bankruptcy clients in the new economic climate;
- using virtual office space to cut costs without cutting service.

Our CLE events are typically held on the third Friday of every month at the Salt Lake Law and Justice Center. Come and be a part of a great group of like-minded attorneys who love the freedoms that a small law practice can provide.

**www.utahbar.org/sections/solo/**



# *Attorney Discipline*

**UTAH STATE BAR ETHICS HOTLINE**

Call the Bar's Ethics Hotline at (801) 531-9110 Monday through Friday from 8:00 a.m. to 5:00 p.m. for fast, informal ethics advice. Leave a detailed message describing the problem and within a twenty-four hour workday period a lawyer from the Office of Professional Conduct will give you ethical help about small everyday matters and larger complex issues.

More information about the **Bar's Ethics Hotline** may be found at www.utahbar.org/opc/opc_ethics_hotline.html. Information about the formal Ethics Advisory Opinion process can be found at www.utahbar.org/rules_ops_pols/index_of_opinions.html.

**PUBLIC REPRIMAND**

On January 27, 2011, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Ned P. Siegfried for violation of Rules 1.5(a) (Fees), 1.8(a) (Conflict of Interest: Current Clients: specific Rules), 1.15(d) (Safekeeping Property), 1.15(d) (Safekeeping Property), 5.1(c) (Responsibilities of Partners, Managers, and Supervisory Lawyers), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

In connection with the representation of a client in a contingency fee matter, associates with Mr. Siegfried's firm waived attorney fees. Due to the waiver, Mr. Siegfried could not accept any fees. Eventually, another associate received an arbitration award in the case that was higher than the firm's original value assessment of the case. After the firm received the award funds, Mr. Siegfried's associate renegotiated the attorney's fees in the case. Mr. Siegfried demanded and accepted fees which were unreasonable under a fee waiver. Mr. Siegfried failed to give notice in writing of independent counsel, failed to outline the settlement in writing in a manner understandable to the client and did not obtain informed consent, in writing, of the client. A third option of arbitration was not sufficiently explained. Mr. Siegfried failed to promptly deliver and distribute undisputed funds to the client prior to beginning settlement negotiations on the fee dispute. This created an unfair and coercive atmosphere in which the Complainant felt compelled to agree to Mr. Siegfried's two proposed settlement options without an opportunity to consider the third option. Mr. Siegfried is responsible for the violations committed by his associate because he supervised or directed all of the actions taken in this case. These violations were negligent. There was injury but of unknown extent.

*Aggravating factors:*

Selfish motive, refusal to acknowledge misconduct, vulnerability of victim, and failure to rectify the consequences of the misconduct involved.

**SUSPENSION/PROBATION**

On November 23, 2010, the Honorable John Paul Kennedy, Third District Court entered an Order of Discipline: Suspension for three years, all three years stayed and probation imposed against Clayne I. Corey, including full restitution, for violation

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of Rules 1.15(a) (Safekeeping Property), 1.15(b) (Safekeeping Property), 1.15(c) (Safekeeping Property), 1.16(d) (Declining or Terminating Representation), and 8.4(a) (Misconduct) of the Rules of Professional Conduct. The OPC has appealed the sanction to the Utah Supreme Court.

*In summary:*
In 1999, a client retained Corey & Lund to represent her in a personal injury action. The client signed a fee agreement with Corey & Lund. The fee agreement allowed for a contingent fee of 33.3% of the settlement, unless the case went to trial. The case settled prior to trial. In 2000, the client accepted a settlement offer of $122,500. On February 25, 2000, Mr. Corey spoke with the insurance adjuster. A settlement check in the amount of $122,500 made out to the client and to her attorney, Clayne I. Corey was issued on February 25, 2000. On February 29, 2000, $124,803.60 was deposited into Mr. Corey's operating account. This amount included the client's settlement funds. Mr. Corey was the signator on this operating account and had control over the account. Mr. Corey knew early on that the client's settlement funds went into his operating account. Mr. Corey failed to deposit the client's settlement funds into a client trust account. Mr. Corey knew that checks were being written against the funds in the operating account. The account balance for the operating account went from $128,916.14 at the end of February, 2000 to $2,909.12 at the end of June, 2000. The client did not authorize her settlement funds to be used by Mr. Corey for any purpose. She did not authorize or sign the Trust documents prepared by Mr. Corey and did not authorize or sign the Promissory Note prepared by Mr. Corey.

The client thought that the money was in Mr. Corey's trust account for safekeeping and agreed to receive $500 payments each month for a period of time. The client received twenty-one payments of $500. The client eventually decided that she wanted to receive the bulk of her settlement funds. The client requested a return of her file, the return of the remaining settlement money, and an accounting of her settlement. Mr. Corey failed to return his client's file. Mr. Corey failed to return unearned excess funds to his client. Mr. Corey failed to properly account for the settlement funds. Although the case settled in early 2000 Mr. Corey did not pay the majority of the lien holders until December 2000 leaving the client exposed for those bills. Mr. Corey failed to handle the third party claims in a timely way. Mr. Corey failed to protect funds belonging to his client.

*Aggravating factors:*
Prior discipline, pattern of carelessness relating to the safekeeping of client funds, substantial experience in the practice of law, and no good faith effort to make restitution.

*Mitigating factors:*
Medical problems, absence of dishonest or selfish motive, and remorse.

**SUSPENSION/PROBATION**
On February 4, 2011, the Honorable L.A. Dever, Third District Court entered an Order of Discipline: Suspension for three years with all but 181 days stayed and probation imposed against Jonathon W. Grimes for violation of Rules 1.2(a) (Scope of Representation and Allocation of Authority Between Client and Lawyer), 1.3 (Diligence), 1.4(a) (Communication), 1.5(a) (Fees), 8.4(c) (Misconduct), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct. The OPC has appealed the sanction to the Utah Supreme Court.

*In summary:*
Mr. Grimes was hired to represent a client in a discrimination case. The client paid Mr. Grimes a retainer while he worked at a law firm. The retainer was placed in the law firm's trust account. Mr. Grimes left the law firm and took his client's file and case with him. Mr. Grimes was given a check from the law firm with a notation that it was the remainder of the client's retainer. Mr. Grimes knew that there was a substantial amount of money left on the retainer given by the client, possibly in excess of the check given to him by the law firm. Mr. Grimes deposited the check in his own account and spent it. Mr. Grimes

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failed to communicate with his client for almost a year. The client left numerous messages for Mr. Grimes and eventually talked to Mr. Grimes's secretary about the case. The client mailed Mr. Grimes a letter requesting information about the case; Mr. Grimes did not respond. The client sent Mr. Grimes a certified letter, the certified letter was later returned to the client. The client continued trying to communicate with Mr. Grimes via telephone and fax, but was unsuccessful in getting a response. Because Mr. Grimes failed to pursue the case, the case was dismissed. Mr. Grimes did not inform his client that the case had been dismissed. Mr. Grimes failed to return the unearned portion of the retainer even though the client repeatedly asked for the money to be returned. The client sent a letter to Mr. Grimes asking for an accounting of his retainer and requesting the unused portion to be sent to his new attorney.

Mr. Grimes was not honest about receiving the check with the client's name on it and was not honest with his client about where the money was. He also accused his former boss of keeping the money.

*Aggravating factors:*

Selfish or dishonest motive and refusal to acknowledge the wrongful nature of the misconduct either to the client or to the disciplinary authority.

*Mitigating factors:*

Absence of prior discipline, inexperience in the practice of law, personal and emotional problems, good character or reputation, and interim reform.


# Parr Brown is pleased to announce…

## Kenneth B. Tillou has been named President of the firm

Mr. Tillou specializes in income taxation, employee benefits and executive compensation. He is a graduate of Washington & Lee University, where he received his J.D., summa cum laude, *Order of the Coif*, and served as Editor-In-Chief of the *Law Review*.

## and four attorneys have been named shareholders

**BREANNE FORS** is a member of the firm's commercial litigation group where she assists clients in litigating contract disputes, non-compete and non-solicitation agreements, trade secrets, eminent domain and defamation cases. Ms. Fors earned her J.D., Order of the Coif, from Brigham Young University's J. Reuben Clark Law School.

**MATTHEW TENNEY** is a member of the business and finance law practice group with an emphasis on business organization and structuring, aircraft acquisition and financing, mergers and acquisitions and securities law. Mr. Tenney received his J.D. from Brigham Young University, magna cum laude, *Order of the Coif*.

**ROBYN L. WICKS** is a member of the firm's commercial litigation group where she assists clients with contract disputes and commercial litigation in both state and federal courts. She also assists clients in helping to resolve contract and commercial disputes prior to litigation and through alternative dispute resolution processes and strategies. Ms. Wicks received her J.D. from the University of Utah.

**RITA M. CORNISH** is a member of the firm's commercial litigation group with a focus on construction litigation and toxic tort defense. Ms. Cornish received her J.D. from the University of Utah with Highest Honors, *Order of the Coif*. An active alumna of the S.J. Quinney College of Law, she currently serves on the Board of Trustees and as the President-Elect for the Young Alumni Association.

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# Attorney Discipline

**UTAH STATE BAR ETHICS HOTLINE**
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**ADMONITION**
On November 29, 2010, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.4(a) (Communication), 1.4(b) (Communication), 1.5(a) (Fees), 1.5(b) (Fees), and 1.16(d) (Declining or Terminating Representation).

*In summary:*
An attorney was hired to draft an estate plan and hold an amount of money for either future fees or investment. The attorney failed to explain the mechanism of a simple trust and pour-over will. The client believed that the attorney had drafted the papers so that the ex-spouse would be a beneficiary. The attorney failed to explain the purpose or use of the amount of money deposited by the client in the trust account. The attorney failed to explain the most basic aspects of estate planning to the client. When the attorney delivered the estate documents, the documents were not complete. The attorney failed to contact the client for months in order to explain what was needed to complete the documents. The attorney did not notify the client when the attorney changed firms. The attorney did not inform the client about the research the attorney had done until the attorney refunded the balance of the funds. The attorney spent only one or two hours at the most, preparing the draft documents and only one or two hours with his client during the representation. The attorney's fee was unreasonable for this amount of work.

*Mitigating factors:*
Lack of prior record of discipline; Personal or emotional problems: poor health.

**ADMONITION**
On December 28, 2010, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), and 8.4(a) (Misconduct).

*In summary:*
An attorney failed for nearly two years to file a divorce petition on behalf of a client. The attorney failed to have the client's spouse served or to seek alternative service. The attorney failed to respond to the client's request for information and failed to keep the client reasonably informed about the status of the matter.

**PUBLIC REPRIMAND**
On November 23, 2010, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Scott C. Walker for violation of Rules 1.1 (Competence), 1.4(a) (Communication), 1.4(b) (Communication), 1.16(d) (Declining or Terminating Representation), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Walker was hired to represent a client in a debt collection matter. Mr. Walker failed to attend a pre-trial conference. Mr. Walker failed to keep his address current. Mr. Walker failed to transmit notices from the court. Mr. Walker failed to file a motion to set aside. Mr. Walker failed to stay in contact with his client and keep his client advised of the status of the case. Mr. Walker failed to explain the default judgment to the extent reasonably necessary to allow his client to make informed decisions and his client did not understand the implications or consequences until supplemental proceedings began. Mr. Walker failed to give his client notice of his personal circumstances which required termination of representation and took no steps to protect his client's interests after termination. Mr. Walker failed to respond to the Notice of Informal Complaint issued by the OPC and failed to adequately explain his non-response after acknowledging notice of disciplinary proceedings.

**PUBLIC REPRIMAND**
On December 6, 2010, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Joane P. White for violation of Rules 1.4(a) (Communication), 1.4(b) (Communication), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Ms. White was hired to represent a client in a custody modification

matter. Ms. White failed to reasonably consult with her client regarding a Court Order. Ms. White failed to explain to the client the Court's decision. Ms. White failed to explain to the client her rights regarding appeal. Ms. White failed to make the client aware of the date by which she needed to appeal. Ms. White failed to provide the client with a copy of the Court's Order and other information with respect to the appeal.

**INTERIM SUSPENSION**

On December 29, 2010, the Honorable John R. Morris, Second Judicial District Court, entered an Order of Interim Suspension Pursuant to Rule 14-519 of the Rules of Lawyer Discipline and Disability, suspending Bradley N. Roylance from the practice of law pending final disposition of the Complaint filed against him.

*In summary:*

On March 11, 2010, Mr. Roylance entered guilty pleas to two counts of Sexual Abuse of a Minor, a class A misdemeanor. Based on the guilty pleas, on April 22, 2010, a Minutes Sentence, Judgment, and Commitment was entered against Mr. Roylance. The interim suspension is based upon the conviction.

**SUSPENSION**

On July 26, 2010, the Honorable Ernie W. Jones, Second District Court entered an Order of Discipline: Suspension for one year and one day against Mark A. Ferrin for violation of Rules 1.8(c) (Conflict of Interest: Current Clients: Specific Rules), 4.2(a) (Communication with Persons Represented by Counsel, 4.3 (Dealing with Unrepresented Person), 8.1 (Bar Admission and Disciplinary Matters), 8.4(c) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Ferrin prepared a will and other estate planning documents for a neighbor/client who was not related to Mr. Ferrin. The estate planning documents gave Mr. Ferrin a one-sixth interest in the residue of the estate as a testamentary gift. As part of the estate planning documents, a deed transferred the Testator's house to the Testator and the Personal Representative as joint tenants, with full rights of survivorship. Shortly before the Testator's death, Morgan Stanley issued a check ("brokerage check") to the Personal Representative in the amount of $100,306. The Personal Representative received the brokerage check after the Testator's death. Mr. Ferrin advised the Personal Representative to distribute the brokerage check immediately per the six-way residual provisions of the will. After the Personal Representative had informed Mr. Ferrin that she was represented by counsel, Mr. Ferrin communicated directly with the Personal Representative regarding her duties and the distribution of the house sale proceeds. Later, during Mr. Ferrin's subsequent communication with the Personal Representative, Mr. Ferrin did not believe the Personal Representative was represented by counsel. During the subsequent communication, Mr. Ferrin advised the Personal Representative by letter that the proceeds from the sale of the Testator's house should be treated as a testamentary gift and requested his one-sixth interest in the proceeds from the sale. Mr. Ferrin did not advise the Personal Representative to obtain counsel. The letter advised the Personal Representative not to show the letter to anyone, including her legal advisors. Mr. Ferrin made misleading statements in the disciplinary matter regarding whether he assisted in the preparation of estate planning documents and whether he knew that the Personal Representative had counsel.

**SUSPENSION**

On July 21, 2010, the Honorable L.A. Dever, Third District Court entered an Order of Discipline: Suspension for one year with all but 181 days stayed against Thomas V. Rasmussen for violation of Rules 8.4(d) (Misconduct) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Rasmussen served as defense counsel in a criminal matter. Mr. Rasmussen appeared in court with his client. At the hearing, the court set a trial date and informed Mr. Rasmussen of the date the jury would be summoned and informed him that plea

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bargains would not be accepted after that date except on a showing of why the agreement could not have been arranged prior to that time. On the date set for summoning the jury, Mr. Rasmussen had some discussions with the prosecution about a possible plea agreement. The prosecutor reminded Mr. Rasmussen of the court's instructions, and cautioned that any plea would be conditioned upon the court's willingness to depart from its rule. The prosecutor informed Mr. Rasmussen that Mr. Rasmussen would need to confer with the court so the parties could obtain the court's approval via a telephone conference. Days after the due date given by the judge, Mr. Rasmussen sent to the prosecutor a letter reciting the plea agreement. On the same day, Mr. Rasmussen's office faxed the letter reciting the plea agreement to the court. Mr. Rasmussen did not file a motion, a written request for a scheduling conference or other written request that the court consider the plea agreement letter. During the week, the assigned judge was traveling between courts. The judge was informed by the court clerk that the letter had been received and the judge indicated that he would try to review the letter and file. The prosecutor told Mr. Rasmussen's staff that there needed to be a conference with the court regarding the plea proposal. Mr. Rasmussen did not submit any written request for a conference regarding the plea proposal to the court. Mr. Rasmussen and his staff did not contact the court and request to schedule a conference.

The judge reviewed the letter, and issued an order rejecting the plea agreement. Mr. Rasmussen filed a Motion to Recuse the assigned judge. A judge denied Mr. Rasmussen's recusal motion. Mr. Rasmussen faxed a Supplemental Affidavit of Bias in Support of Motion to Recuse and a Motion to Reconsider to the court. Mr. Rasmussen filed the supplemental Affidavit of Bias in Support of Motion to Recuse and a Motion to Reconsider even though Rule 29(c)(1)(c) restricts a party from filing more than one motion of recusal. Mr. Rasmussen had knowledge that the Motion to Recuse had been denied. Mr. Rasmussen admitted that he knew only one Motion to Recuse was allowed and yet he proceeded to file the Motion to Reconsider. Mr. Rasmussen failed to appear at the criminal trial knowing that the jury panel was present and the judge was waiting. Mr. Rasmussen stated he did not appear because he was afraid the judge would force him to go to trial.

*Aggravating factors:*
Prior record of discipline; Selfish or dishonest motive; Pattern of misconduct; Refusal to acknowledge the wrongful nature of the misconduct either to the client or to the disciplinary authority; Substantial experience in the practice of law.


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# Attorney Discipline

**UTAH STATE BAR ETHICS HOTLINE**

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More information about the **Bar's Ethics Hotline** may be found at www.utahbar.org/opc/opc_ethics_hotline.html. Information about the formal Ethics Advisory Opinion process can be found at www.utahbar.org/rules_ops_pols/index_of_opinions.html.

**ADMONITION**

On May 18, 2011, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 8.4(b) (Misconduct) and 8.4(a) (Misconduct).

*In summary:*

An attorney was involved in a domestic violence incident and was charged with Aggravated Assault (Domestic Violence) a third degree felony. The attorney admitted to committing the assault – an act of unlawful violence or force – that caused substantial bodily injury to a spouse. The attorney pled "no contest" to an Assault (Domestic Violence) a class A misdemeanor. The plea was to be held in abeyance for twenty-four months based upon completion of certain conditions.

**PUBLIC REPRIMAND**

On January 27, 2011, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against T. Christian Burridge for violation of Rules 1.5(a) (Fees), 1.8(a) (Conflict of Interest: Current Clients: Specific Rules), 1.15(d) (Safekeeping Property), 1.15(e) (Safekeeping Property), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

In connection with the representation of a client in a contingency fee matter, firm attorneys who had previously worked on the case waived attorney fees. Due to the waiver, Mr. Burridge could not accept any fees. Mr. Burridge demanded and accepted fees which were unreasonable under a fee waiver. Mr. Burridge failed to give notice in writing of independent counsel, failed to outline the settlement in writing in a manner understandable to the client and did not obtain informed consent, in writing, of the client. The third option of arbitration was not sufficiently explained. Mr. Burridge failed to promptly deliver and distribute undisputed funds to client prior to beginning settlement negotiations on the fee dispute. This created an unfair and coercive atmosphere in which the complainant felt compelled to agree to Mr. Burridge's two proposed settlement options without an opportunity to consider the third option. These violations were negligent. There was injury, but of unknown extent.

*Aggravating factors:*

Selfish motive; refusal to acknowledge misconduct; vulnerability of victim; and failure to rectify.

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# *Avoiding Ethical Landmines: A Review of the 2010 OPC Annual Report*

*by Keith A. Call*

The Utah Constitution gives the Utah Supreme Court authority to adopt and enforce rules governing the practice of law in Utah, including attorney discipline. *See* Utah Const. Art. VIII, § 4. In turn, the Utah Supreme Court has given the Office of Professional Conduct broad authority to receive, investigate, and in some cases prosecute claims of attorney misconduct. *See* Supreme Court Rules of Professional Practice, Rule 14-501 et seq.

The OPC currently consists of ten full-time employees, which include Senior Counsel, five Assistant Counsels, two Paralegals, one Legal Secretary/Assistant to Counsel, and one Intake Clerk. The OPC is charged with (among other things) screening allegations or information relating to lawyer misconduct, performing investigations, and prosecuting lawyer misconduct cases on behalf of the Bar. Every year it prepares an annual report describing its work and the work of the Ethics and Discipline Committee. Its August 2010 Annual Report is currently available online at www.utahbar.org/opc/Assets/2009_2010_annualreport.pdf.

The Report contains several interesting facts and statistics. For example, during its fiscal year July 1, 2009 to June 30, 2010, the OPC opened 1085 new cases. 313 of those new cases were "informal complaints." (An "informal complaint" is a written, notarized, and verified document alleging attorney misconduct. It is not a "formal complaint" that one would file with a District Court.) 765 of the new cases were "requests of assistance." A "request for assistance" can range from an informal inquiry to a serious allegation of attorney misconduct, but lacking the formality of a notarization or verification.

During the same fiscal year, the OPC closed 1068 cases. (Because cases do not open and close neatly in each fiscal year, statistics regarding closed cases do not directly correspond to opened cases, but they are instructive.) 57 cases (about 5% of all cases closed) concluded with orders of discipline. 37% of those orders of discipline were by stipulation. The orders of discipline included one disbarment, 17 public reprimands, 17 suspensions, 10 resignations with discipline pending, and 12 admonitions.

The OPC declined to prosecute 73 informal complaints and 556 requests for assistance, a total of about 59% of all cases closed. The total number of informal complaints or requests for assistance that were closed due to dismissal (after investigation, screening panel hearing, or summary disposition), the OPC's decision not to prosecute, or that were returned to the complainant for notarization was 981, or 92% of all cases closed during the fiscal year.

The Annual Report also provides a breakdown of disciplinary orders according to the ethical rules that were violated. A summary chart of that breakdown appears in the accompanying window.

Given all the public discourse I have seen and heard regarding conflicts of interest, I was surprised to see violations of Rules 1.7 and 1.8 so low on the list. I was disappointed to see ethical violations that apparently involve dishonesty and deceit so high on the list. And I was heartened to see that many of the violations high on the list appear to be mistakes that are correctable with careful education, training, and practice. These include problems such as poor client communication, lack of diligence, improper supervision of others, and missing court appearances. Watch for practice pointers addressing some of these high-rate, but correctable, offenses in future editions of *Focus on Ethics and Civility.*

*KEITH A. CALL is a shareholder at Snow, Christensen & Martineau. His practice includes professional liability defense, IP and technology litigation, and general commercial litigation.*

Fiscal Year 2009-10 Disciplinary Orders by URPC rule violation. Note that percentages of actual rule violations exceed 100% because each order of discipline generally includes multiple rule violations.

| Percentage | Rule | | Percentage | Rule | |
|---|---|---|---|---|---|
| 35.1% | 1.15 | Safekeeping Property | 7.02% | 8.4(d) | Misconduct Prejudicial to the Administration of Justice |
| 31.6% | 1.4 | Communication | 7.02% | 7.5 | Firm Names and Letterheads |
| 21.1% | 1.3 | Diligence | 7.02% | 4.2 | Communication with Persons Represented by Counsel |
| 15.8% | 8.1 | Bar Admission & Disciplinary Matters | 5.26% | 3.3 | Candor Toward the Tribunal |
| 15.8% | 1.5 | Fees | 5.26% | 1.8 | Conflict of Interest: Current Clients: Specific Rules |
| 14.0% | 5.3 | Responsibilities Regarding Nonlawyer Assistants | 5.26% | 1.6 | Confidentiality of Information |
| 14.0% | 1.2 | Scope of Representation and Allocation of Authority Between Client & Lawyer | 3.51% | 5.5 | Unauthorized Practice of Law; Multijurisdictional Practice of Law |
| 12.3% | 8.4(c) | Misconduct – Deceit, Fraud, Misrepresentation | 3.51% | 1.14 | Client with Diminished Capacity |
| 10.5% | 8.4(b) | Misconduct – Criminal Act | 1.75% | 5.1 | Responsibilities of Partners, Managers, and Supervisory Lawyers |
| 10.5% | 1.1 | Competence | 1.75% | 3.2 | Expediting Litigation |
| 8.8% | 1.16 | Declining or Terminating Representation | 1.75% | 1.7 | Conflict of Interest: Current Clients |

# *Attorney Discipline*

**RESIGNATION WITH DISCIPLINE PENDING**

On June 23, 2010, the Honorable Christine M. Durham, Chief Justice, Utah Supreme Court, entered an Order Accepting Resignation with Discipline Pending concerning Martin J. MacNeill for violation of Rules 8.4(b) (Misconduct), 8.4(c) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

On June 4, 2009, Mr. MacNeill entered a guilty plea to two counts of Aggravated Identity Theft and Aiding and Abetting, both felonies. Mr. MacNeill was sentenced to a prison term of 48 months.

On September 21, 2009, Mr. MacNeill entered a guilty plea to one count of False/Inconsistent Material Statements, a second degree felony, one count of Recording False/Forged Instruments, a third degree felony, and one count of Accepting Benefits from False or Fraudulent Insurance Claim, a third degree felony. Mr. MacNeill was sentenced to a prison term of 365 days, for each count, and placed on 72 months probation.

**ADMONITION**

On May 26, 2010, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.4(a)(1) (Communication), 1.15(a) (Safekeeping Property), 5.3(b) (Responsibilities Regarding Nonlawyer Assistants), and 8.4(a) (Misconduct).

*In summary:*

A client was involved in an automobile accident and contacted an attorney's office for representation in a personal injury case. The attorney was living out of the country at the time of initial contact. The attorney asked two individuals to receive the mail, scan it and email it to the attorney. The client spoke to one of the individuals who indicated they worked for the attorney's law firm and that the attorney would be handling the case. Without the client's knowledge or consent, the individual negotiated a settlement. The client did not receive any of the settlement proceeds. As part of their work for the attorney, the individuals received all correspondence, pleadings, and money for the clients. The individuals were responsible for filing court documents for the attorney's clients. It was not possible for the attorney to adequately supervise the individuals when the attorney was out of the country. The attorney failed to establish procedures to ensure that the individuals conducted themselves in a manner consistent with the attorney's ethical obligations. The attorney failed to inform the clients that the individuals would be assisting the attorney on their cases.

**PUBLIC REPRIMAND**

On May 26, 2010, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Robert D. Atwood for violation of Rules 1.2(a) (Scope of Representation and Allocation of Authority Between Client and Lawyer), 1.6(a) (Confidentiality of Information), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Atwood represented a client in a guardianship/conservatorship proceeding with respect to her father. While it was not clear to all of the parties whether Mr. Atwood also represented other siblings, some of the other siblings had separate counsel. At one point, Mr. Atwood sent an email to all of the siblings and their attorneys as well as to the father's attorney. The email included statements that he disagreed with his client's position and that he did not believe that his client's father needed a guardian/conservator. Mr. Atwood also revealed through his email that he had a potential conflict with his client. Mr. Atwood also indicated in a subsequent email that he was going to withdraw, even though he had not discussed this with his client before this time. Mr. Atwood included in the email the basis for his decision to withdraw. Mr. Atwood had not discussed with his client the contents of the email prior to sending it and had not obtained his client's informed consent or permission to disclose the information. The contents of the email were later used by opposing counsel to attempt to disadvantage the client.

Aggravating factors: Refusal to acknowledge the wrongful nature of misconduct; substantial experience in the practice of law.

**PUBLIC REPRIMAND**

On July 20, 2010, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Edward W. McBride for violation of Rules 3.5(a) (Impartiality and Decorum of the Tribunal), 4.4(a) (Respect for Rights of Third Person), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. McBride represented an heir to an Estate. Mr. McBride sent a letter to four District Court judges who were presiding over the estate matters. In his letter Mr. McBride purposefully revealed that he initiated OPC proceedings against the complainants. Proceedings before the OPC are confidential. In his letter Mr. McBride accused the complainants of perpetrating a fraud upon the Court. Mr. McBride also sent letters to the complainants in an attempt to convince them to accept his point of view regarding the underlying litigation through

use of coercion and threats of criminal proceedings. Mr. McBride's letters to complainants had no substantial purpose other than to embarrass and burden them.

**PUBLIC REPRIMAND**

On July 20, 2010, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Dusten L. Heugly for violation of Rules 1.7(b)(4) (Conflict of Interest: Current Clients), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Heugly agreed to represent clients in a family court matter. Mr. Heugly expressed that if he were to be retained by the clients he would clearly have a conflict of interest based on the fact that his parent was a counselor and court appointed supervisor. Mr. Heugly did not get a written waiver for this conflict and entered an appearance in the parental rights case. Mr. Heugly's actions caused harm by undermining the confidence in the proceedings and calling into question the fair, impartial, and just administration of the case.

**RECIPROCAL DISCIPLINE**

On May 25, 2010, the Honorable Paul G. Maughan, Third Judicial District Court entered an Order of Discipline: Public Reprimand against Daniel P. McCarthy for violation of Rules 8.4(c) (Misconduct), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct. This was a reciprocal discipline order based upon an Order from the United States Patent and Trademark Office ("USPTO").

*In summary:*

The original complaint was made to the USPTO and alleged that Mr. McCarthy made derogatory and scandalous statements in patent applications, failed to take appropriate action to remove those statements from the public record, and misrepresented that those statements would be removed. In particular, Mr. McCarthy had caused to be placed in the public record "derogatory and scandalous" statements regarding an applicant and patentee. The statements were later found by the USPTO to be derogatory and scandalous.

In mitigation the OPC considered the following: (1) Illness; and (2) Mr. McCarthy has made recent efforts to remove the language from the patent applications.

**DISBARMENT**

On July 19, 2010, the Honorable David Mortensen, Fourth District Court entered an Order of Discipline: Disbarment against Jerome R. Hamilton for violation of Rules 8.4(b) (Misconduct), 8.4(c) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

After being charged with theft, a third degree felony, for keeping a laptop computer, notwithstanding a number of requests for its return; on July 16, 2008, Mr. Hamilton entered a No Contest plea to Wrongful appropriation, a Class A misdemeanor. Mr. Hamilton's plea was held in abeyance for 36 months. Mr. Hamilton ultimately returned the computer.


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# *Attorney Discipline*

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**ADMONITION**
On August 2, 2010, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.4(a) (Communication), 1.5(a) (Fees), 1.16(d) (Declining or Terminating Representation), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
The attorney was hired to represent a client in a divorce matter. The client paid the attorney a portion of the agreed upon fee. The attorney failed to diligently pursue the case. The attorney failed to adequately communicate with the client including failing to return telephone calls and attend scheduled appointments. The attorney failed to inform the client of a pending hearing at which the client was expected to be present. The attorney admitted to failing to adequately represent the client but continuing to charge the client for the attorney's time, without discount. The attorney failed to timely provide the client with a copy of the client file and of records in the attorney's possession.

**PUBLIC REPRIMAND**
On August 2, 2010, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against S. Austin Johnson for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.5(a) (Fees), 1.16(d) (Declining or Terminating Representation), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Johnson was hired to represent a client in an immigration matter. The client paid Mr. Johnson a retainer fee. Mr. Johnson failed to represent his client in a diligent matter. Mr. Johnson failed to notify his client of her INS approval which was later discovered by the client. Mr. Johnson failed to respond to his client's request for information. Mr. Johnson failed to reasonably consult with his client or to keep his client informed. Mr. Johnson failed to return phone calls, respond to letters or answer notes left at his unoccupied office. Mr. Johnson failed to perform or complete the work for which the fee was charged. Mr. Johnson refused to refund any of the portion of the fee. Mr. Johnson had no documentation for services or hours worked on his client's case. Mr. Johnson failed to return his client's file upon request and termination of representation. Mr. Johnson's client suffered injury because she had to pay another retainer for another attorney, was delayed in permanent residency status, and loss of original documents in her file.

**PUBLIC REPRIMAND**
On August 3, 2010, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against S. Austin Johnson for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.16(d) (Declining or Terminating Representation), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Johnson was hired by a client to represent her in an immigration (INS) matter. Mr. Johnson failed to represent his client in a diligent manner. Mr. Johnson lost the client's file and required the client to fill out INS forms multiple times. Mr. Johnson failed to respond to INS discovery requests. Mr. Johnson failed to respond to his client's requests for information. Mr. Johnson failed to reasonably consult with his client or to keep his client informed. Mr. Johnson failed to return phone calls, respond to letters or answer notes left at his unoccupied office. Mr. Johnson failed to return to his client the file once it was requested and his representation was terminated. Mr. Johnson caused injury to his client because the client had to pay another INS fee and suffered delays in her INS proceedings.

**PUBLIC REPRIMAND**
On August 3, 2010, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against S. Austin Johnson for violation of Rules 1.4(a) (Communication) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Johnson was hired to represent a client in an immigration matter. Mr. Johnson failed to respond to requests made by his client for information. Mr. Johnson failed to consult with his client or to keep his client informed. Mr. Johnson failed to return phone calls. Mr. Johnson failed to relay important developments or documents to his client. Mr. Johnson's client suffered a delay

in her immigration proceedings.

**PUBLIC REPRIMAND**
On August 3, 2010, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against S. Austin Johnson for violation of Rules 1.1 (Competence), 1.3 (Diligence), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Johnson was hired to assist his client with the distribution of a settlement check and real estate property that was awarded to his client. Mr. Johnson failed to handle his client's case completely and failed to secure ownership of the property in a timely and appropriate manner. Mr. Johnson could not account for his failure and did nothing to rectify it. Mr. Johnson failed to diligently perform the legal work he was hired to do. Mr. Johnson's client suffered injury because she lost any value that the property may have had.

**PUBLIC REPRIMAND**
On August 31, 2010, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Joe Cartwright for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Cartwright was hired to modify a divorce decree. Mr. Cartwright failed to get the initial stipulation signed and filed. Mr. Cartwright failed to keep his client informed of the status of the case.

*Aggravating factors:* Substantial prior record of discipline, pattern of misconduct with respect to diligence and communication.

*Mitigating factors:* Absence of dishonest or selfish motive, timely good faith effort to make restitution and rectify consequences, full cooperation with the Office of Professional Conduct, and disclosure to the client.

**PUBLIC REPRIMAND**
On August 31, 2010, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Jeanne Campbell-Lund for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.15(c) (Safekeeping Property), 1.16(d) (Declining or Terminating Representation), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Ms. Campbell-Lund was hired to represent a client in a DUI matter. Ms. Campbell-Lund repeatedly cancelled hearings in this matter. Ms. Campbell-Lund failed to appear for the pre-trial conference. Ms. Campbell-Lund also failed to appear at a hearing. Ms. Campbell-Lund called the court the morning of the hearing to inform of her plan not to appear. Ms. Campbell-Lund missed the re-scheduled hearing that was set to accommodate her absence. Ms. Campbell-Lund failed to adequately communicate with her client, including keeping her client reasonably informed about the status of the matter. Ms. Campbell-Lund failed to provide copies of documents that were requested by her client. Ms. Campbell-Lund's client notified her of a DUI hearing. The client did not know that the pre-trial hearing dates had been missed, and the client did not know that the case had been remanded. Ms. Campbell-Lund failed to deposit her fee in the trust account until earned. Ms. Campbell-Lund provided no accounting of how, where, and when the fee was deposited. Ms. Campbell-Lund failed to provide the file to the client upon request; in this respect she did not return the file until approximately nine months after the request. The client eventually got his charge reduced, but only after having to hire new counsel and paying more fees, which caused him harm.

*Aggravating factors:* Prior record of discipline; pattern of misconduct, substantial experience in the practice of law, and lack of a good faith effort to make restitution or rectify consequences.

*Mitigating factors:* Absence of dishonest or selfish motive, personal problems, and remorse.

**SUSPENSION**
On August 10, 2010, the Honorable Denise P. Lindberg, Third Judicial District Court entered an Order of Discipline: Suspension for three years against Nathan N. Jardine for violation of Rules 1.1 (Competence), 1.2(a) (Scope of Representation), 1.3 (Diligence), 1.4(a) (Communication), 1.4(b) (Communication), 1.5(a) (Fees), 1.6(a) (Confidentiality of Information), 1.15(a) (Safekeeping Property), 1.15(c) (Safekeeping Property), 1.15(d) (Safekeeping Property), 1.16(d) (Declining or Terminating Representation), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct. Mr. Jardine has filed an appeal on this matter.

*In summary there are four matters:*
Mr. Jardine was hired to represent a client in a criminal matter and a domestic matter. The client paid Mr. Jardine to represent her in both cases. Mr. Jardine did not place the fee in a client trust account to be taken out as earned. Mr. Jardine did not keep his client's funds separate from his own. The client later hired another attorney because she was dissatisfied with Mr. Jardine's representation. The attorney sent a letter to Mr. Jardine requesting both the criminal and domestic files from Mr. Jardine. Mr. Jardine did not comply. Mr. Jardine sent the client both the criminal and divorce files, but included the file and personal information of another client without the other client's consent. Mr. Jardine did not reimburse the client for unearned fees at the close of his representation.

In the second matter, Mr. Jardine was hired to pursue a civil rights action against a state agency. Mr. Jardine did not inform his

client that the first Complaint he had filed had been dismissed. Mr. Jardine failed to prosecute the case and failed to serve the second Complaint on all of the parties in the case, so the case was dismissed. Mr. Jardine did not inform his client of the second dismissal. During six years of representation, Mr. Jardine communicated with his client only a few times.

In the third matter, Mr. Jardine and his client appeared in Salt Lake City Justice Court to set two cases for a jury trial and a pretrial conference. Mr. Jardine and his client failed to appear on both matters. As a result of Mr. Jardine's failure to appear, justice was impeded.

In the fourth matter, an employee of Mr. Jardine, hired Mr. Jardine to represent an elderly woman. Mr. Jardine accepted a check dated from the client. Mr. Jardine did not meet with his client or speak with her over the telephone at the time he accepted the check for his representation. Mr. Jardine did not contact his client's son nor anyone in his client's family to assess her capacity or her financial affairs. Mr. Jardine did not deposit the check into his trust account; instead, Mr. Jardine deposited the check into his general account. Mr. Jardine did not keep his client's funds separate from his own. Mr. Jardine did nothing in furtherance of the representation and did not meet with his client until months later when he was formally notified by a representative of a financial institution that his client's accounts were being drained.

*Aggravating factors:* Prior discipline, vulnerability of victim; selfish motive, multiple offenses; pattern of misconduct, refusal to acknowledge wrongful nature of the misconduct involved, substantial experience in the practice of law, and lack of good faith effort to make restitution or to rectify the consequences of the misconduct involved.

*Mitigating factor:* Personal problems.

**RESIGNATION WITH DISCIPLINE PENDING**

On May 12, 2010, the Honorable Christine M. Durham, Chief Justice, Utah Supreme Court, entered an Order Accepting Resignation with Discipline Pending concerning Isaac B. Morley for violation of Rules 8.4(b) (Misconduct), 8.4(c) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

On October 7, 2009, Mr. Morley entered a guilty plea to one count of Concealment of Assets, a felony. Mr. Morley was sentenced to thirty-six months probation and $100 assessment.

**RESIGNATION WITH DISCIPLINE PENDING**

On July 21, 2010, the Honorable Christine M. Durham, Chief Justice, Utah Supreme Court, entered an Order Accepting Resignation with Discipline Pending concerning Christopher W. Edwards for violation of Rules 1.1 (Competence), 1.2(a) (Scope of Representation), 1.3 (Diligence), 1.4(a) (Communication), 1.4(b) (Communication), 1.15(a) (Safekeeping Property), 1.15(c) (Safekeeping Property), 1.15(d) (Safekeeping Property), 3.2 (Expediting Litigation), 3.3(a) (Candor Toward the Tribunal), 8.1(b) (Bar Admission and Disciplinary Matters), 8.4(c) (Misconduct), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary there are four matters:*

Mr. Edwards was hired to file a quiet title action. The client made numerous telephone calls and made numerous walk-in visits to Mr. Edwards's office to inquire about the status of the case. The client eventually came to Mr. Edwards's office to find out about an order. Mr. Edwards went into his copy room and emerged with a document that was purportedly an Order Quieting Title drafted by the court. The order had been signed "By Order of the Court." The client questioned the authenticity of the document and took the document that Mr. Edwards had given him to the courthouse to see if it had been issued and signed by court personnel. The court clerk confirmed the client's suspicions that the document had not been drafted, issued, or signed by the court.

In the second matter, Mr. Edwards was hired to assist in a foreclosure proceeding. For two years, Mr. Edwards only communicated with the clients on a few occasions when they came to his office. Mr. Edwards misrepresented the status of the case on several occasions. Eventually, the client decided to check the status of the state court action and found that no case had been filed. Over the course of two years, Mr. Edwards told the clients that court proceedings were scheduled nine times when they were not. When Mr. Edwards told the client that there was a trial scheduled, the client demanded to see the Trial Notice. Mr. Edwards produced a Trial Notice purporting to have been drafted and sent by the court. The client took the Trial Notice to the court. The court clerk confirmed that the Trial Notice had not been drafted, issued, or signed by the court.

In the third matter, the OPC received a notice of insufficient funds from Mr. Edwards' financial institution regarding his client trust account. After Mr. Edwards failed to respond to the OPC's request, the OPC served a Notice of Informal Complaint ("NOIC") on Mr. Edwards by mail. The NOIC reminded Mr. Edwards of his obligation under Rule 10(a)(5) of the RLDD, to submit a written response within twenty days. Mr. Edwards failed to respond to the NOIC or to provide the documents that might have explained the NSF.

The OPC had two additional informal complaints pending against Mr. Edwards. One matter was initiated by an individual with information that Mr. Edwards had retained funds of two of his clients to which he was not entitled. Rather than using the money to pay the clients' creditors, Mr. Edwards kept the money and used it for his own purposes. Mr. Edwards told one of the clients that he had paid off his mortgage when in fact he had not. Mr. Edwards also sent a false cashiers check to one client to make the client think the mortgage had been paid.

# *Attorney Discipline*

Since the publication of the Jan/Feb issue of the *Utah Bar Journal,* there has been some discussion among members of the Bar regarding a notice in the Attorney Discipline section. That notice concerned a respondent's reliance upon an opinion issued by the Ethics Advisory Opinion Committee. To provide some clarification to this discussion, the OPC is printing this letter, which was the source material for the disciplinary note:

Supreme Court of Utah
450 South State Street
P.O. Box 140210
Salt Lake City, Utah 84114-0210

Appellate Clerks' Office
Telephone (801) 578-3900
Fax (801) 578-3999
Supreme Court Reception 238-7967

Christine M. Durham
Chief Justice

Michael J. Wilkins
Associate Chief Justice

Matthew B. Durrant
Justice

Jill N. Parrish
Justice

Ronald E. Nehring
Justice

Marilyn M. Branch
Appellate Court Administrator

Pat M. Bartholomew
Clerk

April 5, 2007

Augustus G. Chin, President
Utah State Bar

Dear Gus:

At a recent court conference, the justices discussed the treatment of opinions issued by the Ethics Advisory Opinion Committee of the Utah State Bar and reviewed your letter of December 8, 2006, as well as the memoranda prepared by Gary Sackett and Billy Walker.

As you know, lawyer discipline is a Supreme Court responsibility. The Office of Professional Conduct ("OPC") works under the Court's direction and regularly reports to it. The Court expects the OPC to take action whenever it believes a disciplinary rule has been violated. It is the Court's view that the OPC cannot adequately perform this function if it is bound by the opinions issued by the Ethics Advisory Opinion Committee.

The Court values and appreciates the excellent work of the Ethics Advisory Opinion Committee. It has relied upon the committee's analysis and substantive research in the past, and it will continue to do so in the future. As I stated in my letter to you of August 10, 2006, the Court believes that a lawyer who acts in accordance with an opinion issued by the Ethics Advisory Opinion Committee should enjoy a rebuttable presumption of having abided by the Rules of Professional Conduct. However, that presumption should not be conclusive, and it is important for the Court to have the opportunity to address interpretations of the Rules of Discipline about which there may be uncertainty.

In view of its position, the Court requests the Bar Commission to make whatever changes are necessary to the rules governing the Ethics Advisory Opinion Committee to provide that the committee's opinions are advisory only.

Thank you for your attention to this matter.

Sincerely,

Christine M. Durham
Chief Justice

cc: Billy Walker
John Baldwin

**ADMONITION**

On March 24, 2010, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.3 (Diligence), 1.8(h) (Conflict of Interest: Current Clients: Specific Rules), 1.15(c) (Safekeeping Property), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

A client retained an attorney to assist in having the client's sister appointed as personal representative of the client's late father's estate and to help resolve estate issues. The attorney did not act with reasonable diligence or promptness in accomplishing these objectives. The attorney claimed the lack of diligence was because the client did not want to pay the attorney to accomplish this task. The attorney's claim was undermined by the fact that within days of the client obtaining a new lawyer, the client's sister was appointed the personal representative of the estate. The attorney did not accomplish in four months what the client's new attorney did in three days. The attorney's fee agreement with the client contains a provision that prospectively limits the attorney's potential liability for malpractice. The client had no opportunity to seek advice of separate counsel on that provision. In this case, the attorney charged the client a retainer, which was deposited in the attorney's operating account.

**PUBLIC REPRIMAND**

On February 10, 2010, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Brian W. Steffensen for violation of Rules 1.5(a) (Fees), 1.5(b) (Fees), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Steffensen met with a potential client for a free consultation. The client met with Mr. Steffensen for a second time and paid for the consultation. Mr. Steffensen did not explain the terms of his retention. Mr. Steffensen charged his client and failed to perform any meaningful work on the case. In this respect, Mr. Steffensen did not file a response to a lawsuit that had been filed against his client and failed to file for a continuance of an upcoming court hearing.

Aggravating factor: dishonest or selfish motive.

**PUBLIC REPRIMAND**

On February 9, 2010, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Bruce L. Nelson for violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.4(a) (Communication), 1.4(b) (Communication), 4.2(a) (Communications with Persons Represented by Counsel), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Nelson was hired to represent a client in a divorce matter. Mr. Nelson failed to respond to a counterclaim made against his client. Mr. Nelson failed to respond to a Motion for Entry of the Divorce Decree and a Default Judgment was entered against his client. Mr. Nelson counseled his client to give up certain rights with respect to a Protective Order. Mr. Nelson failed to communicate with his client when representing the client and then tried to contact his former client without the consent or permission of his client's new attorney after the client hired someone else. The client incurred significant attorney's fees as a result of Mr. Nelson's actions. Mr. Nelson also failed to respond to OPC's lawful request for information.

Aggravating factors: failure to cooperate with the OPC, prior record of discipline.

**PUBLIC REPRIMAND**

On February 9, 2010, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Franklin R. Brussow for violation of Rules 1.15(d) (Safekeeping Property), 1.16(d) (Declining or Terminating Representation), and 8.4(a) (Misconduct) of the Rules of Professional Conduct. On March 11, 2010, Mr. Brussow filed a Petition/Request for Review with the Utah Supreme Court.

*In summary:*

Mr. Brussow was hired to represent a client in court. Mr. Brussow failed to provide an accounting to his client when one was requested. Mr. Brussow could not completely account for his fees and did not know how much his client had paid. Mr. Brussow's billing records were inadequate and incomplete. Mr. Brussow failed to provide his client the file upon request. Mr. Brussow failed to provide his client's file to his client's new attorney when it was requested of him. Mr. Brussow held his client's file while demanding payment of a third-party bill by his client in exchange for the file.

**PUBLIC REPRIMAND**

On March 18, 2010, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Roberto G. Culas for violation of Rules 1.1 (Competence), 5.3(a) (Responsibilities Regarding Nonlawyer Assistants), 5.3(b) (Responsibilities Regarding Nonlawyer Assistants),

and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Culas was the managing attorney in many cases he had with the Workers Compensation Fund. Mr. Culas admitted that he lacked the requisite skill and knowledge to handle Worker Compensation cases. Mr. Culas' paralegal was assisting Mr. Culas in the Workers Compensation matters. Mr. Culas failed to have sufficient measures and training in place to ensure his paralegal's conduct was professional and compatible with the Rules of Professional Conduct. The paralegal's conduct included holding himself out as an attorney. The paralegal demanded information he was not entitled to by law.

Aggravating factor: Mr. Culas' prior disciplinary history.

**PUBLIC REPRIMAND**
On March 24, 2010, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against J. Kent Holland for violation of Rules 1.15(a) (Safekeeping Property), 1.15(d) (Safekeeping Property), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Holland received funds from a client who hired an associate in his office. Mr. Holland deposited the funds into his client trust account. At one point the associate attorney left the office and took the client and client file with him. The young associate requested the unearned funds left in the account. Mr. Holland sent the check to the associate but did not let the client know what had happened to the funds. The client, on several occasions, requested accounting of the funds from Mr. Holland. Mr. Holland failed to provide the client with an accounting or refund. Mr. Holland failed to explain to the client what had happened to the funds in the trust account or provide any documentation for more than a year. Mr. Holland failed to respond to the OPC after requests were made and failed to provide the necessary documentation establishing what happened to the client's funds, until he presented the documentation to the Screening Panel of the Ethics and Discipline Committee.

**PUBLIC REPRIMAND**
On March 24, 2010, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against S. Austin Johnson for violation of Rules 1.4(a) (Communication), 1.16(d) (Declining or Terminating Representation), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Johnson was hired to assist a client in obtaining a labor certification. Mr. Johnson failed to communicate with his client. Mr. Johnson failed to keep his client informed about the progress of the case. The client tried repeatedly to reach Mr. Johnson, but was never successful. Mr. Johnson only communicated with the client after the client filed the Bar complaint against him. Mr. Johnson failed to notify his client of the relocation of his office. Mr. Johnson failed to comply with reasonable requests for filing materials. Mr. Johnson did not provide key documents to the client until the day of the Screening Panel Hearing of the Ethics and Discipline Committee. Mr. Johnson failed to provide the entire file to the client as requested. The Panel found injury in that the client has had to hire another lawyer and pay additional, substantial fees.

**PUBLIC REPRIMAND**
On March 24, 2010, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against S. Austin Johnson for violation of Rules 1.15(d) (Safekeeping Property), 8.1(b) (Bar Admission and Disciplinary Matters) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Johnson represented several patients of a clinic in connection with vehicular accidents. Mr. Johnson failed to timely notify the doctor at the clinic of settlements with clients for which the doctor had provided medical services. Mr. Johnson failed to disburse funds owed to the doctor and the clinic when the cases were settled by his office and only provided funds to the clinic after the Bar complaint was filed against him. Mr. Johnson failed to provide an accounting to the doctor even after several requests. Mr. Johnson failed to respond to the OPC's request for information. Mr. Johnson caused injury to the clinic, the doctor, and to his clients by his failure to disburse the funds in a timely fashion.

**INTERIM SUSPENSION**
On January 26, 2010, the Honorable Paul G. Maughan, Third Judicial District Court, entered an Order of Interim Suspension Pursuant to Rule 14-519 of the Rules of Lawyer Discipline and Disability, suspending Jeffrey M. Gallup from the practice of law pending final disposition of the Complaint filed against him.

*In summary:*
On January 22, 2009, Mr. Gallup entered a no contest plea to one count of Violation of a Protective Order, a 3rd degree felony. On April 30, 2009, Mr. Gallup entered a guilty plea to one count of Violation of a Protective Order, a 3rd degree felony. On June 30,

2009, Mr. Gallup entered a guilty plea to one count of Violation of a Protective Order, a 3rd degree felony. On August 18, 2009, Mr. Gallup entered a guilty plea to two counts of Driving Under the Influence of Alcohol/Drugs. The interim suspension is based upon the felony convictions.

**RESIGNATION WITH DISCIPLINE PENDING**

On February 24, 2010, the Honorable Christine M. Durham, Chief Justice, Utah Supreme Court, entered an Order Accepting Resignation with Discipline Pending concerning Richard D. Wyss II for violation of Rules 8.4(b) (Misconduct), 8.4(c) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

On December 1, 2008, Mr. Wyss pleaded guilty to one count of Making a False Statement, a felony, pursuant to United States Code 18 § 1001(a)(2). Mr. Wyss was sentenced to 36 months probation, $100 assessment, $188,548.92 in restitution, and the performance of 300 hours of community service.

**SUSPENSION**

On March 9, 2010, the Honorable Bruce Lubeck, Third District Court entered an Order of Discipline: Suspension for three years against Brian R. Rayve for violation of Rules 1.3 (Diligence), 1.5(a) (Fees), 1.15(d) (Safekeeping Property), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Rayve was retained by a client to perform some trademark work. Mr. Rayve was paid but failed to perform any substantive work on the case. Mr. Rayve failed to provide an accounting to his client. Mr. Rayve sent his client an email asking for information so he could do the work on the case. The client had previously provided all of the information necessary to do the work. When his client requested a refund of the fee paid, Mr. Rayve refused to refund any portion of the fee. Mr. Rayve failed to respond to the Notice of Informal Complaint. Mr. Rayve failed to attend the Screening Panel Hearing of the Ethics and Discipline Committee.

Aggravating circumstances include: a pattern of misconduct; refusal to acknowledge the wrongful nature of the misconduct; a lack of good faith effort to make restitution or to rectify the consequences of the misconduct involved (including filing papers with a tribunal while suspended); substantial experience in the practice of law; a prior record of discipline; and obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary authority.

**SUSPENSION**

On February 24, 2010, the Honorable Tyrone E. Medley, Third District Court entered an Order of Discipline: Suspension for three years beginning June 1, 2010, against Justin K. Roberts for violation of Rules 1.1 (Competence), 1.2(a) (Scope of Representation), 1.3 (Diligence), 1.4(a) (Communication), 1.4(b) (Communication), 1.5(a) (Fees), 1.15(b) (Safekeeping Property), 1.16(d) (Declining or Terminating Representation), 3.2 (Expediting Litigation), 8.1(a) and (b) (Bar Admission and Disciplinary Matters), 8.4(c) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary there are six matters:*

Mr. Roberts was hired to represent clients in a lawsuit, to raise counterclaim issues, and to bring a different civil lawsuit against another party. Mr. Roberts failed to enter his appearance in one of the civil matters. Mr. Roberts did not pursue the other civil matter and did not timely explain his case strategy to his client. The client contacted Mr. Roberts for a status update. Mr. Roberts failed to keep his client informed about the status of his cases. When the representation was terminated, the client requested a refund and an accounting of the retainer. Mr. Roberts failed to timely provide his client with an accounting of the retainer fees. Mr. Roberts did not refund any of the retainer. Mr. Roberts failed to file a notice of withdrawal in one of the civil cases. Mr. Roberts did not forward notice of the Order to Show Cause to his former client which Mr. Roberts received after his services were terminated. Mr. Roberts failed to timely respond to the OPC's Notice of Informal Complaint ("NOIC").

In another matter, Mr. Roberts was hired to defend a client against a domestic violence charge and represent the client in a divorce. Mr. Roberts informed the client that he would reset the arraignment hearing. At the next meeting, Mr. Roberts advised the client he did not need to attend the arraignment and gave the client a new court date. Mr. Roberts did not obtain an Order from the court continuing the arraignment. Mr. Roberts did not attend the arraignment and the court issued a bench warrant for his client. After reaching a stipulated settlement in the divorce, the court directed Mr. Roberts to file an Affidavit of Jurisdiction and Grounds along with the Findings of Fact, Conclusions of Law and Decree of Divorce. Mr. Roberts did not timely file the paperwork needed to finalize the divorce matter. Mr. Roberts failed to return his client's calls for status information about the divorce. When the client was able to find Mr. Roberts, Mr. Roberts informed the client that he filed the documents requested by the court but the court lost the documents and he would re-file them. By the time of the filing of the informal Bar complaint against Mr. Roberts, the documents requested by the court had

not been filed with the court. Mr. Roberts failed to timely respond to the OPC's NOIC.

In another matter, Mr. Roberts was hired to represent a client in a divorce. Mr. Roberts did not timely file a petition for divorce and serve it. Mr. Roberts informed the client that he would reset the Order to Show Cause Hearing for another date with the court. Mr. Roberts informed the client that he changed the hearing date with the court and that he did not need to appear in court. Mr. Roberts did not file a Motion to Continue the Order to Show Cause Hearing with the court and did not appear for the hearing. At the Order to Show Cause Hearing, the court granted the requests of the client's spouse based on Mr. Roberts' client's failure to appear. Mr. Roberts failed to answer his client's requests for information about the case. Mr. Roberts failed to explain to his client the options regarding setting aside the Order from the Order to Show Cause Hearing. The client gave Mr. Roberts' office a letter from the Office of Recovery Services ("ORS") regarding unpaid child support. Mr. Roberts failed to timely contact his client about the ORS letter. Mr. Roberts failed to timely respond to the OPC's NOIC.

In another matter, Mr. Roberts was hired to pursue a tort claim. Since his client's claims were based on repressed memories of abuse as a child, an expert witness would be needed to testify concerning the client's repressed memories to prove the claim. Mr. Roberts failed to fully research expert witnesses to prepare the case prior to filing the complaint. Mr. Roberts requested that the prison officials serve the defendant in prison but he failed to timely follow up to ensure that the correct inmate had been served. Mr. Roberts failed to obtain a certificate of service of the summons or other proof of service on the defendant. Mr. Roberts failed to file any proof of service of the summons in the case. Mr. Roberts failed to return his client's telephone calls for information about the status of the case. The court dismissed the complaint for failure to prosecute. Mr. Roberts failed to inform his client about the dismissal of his complaint. Without consulting with his client about the dismissal and re-filing of the complaint, Mr. Roberts re-filed the complaint. Mr. Roberts failed to take the steps necessary to perfect service of process within the 120 days after the filing of the second complaint. Mr. Roberts failed to explain to the client the ramifications of failing to timely complete service of process of the second complaint. Mr. Roberts failed to timely respond to the OPC's NOIC.

In another matter, Mr. Roberts was hired to continue work on a pending tort case. Opposing counsel filed a motion to dismiss the complaint for failure to prosecute. The client paid Mr. Roberts a flat fee for the tort case. The client gave Mr. Roberts a signed and notarized statement for Mr. Roberts to immediately file with the court. Mr. Roberts did not file the notarized document with the court. Mr. Roberts did not enter an appearance of counsel for the tort case and failed to respond to the Motion to Dismiss to preserve his client's claim. Mr. Roberts did not request an extension of time to respond to the Motion to Dismiss from opposing counsel or the court. Mr. Roberts did not keep his client informed about the case. The client called Mr. Roberts several times for information about the case. Mr. Roberts did not return his client's voicemail messages. The client learned from the court that the case had been dismissed with prejudice for failure to prosecute. The client requested that Mr. Roberts refund the attorney's fees that were paid and return the client's file. He did not refund any of the attorney's fees he collected, nor did he return the file to the client. Mr. Roberts made material misrepresentations to the Screening Panel of the Ethics and Discipline Committee in response to the client's complaint regarding discussions he had with his client and documents he claimed to have given to his client.

In the last matter, Mr. Roberts was hired to represent a client in an adoption and termination of parental rights matter for a child in the client's care. Mr. Roberts verbally agreed to handle the case for a flat fee plus costs. During the initial meeting, Mr. Roberts discussed filing a motion with the court for alternate service. Mr. Roberts misrepresented to the client that he filed the adoption petition and a Motion for Alternate Service for the birth parents with the Third District Court around February 2007. The client called Mr. Roberts multiple times to inquire when the birth mother would be served. Mr. Roberts failed to return most of his client's requests for information about the case. Mr. Roberts misrepresented to the client that the judge had approved the motion for alternate service before it was filed. Mr. Roberts did not give his client the case number or the judge assigned to the case upon the client's request. Months later, Mr. Roberts informed his client that the court clerks had lost the paperwork, so he would have to re-file the case. The client paid Mr. Roberts cash for publication of the summons upon Mr. Robert's request. Mr. Roberts did not place the legal notice. The client terminated Mr. Roberts' representation. By the time the representation was terminated, Mr. Roberts had filed the petition and alternate service motion and was awaiting the court's ruling regarding the motion. The client requested a full refund of the fees paid for Mr. Roberts' legal fees and the costs paid for publication of the summons. The client also requested the return of the file. Mr. Roberts refused to refund any of the fees and failed to refund the money paid for the publication of the summons. Mr. Roberts failed to provide his client the file.

## *Attorney Discipline*

**ADMONITION**

On September 17, 2009, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 4.2(a) (Communication with Persons Represented by Counsel) and 8.4(a) (Misconduct).

*In summary:*

An attorney was contacted by a minor whose parents were involved in a divorce proceeding in district court. The minor informed the attorney that the minor had been appointed a Guardian ad Litem (GAL), though the minor had not heard from the GAL in over two years. The minor asked the attorney for representation in the district court proceeding. The attorney researched the possibility of representation, and reviewed Ethics Advisory Opinion 07-02. That opinion addresses the situation that the attorney was presented with, and advises that in the case of a mature minor, an attorney may speak with the minor even without the permission of the GAL and not violate Rule 4.2. The attorney spoke again to the minor after conducting research. The attorney filed a Notice of Appearance in the case. The GAL filed a Motion to Strike Notice of Appearance of Counsel. The attorney conducted further research to determine if the minor was a "mature minor" as described in the ethics opinion. The attorney filed a response to the motion to strike. A pretrial hearing was held where the attorney's representation was discussed. The attorney asked to withdraw from the case after the representation was challenged by the father's counsel and the GAL. The court removed the attorney from the case, struck all of the pleadings that had been filed, and chastised the attorney for what had been done. The court stated that the attorney's actions were "wrong," "out of line," "unethical," and "inappropriate." The attorney followed all orders of the court.

The Rules of Procedure for the Ethics Advisory Opinion Committee ("EAOC") state: "A lawyer who acts in accordance with an ethics advisory opinion enjoys a rebuttable presumption of having abided by the Utah Rules of Professional Conduct." The Utah Supreme Court has advised that it expects the OPC to take action whenever it believes a disciplinary rule has been violated and that the OPC cannot adequately perform that function if it is bound by the opinions issued by the EAOC. As was the case in this matter, the opinions are advisory, and the presumption that an attorney who follows an opinion has not violated a Rule is rebuttable and inconclusive.

**PUBLIC REPRIMAND**

On November 13, 2009, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Larry N. Long for violation of Rules 5.3(a) (Responsibilities Regarding Nonlawyer Assistants), Rule 5.5 (Unauthorized practice of Law; Multijurisdictional Practice of Law), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Long was hired by the complainant to represent a client on


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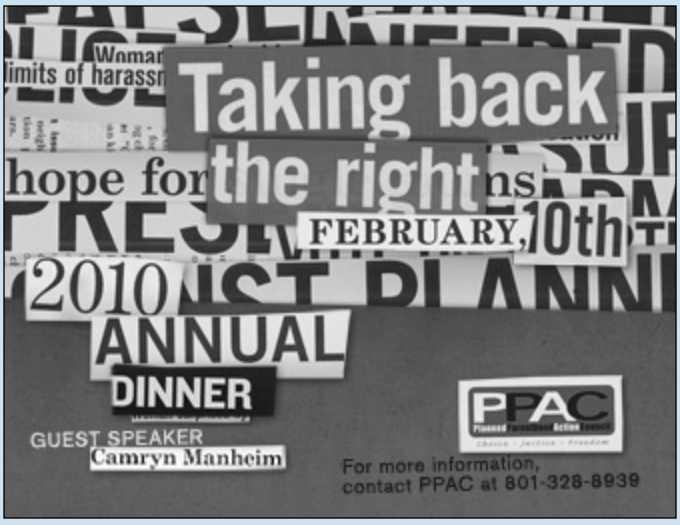
a violation of a Protective Order. The complainant originally met with a non-lawyer working for Mr. Long, on April 18, 2007. The complainant paid a $750 retainer fee to the non-lawyer. After Mr. Long failed to appear at a court hearing the complainant called Mr. Long to inquire about his failure to appear and spoke to the non-lawyer. After Mr. Long failed to appear at the next hearing scheduled, the complainant called to speak with Mr. Long and again only spoke with the non-lawyer. At one point, the non-lawyer planned to serve as a mediator for the parties in this dispute, while Mr. Long represented the client and while the non-lawyer was employed by Mr. Long. The non-lawyer prepared a mediation settlement document and sent it to opposing counsel for signature. The complainant was led to believe that the non-lawyer was an attorney. Mr. Long failed to effect measures to make reasonably certain that the non-lawyer as his employee complied with the Rules of Professional Conduct. Mr. Long failed to adequately supervise the non-lawyer's activities to insure the non-lawyer was not engaging in the Unauthorized Practice of Law. Mr. Long allowed the non-lawyer to appear in court, contact an opposing party and conduct mediation proceedings at Mr. Long's office.

**PUBLIC REPRIMAND**

On November 10, 2009, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against David C. VanCampen for violation of Rules 1.4(b) (Communication), 1.16(d) (Declining or Terminating Representation), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. VanCampen represented a client who was charged with three misdemeanors. Mr. VanCampen failed to appear at two bench trials. Mr. VanCampen failed to notify his client that he was leaving the firm where he had been employed and that he was no longer representing the client. Mr. VanCampen failed to withdraw as counsel and failed to make sufficient arrangements to protect his client after terminating the representation. Mitigating factors included: Respondent's stated intent not to resume the practice of law and Respondent's apparent lack of intent to harm his client. Aggravating factors included: Respondent's extensive disciplinary history and pattern of misconduct.




**RECIPROCAL DISCIPLINE**

On July 23, 2009, the Honorable Kate A. Toomey, Third District Court, entered an Order of Discipline: Public Reprimand against Timothy Barnes for violation of Rules 1.3 (Diligence), 1.4 (Communication), 1.16(d) (Declining or Terminating Representation), and 8.4(a) (Misconduct) of the Rules of Professional Conduct. This was a reciprocal discipline order based upon a Nebraska Supreme Court order of discipline.

*In summary:*

The Nebraska Supreme Court found that Mr. Barnes accepted a flat-fee of $1500, plus $500 for expenses to obtain tax-exempt status for a non-profit corporation in February 2006. Mr. Barnes never completed the application. After several months had gone by, Mr. Barnes contacted the corporation to request additional information. When the corporation attempted to get clarification, they found that Mr. Barnes had moved to Utah without notifying the corporation. In January 2007, the corporation asked for Mr. Barnes to refund the money.

The Nebraska Counsel for discipline filed formal charges against Mr. Barnes in June 2007. After charges were filed Mr. Barnes refunded $1500 and promised to refund the remainder, however at the time of the hearing he had not refunded the remainder.

The Nebraska Supreme Court found that Mr. Barnes failed to complete the matter and failed to notify the non-profit corporation that he was unable to do so. He failed to return any of the money the corporation paid for his fees and expenses until after the Counsel for Discipline had filed formal charges against him. The Nebraska Supreme Court also found that the evidence did not show that Mr. Barnes repaid the full amount of his unearned fee. In mitigation, the Nebraska Supreme Court found that during some of the time that Mr. Barnes neglected his client's legal matter, he was contending with a series of personal and family health issues and that he cooperated with the Counsel for Discipline, admitted most of the allegations in the formal charges and acknowledged responsibility for his actions. There was no record of other complaints against Mr. Barnes and he was no longer engaged in the private practice of law.

**INTERIM SUSPENSION**

On October 20, 2009, the Honorable Vernice S. Trease, Third Judicial District Court, entered an Order of Interim Suspension Pursuant to Rule 14-519 of the Rules of Lawyer Discipline and Disability, suspending Richard D. Wyss II from the practice of law pending final disposition of the Complaint filed against him.

*In summary:*

On December 1, 2008, Mr. Wyss pleaded guilty to Making a False Statement, a felony, United States Code Annotated § 1001(a)(2). The interim suspension is based upon the felony conviction.

# *Attorney Discipline*

**ADMONITION**

On November 30, 2009, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.4(b) (Communication), 8.1(b), (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct).

*In summary:*
An attorney was hired to assist a client in a property dispute. The attorney failed to send letters within 14 months of being hired. The attorney failed to take any appropriate or effective actions to obtain all necessary information to fully prepare the client's letters. The attorney failed to answer letters, phone calls, and emails from the client. The attorney failed to send written correspondence when phone calls were not answered. The attorney did not finish the legal work. The attorney failed to respond to the OPC's Notice of Informal Complaint.

Mitigating factor: No injury to clients.

**ADMONITION**

On December 17, 2009, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 4.2(a) (Communications with Persons Represented by Counsel), and 8.4(a) (Misconduct).

*In summary:*
An attorney represented a client in a domestic dispute. The court appointed a separate attorney to represent a party also involved in the domestic dispute. The attorney knew that the separate party was being represented by an attorney. The attorney communicated in the presence of the separate party regarding the subject of the representation without the knowledge and/or consent of the Court appointed attorney.

**ADMONITION**

On November 13, 2009, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.5(a) (Fees), 7.1 (Communications Concerning a Lawyer's Services), 7.5(d) (Firm Names and Letterheads), and 8.4(a) (Misconduct).

*In summary:*
The attorney met with a potential client for a free consultation. The attorney discussed the attorney's fees with the potential client and gave an amount for the fees should the potential client hire the attorney. The attorney appeared at one court hearing on an emergency basis. The attorney met with the potential client afterwards and discussed the fee. The potential client paid the attorney a small fee for the appearance. The potential client signed a retainer agreement but then decided and told the attorney that the representation was no longer wanted. The client then hired another attorney whose fee was less. Even though the attorney had not been retained, the attorney appeared at a driver's license hearing for the client. The attorney left when the client appeared with another attorney. The attorney filed a collection lawsuit against the potential client. The attorney attempted to collect an unreasonable fee for services rendered. The attorney caused a debt collection action to be filed for an amount that was equal to the entire flat fee that would have been charged had the client accepted the representation. The attorney used "and Associates" as firm names on his letterhead when the attorney is the only attorney in the office. The use of "and Associates" represents to the public that there are other attorneys at the office.

**PUBLIC REPRIMAND**

On November 24, 2009, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Larry N. Long for violation of Rules 1.4(a) (Communication), 1.4(b) (Communication), 1.5(a) (Fees), 7.1 (Communications Concerning a Lawyer's Services), 7.5(d) (Firm Names and Letterheads), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Long charged excessive fees for work he completed in two criminal matters. In one case Mr. Long appeared in court only a few times before his client was accepted into Drug Court. In another case Mr. Long made only a few court appearances before his client entered a plea. In the second case Mr. Long did not appear in court after his client's plea was entered.

At all times relevant to the conduct at issue, Mr. Long was the only lawyer in his office. Mr. Long presented himself to the public using the names L. Long Lawyers and Long & Associates. The use of these firm names misleads the public to conclude that there were other lawyers in Mr. Long's office.

**PUBLIC REPRIMAND**

On January 6, 2010, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Joe Cartwright for violation of Rules 1.2(a) (Scope of representation and Allocation of Authority Between Client and Lawyer), 1.4(a) (Communication), 1.4(b) (Communication), 1.15(c) (Safekeeping Property), 5.3(b) (Responsibilities Regarding Nonlawyer Assistants), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

A client met with Mr. Cartwright's contract paralegal. The paralegal represented to the client and his parents the intent to perform legal work for a substantially discounted fee. Mr. Cartwright was unaware of the communication. Mr. Cartwright instructed the paralegal to collect a retainer fee from the client and instructed the paralegal to inform the client of Mr. Cartwright's hourly rate. The paralegal instructed the client to make a check payable to him and the paralegal proceeded to hold that money for over two weeks without the money being deposited in Mr. Cartwright's trust account. Mr. Cartwright never met with the client. Mr. Cartwright never explained his fee structure or scope of representation to the client. Mr. Cartwright failed to specifically instruct his paralegal to have the retainer check paid to Mr. Cartwright.

**RESIGNATION WITH DISCIPLINE PENDING**

On January 13, 2010, the Honorable Christine M. Durham, Chief Justice, Utah Supreme Court, entered an Order Accepting Resignation with Discipline Pending concerning Richard Reynolds for violation of Rules 1.2(d) (Scope of Representation), 1.4(b) (Communication), 1.5(b) (Fees), 1.15(d) (Safekeeping Property), 3.3(a)(1) (Candor Toward the Tribunal), 8.1(b) (Bar Admissions and Disciplinary Matters), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary there are two matters:*

In the first matter, a client hired Mr. Reynolds to represent her in her divorce. The court entered a restraining order that prevented the sale of personal and marital assets that could be deemed a marital asset by both parties in the divorce case. The client's vehicle was an asset that could have been deemed a marital asset in the divorce proceedings. Mr. Reynolds did not explain how the sale of the vehicle could effect the restraining order and the divorce case. Mr. Reynolds's billing for his client listed an unexplained increase in the balance due. Mr. Reynolds did not provide his client receipts or proof of how the claimed expert/consulting fees were assessed. After Mr. Reynolds withdrew from his client's representation, he filed a Motion to Intervene and Memorandum to Intervene on her case in the divorce matter. Mr. Reynolds obtained an order on his motion. The client filed a Motion for Review of Order Re: Motion to Intervene with the Court. The court granted a review of the issue of attorney fees and costs owed by the client to Mr. Reynolds. At a review hearing, the court directed Mr. Reynolds to produce to his client's new attorney all computer files involving his client in a format to be specified by the client's attorney. Mr. Reynolds did not provide any computer files to the client's attorney. At a review hearing, the court ordered Mr. Reynolds to provide his computer billing files to his former client's attorney. Mr. Reynolds did not comply with the court's order that he provide his former client's attorney his computer billing files.

In the second matter, Mr. Reynolds was hired to represent a client in a criminal matter involving charges of possession of a controlled substance and possession of a dangerous weapon by a restricted person. The client signed an Employment and Fee Agreement with Mr. Reynolds. The client paid Mr. Reynolds a flat-fee of $1500. The client's firearms and ammunition had previously been seized. As part of an agreement, Mr. Reynolds took possession of the client's firearms and ammunition. Mr. Reynolds indicated to his client that he would turn the firearms and ammunition ("property") over to a friend or family member of the client. Mr. Reynolds did not surrender the property to a friend or family member of the client. Mr. Reynolds did not surrender the property to his client upon completion of his client's probation and reduction of conviction to a misdemeanor.

The client made numerous written and telephonic requests for his property to be returned. Mr. Reynolds did not give the client any money in exchange for the property. A judgment was entered against Mr. Reynolds in First District Court, as a result of a suit brought by his client for the return of his property. The OPC served Mr. Reynolds with a Notice of Informal Complaint (NOIC). Mr. Reynolds did not respond to the NOIC.

**SUSPENSION**

On December 21, 2009, the Honorable Robert K. Hilder, Third District Court entered an Order of Discipline: Suspension for six months and one day against Douglas H. Killpack for violation of Rules 1.1 (Competence), 1.2(a) (Scope of Representation), 1.3 (Diligence), 1.4 (Communication), 3.3(a) (Candor Towards the Tribunal), 8.4(c) (Misconduct), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary there are two matters:*

A client contacted Mr. Killpack to represent her on her divorce matter. Prior to a meeting the client had informed Mr. Killpack by telephone that she did not wish to file bankruptcy at that time due to a pending home loan. At the meeting the client completed bankruptcy paperwork with the understanding that it would be ready should she later decide to file for bankruptcy. Within approximately two days of the client's meeting with Mr. Killpack, Mr. Killpack filed the bankruptcy and the divorce. The client learned the bankruptcy was filed when she was contacted by her loan officer regarding her home loan. The client received a letter informing her of the Bankruptcy Trustee meeting which had been scheduled for her case. Mr. Killpack initially informed the client that the notice was an error and that Mr. Killpack still had the unfiled bankruptcy. Mr. Killpack told his client that the bankruptcy was filed by mistake. Mr. Killpack's solution to correct the problem was for neither she nor Mr. Killpack to attend the Trustee meeting so that the case would be dismissed. The client and her loan officer spoke with Mr. Killpack and Mr. Killpack agreed to write to the loan provider admitting Mr. Killpack's error in filing the bankruptcy with the hope of reviving the home loan.

Mr. Killpack attended the Trustee's meeting. The client's attempts to discuss this matter with Mr. Killpack further resulted in unreturned calls. Mr. Killpack refused to refund the money that his client paid for the bankruptcy paperwork. Subsequent to these events, the client hired another attorney in an effort to resolve these matters. The attorney sent Mr. Killpack a letter stating essentially the same facts described above. In his Fax Transmission to the attorney, Mr. Killpack denied his error. At no time did Mr. Killpack contact the bankruptcy court to correct his error.

A client hired Mr. Killpack to file a bankruptcy. Mr. Killpack filed a chapter 7 bankruptcy on behalf of his client. Prior to the filing of the bankruptcy, his client married and moved to California. The client attempted to contact Mr. Killpack to inform him that she had changed her address. Mr. Killpack did not return his client's telephone calls. The client sent Mr. Killpack a letter informing him of her new contact information and requested that Mr. Killpack contact her to inform her of the court date. The client also called Mr. Killpack and left a message with her contact information. Mr. Killpack did not respond to his client's telephone call. Mr. Killpack attended the meeting of the creditors, during which the trustee completed a detailed report stating there was no new address for the client. Mr. Killpack made no effort to ensure that his client was aware of or would be attending the creditors' meeting. The client received information from the Bankruptcy Court indicating that because she had not attended the meeting of the creditors, her bankruptcy case was dismissed. Mr. Killpack made no effort to object to the dismissal on his client's behalf or inform the court that he erred by not providing his client's new address to the court.

**SUSPENSION**

On December 14, 2009, the Honorable Kate A. Toomey, Third District Court entered an Order of Discipline: Suspension for a three year suspension against Christopher S. Hall for violation of Rules 5.5(a) and (b) (Unauthorized Practice of Law; Multijurisdictional Practice of Law), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Hall was notified that his license was administratively suspended, but he nevertheless continued to practice law and held himself out to be a lawyer by filing pleadings, appearing in court, and communicating with opposing counsel. Mr. Hall failed to respond in a timely fashion to two lawful demands for information from the Office of Professional Conduct and failed to appear for Screening Panel Hearings in two disciplinary matters.

Aggravating factors included: failure to acknowledge the wrongful nature of the conduct and failure to make a good faith effort to rectify the consequences; substantial experience in the practice of law; prior record of discipline; a pattern of misconduct; multiple offenses; and obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary authority.

# *Attorney Discipline*

**RESIGNATION WITH DISCIPLINE PENDING**

On April 14, 2010, the Honorable Christine M. Durham, Chief Justice, Utah Supreme Court, entered an Order Accepting Resignation with Discipline Pending concerning R. Bradley Neff for violation of Rules 8.4(b) (Misconduct), 8.4(c) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

On September 23, 2008, Mr. Neff entered into a plea in abeyance to three Class A Misdemeanor counts of Attempted Failure to Render a Proper Tax Return. Mr. Neff was required to complete 40 hours of community service and pay restitution of $13,936.37 in addition to the $197,139.57 previously paid.

**SUSPENSION**

On March 11, 2010, the Honorable Denise Lindberg, Third District Court entered an Order of Discipline: Suspension for one year and Probation for one year against David VanCampen for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.4(b) (Communication), 1.5(a) (Fees), 1.5(b) (Fees), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary there are two matters:*

In the first matter, Mr. VanCampen was retained to file modification papers in a divorce and custody case. Mr. VanCampen was paid and provided with the client's information. Almost a month later, the client initiated contact with Mr. VanCampen at which time he reported that he lost the information that his client had provided and requested it be provided again. The client provided the information to Mr. VanCampen a second time. Mr. VanCampen failed to file any papers with the court on the case. The client attempted to contact Mr. VanCampen on numerous occasions. Mr. VanCampen failed to return all but three of her calls. During the three calls, Mr. VanCampen provided no real assistance and made promises to perform services that were never performed. Mr. VanCampen failed to return his client's file, provide an accounting, or return unearned fees to his client. Mr. VanCampen failed to provide meaningful legal services necessary to prosecute his client's case. Mr. VanCampen was served a Notice of Informal Complaint ("NOIC"), but failed to timely respond.

In the second matter, Mr. VanCampen was hired to file documents to seal the client's case and attempt to negotiate an expungement. The client called Mr. VanCampen's office several times, but did not receive a call back. Mr. VanCampen's assistant told the client that there was a hearing scheduled. When the client appeared for the hearing, Mr. VanCampen did not appear. Mr. VanCampen failed to contact the client to explain what was going on in the case despite numerous calls by the client to speak with him. Mr. VanCampen failed to return unearned fees to his client, failed to return his client's file, and failed to provide the legal services for which he was hired. Mr. VanCampen was served a NOIC, but failed to timely respond.

Aggravating circumstances include: prior record of discipline; pattern of misconduct; multiple offenses; and substantial experience in the practice of law.

Mitigating circumstances include: personal or emotional problems.

**ADMONITION**

On May 10, 2010, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 5.3(a) (Responsibilities Regarding Nonlawyer Assistants), 5.3(b) (Responsibilities Regarding Nonlawyer Assistants), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

The attorney was informed by a friend that a couple wanted to petition the Court to obtain the excess proceeds from a foreclosure sale. The attorney was never retained by the couple. The attorney prepared a pleading and signed it as if he were representing the couple. The attorney delegated to the attorney's non-lawyer assistant the responsibility of filing the pleading. The attorney used the non-lawyer's address and phone number on the pleading. The attorney made no reasonable efforts to ensure the non-lawyer acted responsibly under the Rules of Professional Conduct. By failing to supervise the nonlawyer, the attorney exposed another party and the legal system to potential injury by causing a contested action where there was no dispute. The attorney had adequate time and opportunity to correct the misconduct, but did not.

**ADMONITION**

On May 10, 2010, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.15(c) (Safekeeping Property), 7.5(a) (Firm Names and Letterheads), 7.5(d) (Firm Names and Letterheads), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

An attorney retained a law firm to assist in a case involving division of real estate transaction fees. The attorney handled the client's matter due to the partner in the firm going on inactive status. The attorney failed to timely prepare, file and provide to

the client, a complaint in the matter. The attorney failed to alert the client that the attorney would be unavailable or unable to complete the complaint in the specified time period. The attorney failed to notify to the client that the attorney had removed part of the retainer from the trust account as earned fees. The attorney had earned those fees; however, the attorney failed to timely account for the fees and provide invoicing to the client. The attorney's letterhead and firm name that were utilized were somewhat misleading because the partner was not practicing in a partnership at that time.

**ADMONITION**

On May 10, 2010, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 7.5(a) (Firm Names and Letterheads), 7.5(d) (Firm Names and Letterheads), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

A client spoke to a partner in a firm about retaining the partner to assist in a legal matter. The partner was going on inactive status and referred the case to the other partner within the firm. At the time of initial contact with the client, the attorney utilized a letterhead and firm name indicating two partners within the firm. The attorney used that letterhead a significant portion of the time during which time the attorney was in contact with the client. The attorney's letterhead and firm name were somewhat misleading, due to the partner not being in a partnership.

**SUSPENSION**

The United States District Court for the District of Utah has entered an order suspending D. Scott Berrett from the practice of law in the federal court for a period of 90 days, commencing June 10, 2010. Mr. Berrett failed to communicate with a client in a criminal case and failed to respond to the request of the magistrate judge to meet regarding the criminal case.

**CLARIFICATION**

There are two Bruce Nelsons licensed with the Utah State Bar. In the last edition of the *Bar Journal,* the attorney discipline listed a Public Reprimand for Bruce L. Nelson, not to be confused with Bruce J. Nelson who has not been disciplined.

# Attorney Discipline

**UTAH STATE BAR ETHICS HOTLINE**
Call the Bar's Ethics Hotline at (801) 531-9110 Monday through Friday from 8:00 a.m. to 5:00 p.m. for fast, informal ethics advice. Leave a detailed message describing the problem and within a twenty-four hour workday period a lawyer from the Office of Professional Conduct will give you ethical help about small everyday matters and larger complex issues.

More information about the **Bar's Ethics Hotline** may be found at www.utahbar.org/opc/opc_ethics_hotline.html. Information about the formal Ethics Advisory Opinion process can be found at www.utahbar.org/rules_ops_pols/index_of_opinions.html.

**ADMONITION**
On July 28, 2011, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.15(a) (Safekeeping Property) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
The attorney failed to maintain the client trust account where the funds were kept separate or clearly identified at all times. The attorney's conduct was negligent. There was little to no injury.

*Mitigating factors:*
Personal or emotional problems; Cooperative attitude toward proceedings; Substance abuse.

**ADMONITION**
On July 28, 2011, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 8.4(d) (Misconduct) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
The attorney charged a client for representation after the attorney had been appointed to represent the client because the client was indigent. The attorney failed to file a Motion to Withdraw once the attorney discovered that the client was no longer indigent. The attorney's conduct was negligent. The injury caused by the attorney's conduct was minimal.

*Mitigating factors:*
Absence of prior record; Imposition of other penalties or sanctions; Belief by attorney that filing client Affidavit of Indigency would cause him to reveal confidential client communications and expose the client to possible criminal charges.

**ADMONITION**
On June 30, 2011, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.1 (Competence), 8.4(c) (Misconduct), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
The attorney sought an ex-parte temporary restraining order to stop a trustee's sale that was scheduled to take place the next day. The court determined that the motion was facially defective, since it did not certify in writing what efforts the attorney had made to contact opposing counsel and did not include an affidavit or verified complaint addressing how the plaintiff might suffer irreparable injury before a hearing could be held. The judge denied the motion without prejudice so that the attorney could correct its deficiencies and issued a written order shortly after reading the motion describing its defects.

After receiving the ruling the attorney attempted to give notice to the defendant by faxing the motion and memorandum to the office and to another attorney's office; although the attorney was not sure whether the other attorney was representing the defendant. The attorney attempted to contact the other attorney by phone but was unable to reach the other attorney. The attorney was unable to fax the documents to the other attorney but eventually was able to send them by email.

The evening before the attorney sent an email to the opposing attorney advising that opposing attorney that the attorney had filed a motion for a TRO and per the judge's request, "I sent notice to you and advised you that you will have an opportunity to be heard on" a set date and time. No hearing had, in fact, been set for that day and time. The opposing attorney received the email message regarding the purported hearing and both attorneys were at the courthouse the following morning. The attorney did not provide the court a certificate describing his efforts of the preceding evening to provide notice to the opposing attorney but did file a verified copy of the complaint that morning.

The attorney stated that they did not intend that this be a full

hearing but simply a chance for the attorney to talk to the court in the presence of opposing counsel to clarify what the attorney should do to perfect the motion. The attorney believed, based on what the court clerk said, that the attorney could discuss the matter with the court the next day if opposing counsel was present.

**PUBLIC REPRIMAND**

On July 8, 2011, the Honorable Tyrone E. Medley, Third District Court, entered an Order of Discipline: Public Reprimand against Jared L. Bramwell, for violation of Rules 1.5(a) (Fees), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Bramwell was hired to represent a client in pending civil matters. Opposing counsel, in one of the cases filed a Motion for Prejudgment Writ of Attachment ("Motion") and supporting Memorandum. Mr. Bramwell filed a Memorandum in Opposition to Plaintiff's Motion for Prejudgment Writ of Attachment. Judge Robert P. Faust heard argument on the Motion. Judge Faust ruled as follows:

> "After reviewing the file and now being fully informed, the court grants the motion for the prejudgment writ of attachment against the [client's] Utah house only. The prejudgment writ of attachment is NOT against their house in Texas. The house can be sold, but the proceeds must be held in an account in Utah and cannot be distributed."

Opposing counsel mailed Mr. Bramwell a proposed Order documenting Judge Faust's ruling. Opposing counsel mailed a Prejudgment Writ of Attachment ("Writ") to Mr. Bramwell stating what Judge Faust had ruled. A Trust Deed between Jared Bramwell and the client was recorded in Salt Lake County. The stated purpose of the Trust Deed was to: (a) secure payment of attorney's fees, costs and interest in the principal sum of $500,000.00; and (b) to secure indebtedness evidenced by an attorney retainer agreement between Mr. Bramwell and the client. At the time Mr. Bramwell recorded the Trust Deed he was not owed $500,000 in attorneys fees. At most, at the time the Trust Deed was recorded, the client owed Mr. Bramwell and his firm less than $75,000. Mr. Bramwell did not send notice to opposing counsel or to the Court that the Trust Deed had been recorded. Mr. Bramwell executed and recorded the Trust Deed without notice to the opposing counsel, and during the time period after the Court had issued its ruling but before the Order had been signed. Partly because of Mr. Bramwell's actions with respect to the Trust Deed, the

Court held a two-day Contempt Hearing, but declined to hold Mr. Bramwell in contempt.

**DISBARMENT**

On August 1, 2011, the Honorable L.A. Dever, Third District Court, entered Findings of Fact, Conclusions of law, and Order of Disbarment against Thomas V. Rasmussen for previously violating the Court's Order of Sanction. Mr. Rasmussen has appealed the sanction to the Utah Supreme Court.

*In summary:*

A Sanction Order was issued by the Court on July 21, 2010. The Order provided that Rasmussen was suspended for one year with all but 181 days suspended. Pursuant to Rule 14-526(a) of the Rules of Discipline and Disability, the effective date was thirty days later on August 20, 2010. The thirty-day period provided by the Rule is to allow Mr. Rasmussen the time to wind down his practice and cease representing clients.

Mr. Rasmussen continued to practice beyond the August 20th deadline. During the period of suspension Rasmussen made thirty-six appearances in seventeen courts. There were eleven cases where Rasmussen entered an appearance on the case after the effective date of his suspension and there were nine cases where he appeared where charges were not even filed against his clients until after the effective date of his suspension. This establishes Mr. Rasmussen was taking on new matters during his suspension.

Rasmussen filed with the Court an affidavit stating that during the period of suspension he had not practiced law. The affidavit was not truthful.

Rasmussen stated in Court that he violated the suspension Order. His position was that because he needed money he had to violate the Order and practice law.

**RESIGNATION WITH DISCIPLINE PENDING**

On July 14, 2011, the Honorable Christine M. Durham, Chief Justice, Utah Supreme Court, entered an Order Accepting Resignation with Discipline Pending concerning Gary W. Nielsen for violation of Rules 8.4(b) (Misconduct), 8.4(c) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

On March 22, 2010, Mr. Nielsen entered a guilty plea to one count of Theft, a second degree felony. Mr. Nielsen was sentenced to one year in the Summit County Jail with six years probation with Adult Probation and Parole, restitution in the amount of $346,248.58, and to not practice law in the State of Utah without the approval of the Utah State Bar.

**SUSPENSION**

On August 8, 2011, the Honorable Kate A. Toomey, Third District Court, entered Findings of Fact, Conclusions of Law, and Order of two-year suspension against John McCoy, for violation of Rules 1.15(a) (Safekeeping Property), 1.15(c) (Safekeeping Property), 8.1(d) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. McCoy did not promptly withdraw earned fees from the trust account and therefore some portion of the money in the trust account belonged to him. By failing to promptly withdraw his earned fees from his trust account, he commingled his funds with client funds. Mr. McCoy had a line of credit attached to the trust account that initiated regular and automatic withdrawals in the amount of $25 per month from his trust account. Such an arrangement is improper. Mr. McCoy did not eliminate the automatic "ready credit" withdrawals until after he had appeared before a Screening Panel of the Ethics and Discipline Committee of the Utah Supreme Court.

In December 2008, Mr. McCoy issued a check written against his trust account. On January 29, 2009, there were insufficient funds in the trust account to cover a check Mr. McCoy wrote against the account. Funds belonging to his clients were used to pay monthly automatic loan withdrawals and to pay the fee for the check written against insufficient funds. Mr. McCoy failed to maintain complete account records for the funds in his trust account. There are no trust account ledgers and no client ledgers, and relying on the bank statements is insufficient because they do not provide sufficient information to appropriately manage the trust account.

Mr. McCoy suffered a near-catastrophic injury on January 5, 2009, that rendered him at least partially incapacitated for weeks. Mr. McCoy failed to respond to three demands for information from the OPC. His lack of initial response to the bank notice may be explained to some extent by his January injury, but by the time the OPC contacted him in February, he had returned to work, and by July, Mr. McCoy could have provided additional information, but did not.

*Aggravating factors:*

Prior record of discipline, multiple offenses, obstruction of the discipline proceedings, refusal to acknowledge the wrongful nature of the misconduct, substantial experience in the practice of law, and lack of a good faith effort to rectify the consequences of the misconduct.

*Mitigating factors:*

Lack of dishonest or selfish motive, good reputation in the legal community.

# *Attorney Discipline*

**ADMONITION**

On August 10, 2009, the Vice-Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.1 (Competence), 1.6(a) (Confidentiality of Information), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

An attorney was hired to represent a client in a domestic matter even though the attorney had not practiced in that area for over two decades. The attorney did not have sufficient skills to provide the representation necessary in the domestic case. When the attorney filed a Motion to Withdraw, the attorney attached a letter in which confidential and possibly prejudicial information was disclosed.

**ADMONITION**

On August 1, 2009, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.8(a) (Conflict of Interest: Prohibited Transactions) and 1.8(b) (Conflict of Interest: Prohibited Transactions) of the Rules of Professional Conduct.

*In summary:*

An attorney had a tax and estate-planning practice, and upon learning that several of the clients were seeking investments, the attorney referred those clients to an investment fund as a viable investment opportunity. As fund manager, the attorney had a business or financial interest in the fund, since the fund manager's proposed compensation was based on the value of fund assets, or investments. Every investor, including the client-investors, was required to execute standard investment agreements prior to investing in the fund. The attorney failed to advise client-investors, in a separate writing, of the desirability of seeking advice from independent counsel and failed to allow them a reasonable opportunity seek such independent advice. The attorney failed to obtain client-investor's informed consent to essential terms of the transaction, in a separate writing.

**ADMONITION**

On August 1, 2009, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.15(a) (Safekeeping Property), 1.15(b) (Safekeeping Property), 1.15(c) (Safekeeping Property), 1.15(d) (Safekeeping Property), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

The Office of Professional Conduct received notice from a financial institution that a check written against an attorney's client trust account created an overdraft against the trust account. The check was not written on behalf of a client, but was instead written against either fees earned or expenses incurred, and was used by the attorney to purchase personal or business items. A review of the attorney's trust account records indicates that there have been occasions in the past, when there existed significant discrepancies between the expected balance and actual balance of funds held in the client trust account. The attorney failed to hold the clients' advanced payments of fees separate from the attorney's property. The attorney failed to maintain complete and accurate records of funds held in the client trust account. The attorney failed to clearly identify the funds held in the trust account as funds belonging to, and being held on behalf of, each of the clients. The attorney failed to properly manage the trust account. The attorney kept personal funds in the client trust account in an amount exceeding that necessary to pay regular bank service charges on the account. The attorney failed to hold advance fees in the trust account, and to withdraw funds only as fees were earned, or as expenses were incurred.

**ADMONITION**

On August 1, 2009, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 4.2(a) (Communication with Persons Represented by Counsel) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

The attorney represented a client in a divorce proceeding. The attorney was aware that the opposing party was represented

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by counsel. The attorney contacted the opposing party on two occasions without consent from that party's attorney.

**RECIPROCAL DISCIPLINE**

On August 14, 2009, the Honorable Bruce Lubeck, Third District Court entered an Order of Discipline: Suspension for two years against Brian R. Rayve for violation of Rules 1.1 (Competence), 1.2(a) (Scope of Representation), 1.3 (Diligence), 8.4(b) (Misconduct), 8.4(c) (Misconduct), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

On October 8, 2008, the United States Patent and Trademark Office ("USPTO") through its disciplinary process entered an Order suspending Mr. Rayve from practicing law for two years. On February 17, 2009, the Supreme Court of Ohio through its disciplinary process issued an Order of reciprocal discipline against Mr. Rayve suspending him from the practice of law for two years. Mr. Rayve was the attorney of record for numerous U.S. Patent applications, which he filed with the USPTO on behalf of a client. Along with the petitions and other filings, Mr. Rayve mailed checks made payable to the order of "Commissioner for Patents." Fifteen checks that Mr. Rayve sent to the USPTO were returned unpaid due to insufficient funds. On numerous occasions the USPTO mailed Mr. Rayve notices of abandonment of the applications for having failed to file a timely response to notices of abandonment, Mr. Rayve failed to respond timely and pay the application fees. In one case, Mr. Rayve filed a notice of appeal and a "Petition for Revival of Unintentionally Abandoned Patent Application." According to the petition, Mr. Rayve contacted the USPTO and learned that the application had become abandoned based on his failure to include the proper fee in his petition. Upon information and belief, the client did not consent to the abandonment of the application or other filings. In one case, the USPTO granted the petition and informed Mr. Ryave of the two-month period for filing an appeal brief. The USPTO later informed Mr. Rayve that the appeal had been dismissed because he did not timely file the appeal brief, and, consequently, (the application had become abandoned because there were no allowable claims). Upon information and belief, the client did not consent to the abandonment of the application or other filings.

**PUBLIC REPRIMAND**

On August 1, 2009, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against David G. Turcotte for violation of Rules 1.15(b) (Safekeeping Property), 1.15(c) (Safekeeping Property) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

A company represented by Mr. Turcotte, entered into a third party security agreement ("the Agreement") with a bank. The Agreement assigned a security interest to the bank and rights to proceeds received by the company in a lawsuit wherein the company was a plaintiff. Mr. Turcotte represented the company throughout the lawsuit. Mr. Turcotte was aware of the existence, terms and conditions of the Agreement. Even so, Mr. Turcotte obtained a judgment in the lawsuit in favor of the company and received funds on behalf of the company. Mr. Turcotte determined that the bank was not owed any monies from the settlement proceeds and disbursed the remainder of the settlement proceeds to third parties other than the bank. In one case, he disbursed funds that directly benefited entities owned or in the control of Mr. Turcotte. Mr. Turcotte disbursed the money without notifying the bank of receipt of the settlement funds.

**DISBARMENT**

On July 2, 2009, the Honorable James R. Taylor, Fourth District Court entered an Order of Discipline: Disbarment against Richard J. Culbertson for violations of Rules 8.4(b) (Misconduct), 8.4(c) (Misconduct) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

On June 19, 2008, Mr. Culbertson pled guilty to three counts of Communications Fraud, in violation of Utah Code section 76-10-1801, second-degree felonies, and one count of Pattern of Unlawful Activity, Utah Code section 76-10-1601, a second-degree felony. Mr. Culbertson was sentenced to incarceration for a period of not less than one year nor more than fifteen years in the Utah State Prison. Mr. Culberston was ordered to pay restitution in the amount of $1,149,544.89 plus interest.

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# *Attorney Discipline*

**ADMONITION**
On June 15, 2009, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.4(a) (Communication) and 8.4(a) (Misconduct).

*In summary:*
An attorney was hired to represent a client in a personal injury case. For approximately eight months the attorney rarely communicated with the client. The client contacted the attorney's office and spoke with a staff member on numerous occasions attempting to find out about the case. When the client asked for status updates, the attorney failed to comply.

**ADMONITION**
On June 15, 2009, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 8.4(d) (Misconduct) and 8.4(a) (Misconduct).

*In summary:*
An attorney represented a client in a paternity action. The attorney, on behalf of the client, filed a petition for common law marriage. The attorney failed to notify the court in the common law marriage action of the pendency of the paternity action. Additionally, the attorney failed to notify the petitioner in the paternity action of the common law marriage action.

**ADMONITION**
On May 25, 2009, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.15(d) (Safekeeping Property), 1.15(e) (Safekeeping Property), 5.3(a) (Responsibilities Regarding Nonlawyer Assistants), and 8.4(a) (Misconduct).

*In summary:*
The attorney and partners in the firm acknowledged that Workers Compensation Fund had a lien on settlement proceeds in regards to a case the firm was handling. The case settled and the funds were distributed to the client without paying the Workers Compensation Fund lien. The attorney delegated to a subordinate the assignment of carrying out some of the firm's responsibilities regarding the Workers Compensation Fund claim. No prior notification of settlement was made to the Workers Compensation Fund prior to disbursement. There was a potential dispute regarding the Workers Compensation Fund Claim that the attorney had researched and consulted on with the senior partner. The attorney did not place the settlement funds in safe-keeping until the Workers Compensation Fund claim dispute was resolved.

**ADMONITION**
On May 25, 2009, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.4(a) (Communication), 1.4(b) (Communication), 1.16(d) (Declining or Terminating Representation), and 8.4(a) (Misconduct).

*In summary:*
The attorney accepted representation of a client and entered an appearance on the client's behalf, creating an attorney-client relationship. At the time the attorney entered an appearance, the

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attorney knew that the matter could not be completed if a previously scheduled hearing was not continued. When the attorney's motion for a continuance was not granted, the attorney did not find another attorney to attend the hearing on behalf of the client and the attorney failed to prepare the client to appear pro se at the hearing. Furthermore, the attorney did not keep the client reasonably informed about the status of the case before and after the hearing; failed to attend a second hearing on behalf of the client or withdraw from representation of the client prior to the hearing.

**ADMONITION**

On June 8, 2009, the Vice Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 5.1(a) (Responsibilities of Partners, Managers, and Supervisory Lawyers), 5.1(c) (Responsibilities of Partners, Managers, and Supervisory Lawyers), and 8.4(a) (Misconduct).

*In summary:*

An attorney practiced in a law firm with a partner. The attorney did not exercise sufficient oversight of the partner's use of the firm's trust account. The attorney did not question the amount of the fee the firm received in comparison to the cash payment received by the client. Furthermore, the attorney did not investigate the matter further when he received a letter from counsel for the client disputing the amount of the fee. Instead, the attorney simply relied on the representation of events from the partner.

**ADMONITION**

On June 15, 2009, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 8.1(b) (Bar Admissions and Disciplinary Matters) and 8.4(a) (Misconduct).

*In summary:*

An attorney knowingly failed to respond to the OPC's first request for information after the OPC received a notice of insufficient funds on the attorney's trust account. The attorney's various responses and submissions to the OPC, both written and in testimony, contained several inconsistencies.

**ADMONITION**

On June 15, 2009, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.5(a) (Fees), 1.15(a) (Safekeeping Property), 1.15(c) (Safekeeping Property), 3.2 (Expediting Litigation), and 8.4(a) (Misconduct).

*In summary:*

An attorney was hired to file a Bankruptcy Petition. The attorney was paid advance money to file the Bankruptcy papers. Of the advanced money, part was designated for attorney fees and part was designated to pay the filing fee, according to the attorney's fee agreement. The attorney deposited all the money into the operating account. After receiving payment from the clients, the attorney failed to return calls from the clients and failed to keep them updated regarding their case. The attorney failed to file the Petition for Bankruptcy or any other papers on behalf of the clients. The attorney failed to refund the unearned fees; and the attorney failed to refund the payment for the filing fee that was not incurred; and the attorney failed to turn the file over to the clients or their new attorney.

**ADMONITION**

On June 15, 2009, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 4.2(a) (Communications with Persons Represented by Counsel) and 8.4(a) (Misconduct).

*In summary:*

An attorney was notified that an individual was represented by counsel. The attorney wrote directly to the individual after receiving the notice from the individual's attorney.

**INTERIM SUSPENSION**

On June 8, 2009, the Honorable Joseph C. Fratto, Third Judicial District Court, entered an Order of Interim Suspension Pursuant to Rule 14-519 of the Rules of Lawyer Discipline and Disability, suspending Donald J. Purser from the practice of law pending final disposition of the Complaint filed against him.

*In summary:*

On May 15, 2008, Mr. Purser was found guilty of one count of Sale of Unregistered Security – 3rd Degree Felony, *see* Utah Code Ann. §61-1-7 (2006); *id.* §61-1-21. On October 15, 2008, Mr. Purser was found guilty of one count of Securities Fraud – 2nd Degree Felony, *see id.* §61-1-1; *id.* §61-1-21. The interim suspension is based upon the felony convictions.

**INTERIM SUSPENSION**

On June 8, 2009, the Honorable Robert Faust, Third Judicial District Court, entered an Order of Interim Suspension Pursuant to Rule 14-518 of the Rules of Lawyer Discipline and Disability, suspending Matthew T. Graff from the practice of law pending final disposition of the Complaint filed against him.

*In summary:*

An attorney discipline complaint was filed against Mr. Graff. Subsequent to the filing of the discipline complaint felony criminal charges were filed against Mr. Graff. The attorney discipline complaint allegations are independent of the criminal charges. However, Mr.

Graff's acknowledged that his practice of law pending resolution of the attorney discipline action and the pending criminal charges poses a substantial threat of irreparable harm to the public.

**SUSPENSION**

On July 2, 2009, the Honorable Sandra N. Pueler, Third District Court entered an Order of Discipline: Suspension for six months all but 30 days stayed with probation imposed against Richard Nemelka for violation of Rules 1.7 (Conflict of Interest: Current Clients), 3.3 (Candor Toward the Tribunal), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Nemelka signed his clients' names, notarized the signatures, and filed the documents with the court allowing the court to believe that his clients had actually signed the papers.

Mr. Nemelka filed motions to intervene in two of the underlying cases so that he could pursue collection of his fees while still representing the clients.

The following were aggravating factors: prior record of discipline; pattern of misconduct; multiple offenses; and substantial experience in the practice of law. The following mitigating factors: remorse; absence of a dishonest and selfish motive; good character and reputation.

**PUBLIC REPRIMAND**

On June 15, 2009, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Roy D. Cole for violation of Rules 1.4(a) (Communication), 1.4(b) (Communication), 1.5(a) (Fees), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Cole worked with a nonlawyer assisting clients with immigration cases. Mr. Cole clearly knew that the nonlawyer was not a licensed Utah attorney. Mr. Cole knew he would be supervising the nonlawyer, but failed to adequately explain and communicate that to his clients. Mr. Cole failed to keep his clients adequately informed of what was going on with the case. Mr. Cole failed to provide copies of any documentation to the clients. Mr. Cole failed to explain the scope of the representation to the clients and, based on the various accounts given to the disciplinary authority, the disciplinary authority could not discern what was the actual scope of representation. Mr. Cole failed to provide legal services for the fee he charged his clients. Mr. Cole failed to present any evidence to show that the fee collected was reasonable given the work performed.


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# Attorney Discipline

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Call the Bar's Ethics Hotline at (801) 531-9110 Monday through Friday from 8:00 a.m. to 5:00 p.m. for fast, informal ethics advice. Leave a detailed message describing the problem and within a twenty-four hour workday period a lawyer from the Office of Professional Conduct will give you ethical help about small everyday matters and larger complex issues.

More information about the **Bar's Ethics Hotline** may be found at www.utahbar.org/opc/opc_ethics_hotline.html. Information about the formal Ethics Advisory Opinion process can be found at www.utahbar.org/rules_ops_pols/index_of_opinions.html.

**ADMONITION**
On June 17, 2011, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.5(a) (Fees), 1.7 (Conflict of Interest: Current Clients), 1.16(d) (Declining or Terminating Representation), 5.1(a) (Responsibilities of Partners, Managers, and Supervisory Lawyers), 5.1(b) (Responsibilities of Partners, Managers, and Supervisory Lawyers), and 8.4(a) (Misconduct).

*In summary:*
The attorney concurrently represented three parties in various matters. The attorney failed to fully advise these clients of the current and/or potential conflicts. The attorney failed to obtain signed waivers from the clients. The attorney concurrently represented the parties whereby certain interests and various liabilities were shifted amongst the parties. The attorney subsequently represented one of the parties in an action brought by creditors wherein one of the other parties was a party. The first client had a valid cross-claim against the second client which the attorney failed to advise the first client of or assert in the action. These actions likely impaired the attorney's ability to effectively represent the parties. The attorney failed to provide the parties files in a timely matter. The attorney's associate violated Rule 1.7 and the attorney knew about the conduct based on the motions filed or otherwise ratified the conduct through his billing or otherwise. The attorney was aware that the associate was representing concurrently two of the parties even though their interests were adverse. The Bankruptcy Trustee recognized this conflict at the meeting of the creditors and disallowed the attorney's firm from further representation of the party. The attorney failed to submit fees for the bankruptcy court's approval and said fees were for another client and/or for unrelated matters.

*Mitigating factors:* Lack of prior discipline; lack of any dishonest motive; the attorney has since handed over all the files requested; recognition and remorse for his conduct.

**PUBLIC REPRIMAND**
On June 20, 2011, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Donald W. Winters for violation of Rules 1.3 (Diligence), 1.4 (Communication), 1.15(d) (Safekeeping Property), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Winters failed to respond to requests for admissions that were served on a client, which subsequently resulted in a judgment against the client. Mr. Winters failed to reasonably consult with the client to keep the client informed regarding the status of the case and to consult with the client regarding the case. Mr. Winters failed to provide an accounting of how the fees were allocated.

*Aggravating factors:* Prior record of discipline.

**PUBLIC REPRIMAND**
On June 20, 2011, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Donald W. Winters for violation of Rules 1.4(a) (Communication), 1.15(d) (Safekeeping Property), 1.16(d) (Declining or Terminating Representation), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Winters failed to reasonably consult with his client regarding the client's objectives and the means to accomplish the same. Mr. Winters failed to keep the client reasonably informed about the status of the matter. Mr. Winters failed to notify the client of a hearing on temporary orders. Mr. Winters failed to respond to his client's phone calls or otherwise keep the client apprised regarding the status of the case. Mr. Winters failed to account for unearned fees. Mr. Winters failed to surrender papers and property to the client. Mr. Winters failed to timely respond to the Notice of Informal Complaint.

*Aggravating factors:* Prior record of discipline; prior pattern of misconduct; and obstruction of the disciplinary procedure.

**PUBLIC REPRIMAND**
On June 20, 2011, the Honorable John Paul Anderson, Third District Court entered an Order of Discipline: Public Reprimand against Jeffrey E. Slack, for violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.4(a) (Communication), 1.5(a) (Fees), and

8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary there are two matters:*
Mr. Slack was appointed to represent a client in a criminal matter in District Court. A bench trial was continued as Mr. Slack was unavailable. The client notified Mr. Slack's office that he would be out of state and unable to appear at the trial. On the day of trial, Mr. Slack appeared and notified the Court that his client would not appear but failed to provide an adequate excuse for his client's non appearance. As a result of the client's failure to appear at the trial, a warrant was issued. The client became aware of the warrant and contacted Mr. Slack's office. Mr. Slack told the client that he would have the warrant recalled, but was not successful. The client asked Mr. Slack for advice because the client had a court date in a separate matter and did not want to be arrested when he appeared in Court. Mr. Slack advised the client that it was doubtful that he would be arrested on the warrant while appearing in another Court. The client was arrested and booked on the warrant when the client appeared in Court in the other matter. The client's criminal matter was set for another trial. Prior to the trial, the client contacted Mr. Slack's office to tell him that the client had a witness that needed to appear at the trial. Mr. Slack did not contact the witness or subpoena the witness for trial.

Even though Mr. Slack had not personally spoken to his client about his appearance at trial, Mr. Slack filed a motion to continue. The bench trial was continued. Mr. Slack failed to contact the client to tell him that he had continued the trial date.

In the second matter, Mr. Slack was hired to draft separation papers to be used privately, but not to be filed with the Court. The client agreed to pay Mr. Slack for preparation of the separation papers. The client went to Mr. Slack's office to review the papers and make changes. Mr. Slack filed the client's separation papers with the Court. After the client became aware of the filing the client contacted Mr. Slack and told him to have the papers withdrawn from the public record. Mr. Slack filed a Motion to Withdraw as Counsel. Mr. Slack served the motion to withdraw on the client's spouse. Mr. Slack filed a motion to dismiss with prejudice. The judge signed an order to dismiss without prejudice. Although the case was dismissed, the papers filed remain public records. At no time did Mr. Slack petition the court to seal the file. Mr. Slack billed the client for the drafting and filing the separation papers. The client confronted Mr. Slack about the bill and was told that she would not need to pay, however the client received a bill from Mr. Slack indicating that if she did not make the payment the bill would be sent to collections. The client paid the bill in full.

**RECIPROCAL DISCIPLINE**
On June 13, 2011, the Honorable Glenn K. Iwasaki, Third Judicial District Court entered an Order of Discipline: Public Reprimand against Mitchell R. Barker for violation of Rules 5.5(a) (Unauthorized Practice of Law; Multijurisdictional Practice of Law), 8.1(a) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct. This was a reciprocal discipline order based upon an Order from the Supreme Court of Oregon ("Court").

*In summary:*
Mr. Barker was suspended from practice in Oregon for failing to comply with his continuing legal education requirements. Mr. Barker filed an appearance as counsel of record for a client in Clatsop County Circuit Court. For several months, Mr. Barker appeared on behalf of and represented the client in a legal matter in Clatsop County, Oregon. On two separate occasions, Disciplinary Counsel's Office ("DCO") requested that Mr. Barker respond to allegations that he represented his client in Oregon during a time when he was suspended from the practice of law in Oregon. In response to inquiries from DCO, Mr. Barker made representations about his involvement with the client. Although Mr. Barker was assisting the law firm in representing the client, and had never met or spoken with he client, he was aware that he had filed a notice of representation and other pleadings on the client's behalf, and had negotiated with the district attorney in that matter. Accordingly, the Supreme Court in Oregon determined that Mr. Barker's representations to DCO that he was only tangentially involved in the client's case were incomplete and inaccurate disclosures.

*Mitigating factors:* Personal or emotional problems.


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## Notice of Stay of Suspension

By Order of the Third Judicial District Court in *In the Matter of the Discipline of Marsha M. Lang,* Case No. 010910847, the Honorable Robert K. Hilder presiding, Marsha Lang's twelve-month suspension beginning May 1, 2005 has been stayed, as of August 1, 2005. For a period of nine months, Ms. Lang's practice of law is under the supervision of attorney Gary R. Howe.

## Utah Attorney Swims English Channel

Richard Barnes, a Utah attorney, has accomplished something no other Utahn has done before. On August 6, 2005 he swam the English Channel. The swim from England to France was completed in sixteen hours and forty-three minutes.

Known as the "Mount Everest" of swimming because of its difficulty, the English Channel is 21 miles straight across, but because of the very strong currents, tides, and weather conditions, swimmers must swim much further than that. Richard Barnes' swim was approximately 36 miles.

*Richard Barnesand his wife, Darcee, overlooking the white cliffs at Dover and the English Channel.*

Richard entered an elite group of swimmers who have successfully made the crossing. Out of thousands of attempts, only approximately 680 people have completed the swim, less than half of the number of people who have climbed Mr. Everest.

The English Channel is known as the most difficult open water swim because of the extreme cold water, averaging only 60 degrees at its warmest season. Other obstacles are jellyfish stings, strong currents, and six-foot swells, not to mention the occasional passing freighter creating even larger waves. It is one of the busiest shipping lanes in the world with 600 tankers passing through and 200 ferries and other vessels going across daily.

In order to be officially recognized by the Channel Swimming Association, swimmers are not allowed to wear a wet suit or anything that will aid in buoyancy or thermal protection. The only exception is that swimmers are allowed to apply "Channel Grease" (a mixture of Vaseline and lanolin) before the swim.

Mr. Barnes has been practicing law for five years and works as an insurance defense attorney for Paul H. Matthews & Associates, P.C.

# *Discipline Corner*

**SUSPENSION**

On November 29, 2004, the Honorable Derek Pullan, Fourth Judicial District Court, entered Findings of Fact, Conclusions of Law, Ruling and Order of Suspension: Three Years suspending Daniel D. Heaton for a period of three years, effective October 20, 2004, for violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.4(a) (Communication), 1.5(a) (Fees), 1.5(b) (Fees), 1.15(b) (Safekeeping Property), 1.16(d) (Declining or Terminating Representation), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4 (a) and (c) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Heaton was retained to represented a client in a bankruptcy matter. The client and the creditors attempted to contact Mr. Heaton for three months without success. Mr. Heaton filed the client's bankruptcy six months later, and then failed to attend the creditors' meeting. In another matter, Mr. Heaton was retained to handle an expungement of records. Four months had passed when the client called Mr. Heaton to check on the progress of the case. Two months later Mr. Heaton informed the client he had misplaced the file but would refund the client's fees and assured the client he would attend to the matter promptly. Mr. Heaton refunded half of the fee to the client and kept half of the fee for the remaining paperwork. The client attempted to contact Mr. Heaton thereafter without success. In a third matter, Mr. Heaton was retained to represent a client in a bankruptcy matter. The client paid Mr. Heaton's attorney's fees but when the client attempted to contact Mr. Heaton, he had vanished. Mr. Heaton failed to timely respond to the OPC's requests for information in all three matters. In a fourth matter, Mr. Heaton engaged in the unauthorized practice of law by assisting a client in a lawsuit while placed on administrative suspension for failure to pay his Bar dues to the Utah State Bar.

Mitigating factors include: no prior disciplinary record; substantial personal or emotional problems; willingness to make full restitution; affected by an impairment or disability for which Mr. Heaton sought and completed treatment.

**PUBLIC REPRIMAND**

On January 31, 2005, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against S. Austin Johnson for violation of Rules 1.2 (Scope of Representation), 1.3 (Diligence), 1.4(a) (Communication), 1.5(a) (Fees), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Johnson was retained by a client in an immigration matter. The client instructed Mr. Johnson not to apply for a TN visa because the client wanted permanent residency. Mr. Johnson sent the client an engagement letter stating that he would pursue and conduct research on a TN visa. The client communicated the discrepancy, but Mr. Johnson did nothing to rectify the error. Mr. Johnson missed a deadline for filing an application for an H-1B visa. The draft documents for the H-1B visa were sent to the client for approval after the deadline. Mr. Johnson did not keep his client reasonably informed of the status of the matter and did not promptly comply with requests for information. Mr. Johnson charged the client for research on a TN visa when he was specifically instructed not to pursue that visa and he failed to complete the entire application.

Aggravating factors include: Mr. Johnson failed to appear at the Screening Panel hearing pursuant to Rule 32 of the Rules of Lawyer Discipline and Disability; Mr. Johnson refuses to acknowledge the wrongful nature of the misconduct involved; Mr. Johnson lacked a good faith effort to rectify the consequences of the misconduct, in particular conducting and billing for the TN visa research; failure to communicate with the client in a reasonable manner and instead, continued to make demands throughout this proceeding for work that was not requested; and Mr. Johnson failed to resolve/communicate, and instead made demands through this proceeding that the client owed him for the TN application, which was not requested and not done.

**ADMONITION**

On January 19, 2005, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.3 (Diligence), 1.4(b) (Communication), 1.16(d) (Declining or Terminating Representation), 5.3 (Responsibilities Regarding Nonlawyer Assistants), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

An attorney was retained to represent a client in a divorce matter. The client requested that the attorney communicate the status of

the case through the client's parent. The attorney did not follow up on requests and questions and failed to effectively communicate with the client's parent. The attorney also failed to supervise the attorney's secretary regarding client contact and failed to timely return the client's file.

**ADMONITION**

On January 19, 2005, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.5(a) (Fees), 1.16(d) (Declining or Terminating Representation), 8.1(a) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

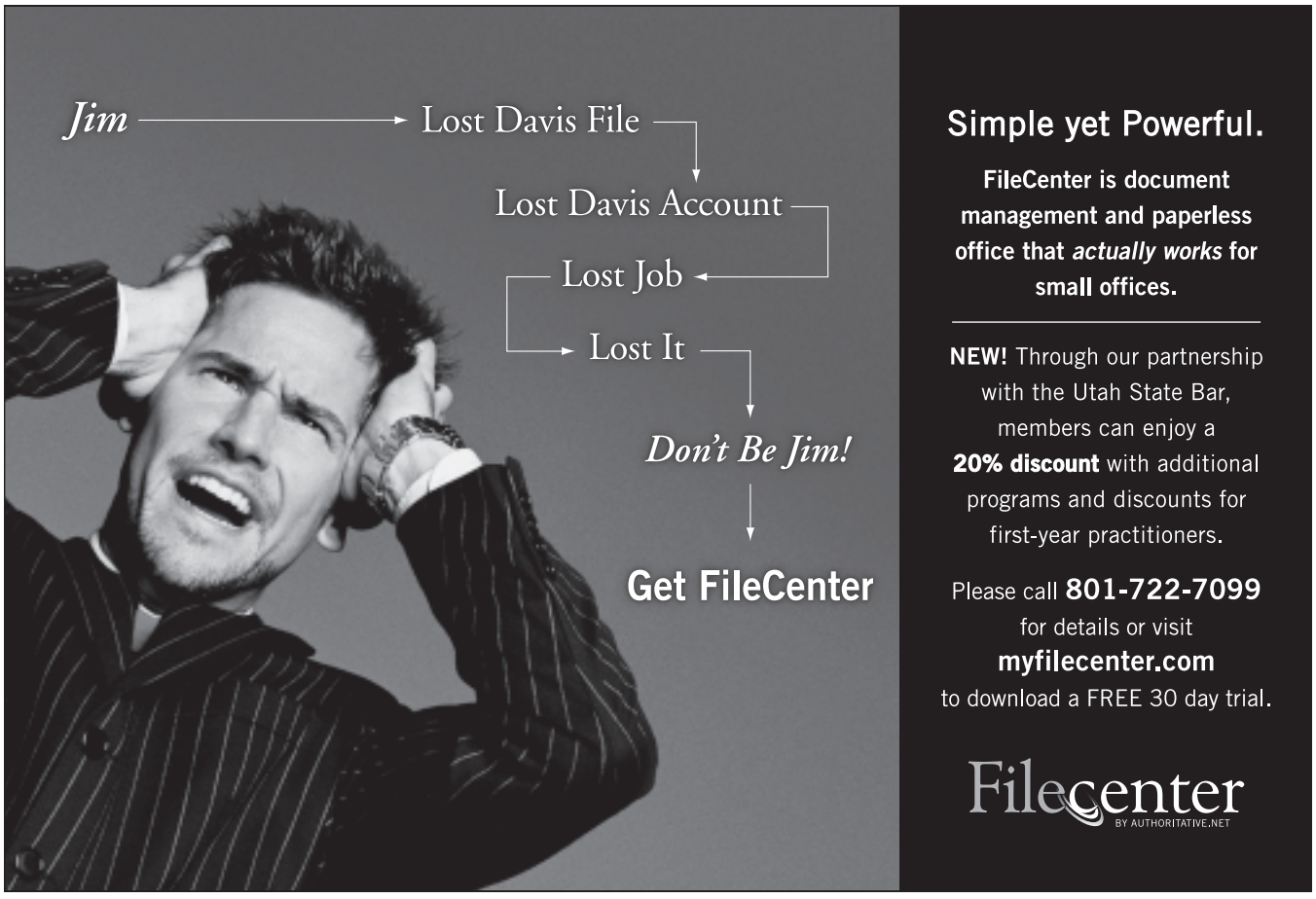
An attorney was retained to represent a client in two cases. The client terminated the attorney's services before the work was concluded and requested a refund of attorney's fees. The attorney filed a motion to withdraw from both cases. The scope of the trial did not justify the extent of the preparation the attorney claimed. The attorney refused to refund any portion of the fees. The attorney testified to the Screening Panel of the Ethics and Discipline Committee of the Utah Supreme Court that the client only requested that the attorney withdraw from one case when the attorney had filed motions to withdraw from both pending cases on the same day.

**ADMONITION**

On January 20, 2005, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

An attorney was retained to represent two clients in a lawsuit but the attorney did little or nothing to pursue the clients' case



until about eight months after being retained. The attorney did not understand the outstanding obligations when retained and failed to respond to outstanding discovery requests served upon the clients' former attorney. The attorney also failed to pursue a new stipulated discovery plan with opposing counsel and failed to file a notice of withdrawal when the attorney ceased representation. The attorney did not respond to the clients' attempts to communicate with the attorney and did not communicate the attorney's change of business location to the clients. The attorney did not respond to the Office of Professional Conduct's requests for information.

Mitigating factor included: No prior record of discipline.

**ADMONITION**

On January 24, 2005, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.15(a) (Safekeeping Property) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

An attorney drew a check for the interest from the attorney's IOLTA account to the Utah Bar Foundation. The attorney authorized the firm's bookkeeper to write off the non-negotiated IOLTA check and write a new check against the trust account to transfer the interest to the firm's operating account based on the misunderstanding that the money belonged to the firm. Later, the Utah Bar Foundation negotiated the check for IOLTA interest rendering the attorney's trust account overdrawn. Upon receipt of the overdraft notice the firm transferred the funds from its operating account to the trust account to cover the overdraft.

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# *Discipline Corner*

**ADMONITION**

On April 12, 2005, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 5.5(a) (Unauthorized Practice of Law) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

An attorney was administratively suspended for failure to comply with Mandatory Continuing Legal Education requirements. During the administrative suspension the attorney represented and/or gave legal advice to existing and prospective clients.

**PUBLIC REPRIMAND**

On April 11, 2005, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Larry B. Larsen for violation of Rules 1.3 (Diligence), 1.4(a) and (b) (Communication), 1.16(d) (Declining or Terminating Representation), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Larsen was retained to represent a client in a divorce case. The client moved out of state. Thereafter, Mr. Larsen received discovery requests and did not make reasonable efforts to work with his client to respond to discovery. Mr. Larsen failed to keep his client informed of the case status and failed to explain the proceedings to the extent that his client could participate accordingly. A default judgment was entered in the case because of the client's failure to comply with a prior discovery order. Mr. Larsen was allowed to withdraw, but failed to inform his client that he had withdrawn and the default divorce decree was entered.

**RESIGNATION WITH DISCIPLINE PENDING**

On April 12, 2005, the Honorable Christine M. Durham, Chief Justice, Utah Supreme Court, entered an Order Accepting Resignation with Discipline Pending concerning Jay W. Taylor.

*In summary:*

Mr. Taylor presented or caused three checks to be presented to his bank on his attorney trust account at a time when the account


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held insufficient funds for the bank to honor the check. Mr. Taylor failed to respond to the Office of Professional Conduct's lawful demands for information. Without a response and/or explanation from Mr. Taylor, the overdrafts presumptively evidence misappropriation of client money. In another matter, Mr. Taylor was hired by a family to initiate guardianship proceedings for one of the parents. Mr. Taylor agreed to provide legal services. There was no written fee agreement. The family also hired Mr. Taylor to probate the estate of the parents. Again Mr. Taylor agreed to provide legal services and there was no written fee agreement. The family made repeated requests for an accounting. After an approximate two and a half year period, Mr. Taylor provided that accounting. However, in a resolution of a civil suit brought by the family against Mr. Taylor, Mr. Taylor acknowledged that he kept money to which he was not entitled.

**ADMONITION**

On April 28, 2005, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.1 (Competence), 1.15(a) and (b) (Safekeeping Property), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

An attorney represented a client in a contractual dispute over a house mortgage. The attorney did not structure the transaction in order for the debt to be kept current, there was no Trust Deed Note, and the attorney knew that the amount being paid was not enough to keep the debt current. The attorney did not competently represent the client, thereby causing loss of money to the opposing party, and exposing the client to potential liability. The attorney did not maintain funds the attorney received for the debt in an attorney trust account. The attorney never produced an accounting of the funds despite requests to do so.

**PUBLIC REPRIMAND**

On April 8, 2005, the Honorable Bruce Lubeck, Third Judicial District Court, entered Findings of Fact, Conclusions of Law, and Order of Discipline: Public Reprimand against Victor Lawrence for violations of Rules 1.1 (Competence), 1.3 (Diligence), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Lawrence was retained to represent a client in a divorce modification matter in which the client had been served with an

Order to Show Cause. Mr. Lawrence miscalendared the date the response was due, and a default was entered against his client. Mr. Lawrence moved to set aside the default within the period set by the rules, but it could have been filed much sooner. Mr. Lawrence did not submit a reply memorandum, and did not promptly file a notice to submit for decision the motion to set aside the default. Although none of these constitute per se violations of the Rules, Mr. Lawrence's failure to respond, his failure to enter an appearance of counsel to more fully protect his client, and the timely-yet-dilatory filing of the motion to set aside all combine to amount to negligent conduct in being less than diligent and competent.

**PUBLIC REPRIMAND**

On April 28, 2005, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Edward Brass for violation of Rules 1.1 (Competence), 1.3 (Diligence), 3.2 (Expediting Litigation), 8.1(b) (Bar Admission and Disciplinary Matters), 8.4(d) (Misconduct), and 8.4(a) (Misconduct).

*In summary:*

Mr. Brass was appointed to represent a client in a state post-conviction case. Mr. Brass failed to provide competent legal representation; failed to perform timely and meaningful legal services; failed to respond to discovery requests, missed court deadlines, sought continuances and then missed deadlines, and caused the litigation to stall; failed to respond in a timely manner to the Office of Professional Conduct's Notice of Informal Complaint; and failed to perform meaningful and timely legal services for his client, thereby wasting court resources and causing egregious delays in the case.

**ADMONITION**

On May 2, 2005, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.1 (Competence), 1.3 (Diligence), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

An attorney was retained to represent a husband and wife in an immigration case. At an immigration hearing, the judge advised the attorney to file required documents. The attorney gave incompetent legal advice to the clients, delaying the filing of the required documents. The attorney also incorrectly advised the

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clients concerning immigration fines and prematurely advised the husband that the husband could file for a work permit.

**SUSPENSION**

On March 29, 2005, the Honorable Robert K. Hilder, Third Judicial District Court, entered a Ruling and Order re: Sanctions, suspending Marsha M. Lang from the practice of law for a period of twelve months commencing May 15, 2005 for violations of Rules 1.3 (Diligence), 1.4(a) and (b) (Communication), 8.1(b) (Bar Admission and Disciplinary Matters), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

The court's decision was based upon Ms. Lang's misconduct in four separate matters.

Ms. Lang represented a client, during the course of which she failed to forward to opposing counsel income verification provided by her client; failed to promptly and thoroughly investigate or correct any failure to safeguard and forward such documentation in her possession; and failed to diligently represent the client at a contempt hearing. Ms. Lang also failed to advise her client sufficiently to allow him to make informed decisions concerning the representation.

In another matter, Ms. Lang failed to inform a client regarding the case status for a prolonged time, and failed to respond to numerous requests for information or to return telephone calls. Ms. Lang's failure to respond for extended periods hampered the client's ability to make informed decisions to protect the client's interests.

In a third matter, Ms. Lang's conduct during a deposition was prejudicial to the administration of justice.

In the fourth matter, Ms. Lang represented a client but engaged in repeated delay, non-responsiveness, and failed to follow through effectively. Ms. Lang also failed to respond to the client, and to generally communicate the status of the matter; and failed to provide sufficient communication to allow the client to make informed decisions. Ms. Lang also failed to respond to a request from the Office of Professional Conduct, and responded late to a Notice of Informal Complaint.

The court considered various factors in aggravation and mitigation and determined that the aggravation outweighed the mitigation. The court also permitted Ms. Lang to petition the court to reduce the duration of the suspension, provided that she submit her practice to the supervision of an attorney approved by the court.


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**DISBARMENT**

On April 19, 2005, the Honorable Timothy R. Hanson, Third Judicial District Court, entered Findings of Fact, Conclusions of Law, and Judgment of Disbarment, disbarring M. Shane Smith from the practice of law for violations of Rules 1.1 (Competence), 1.2(a) (Scope of Representation), 1.3 (Diligence), 1.4(a) (Communication), 1.5(a) (Fees), 1.15(b) (Safekeeping Property), 1.15(c) (Safekeeping Property), 1.16(d) (Declining or Terminating Representation), 3.2 (Expediting Litigation), 8.1(b) (Bar Admission and Disciplinary Matters), 8.4(c) (Misconduct), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

The court's decision was based upon Mr. Smith's misconduct in nine separate matters.

Mr. Smith was retained by an agency in a collections matter. Mr. Smith failed to provide competent representation in that he failed to file a Complaint, failed to keep the agency reasonably informed concerning the case status and failed to respond to its reasonable requests for information. Mr. Smith abandoned the representation, and did not take the steps reasonably necessary to protect the agency. Mr. Smith did not return the unearned portion of the retainer and charged an excessive fee. Mr. Smith failed to respond to the Office of Professional Conduct's Notice of Informal Complaint.

In a second matter, Mr. Smith failed to forward a check, as directed by his client, resulting in his client paying late fees. After the client terminated the representation, Mr. Smith failed to return the file. Mr. Smith failed to respond to the Notice of Informal Complaint.

In a third matter, Mr. Smith was to draft and send a letter informing an entity of his client's intent to file a lawsuit. The letter did not accurately reflect his client's claims and was sent to the wrong entity. The client learned from the entity's employees that Mr. Smith was filing on the client's behalf. Mr. Smith did not file the lawuit in a timely fashion, failed to keep his client reasonably informed about the status of the case, and failed to respond to reasonable requests for information. Mr. Smith did not provide meaningful services and abandoned the representation without taking steps to the extent necessary to protect his client. Mr. Smith failed to respond to the Notice of Informal Complaint.

In a fourth matter, Mr. Smith represented a client in an estate probate matter. Mr. Smith failed to perform meaningful work on behalf of his client, failed to keep his client reasonably informed of the status of the case and failed to respond to reasonable requests for information. Mr. Smith failed to respond to the Notice of Informal Complaint.

In a fifth matter, Mr. Smith failed to complete the matter for which he was hired. He failed to provide competent representation and failed to act with reasonable diligence. He failed to keep his client reasonably informed of the status of the case and failed to comply with reasonable requests for information. The client requested an accounting, but Mr. Smith failed to provide one. Mr. Smith failed to return the file and unearned portion of the retainer. Mr. Smith failed to respond to the Notice of Informal Complaint.

In a sixth matter, Mr. Smith was hired to file a lawsuit against an insurance agency. Mr. Smith's work in the case contained many errors and he failed to provide competent representation. Mr. Smith failed to provide an accounting to the client, and failed to return the client's file and return the unearned portion of the retainer fee. Mr. Smith failed to withdraw from the case even after the client requested that he do so. Mr. Smith failed to respond to the Notice of Informal Complaint.

In a seventh matter, Mr. Smith was retained to represent a client in a medical malpractice lawsuit. Mr. Smith failed to respond to three sets of interrogatories and failed to respond in opposition to motions from the opposing party seeking orders to compel the client's cooperation. The court entered an order to compel, and Mr. Smith still failed to respond on behalf of his client. The action was dismissed with prejudice. Mr. Smith failed to oppose the dismissal. Mr. Smith failed to inform his client of the status of the case and misrepresented to his client that the case was progressing. Mr. Smith did not inform his client of the dismissal until a later date and he told his client that he would file a motion to set aside the dismissal, but failed to do so. Mr. Smith failed to respond to the Notice of Informal Complaint.

In an eighth matter, Mr. Smith abandoned the representation without taking the necessary steps to protect his client. He failed to returned unearned portions of the retainer. The fee agreement Mr. Smith entered into with his client provided that the client could not get the file back until the client paid the bill in full. Mr. Smith failed to appear at the Screening Panel hearing.

In a ninth matter, Mr. Smith was hired to protect his clients' interest in a piece of real property. The clients gave Mr. Smith power of attorney and specific instructions, but he failed to abide by those instructions. Mr. Smith failed to act with reasonable diligence and promptness in representing his clients, failed to keep them reasonably informed concerning the status of the case, and did not comply with their requests for information. Mr. Smith entered into a business transaction with his clients without taking the necessary steps to safeguard their interests. The proceeds amount was significantly less than what Mr. Smith told his clients, and he failed to provide an accounting for the remainder. Mr. Smith failed to respond to the Notice of Informal Complaint.

# *Discipline Corner*

**ADMONITION**

On September 20, 2005, the Chair of the Ethics and Discipline Committee entered an Order of Discipline: Admonition against an attorney for violations of Rules 1.2(a) (Scope of Representation), 1.3 (Diligence), 1.4(a) (Communication), and 1.4(b) (Communication) of the Rules of Professional Conduct.

*In summary:*
The attorney failed to meet with the client prior to filing bankruptcy on behalf of the client. The attorney failed to review the petition and failed to correct the contact information for the client before filing it with the court. The attorney failed to communicate with the client and failed to explain the bankruptcy process to the client.

**ADMONITION**

On September 15, 2005, the Chair of the Ethics and Discipline Committee entered an Order of Discipline: Admonition against an attorney for violations of Rules 1.15(b) (Safekeeping Property) and 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

*In summary:*
The attorney did not provide an accounting to another attorney representing a clinic after a lien had been placed on monies earned from a lawsuit. The attorney also failed to respond to the Office of Professional Conduct's Notice of Informal Complaint.

**DISBARMENT**

On October 21, 2005, the Honorable Robert K. Hilder, Third Judicial District Court, entered Findings of Fact, Conclusions of Law, and Order of Disbarment, disbarring David J. Burns from the practice of law for violations of Rules 1.15(a) (Safekeeping Property), 1.15(b) (Safekeeping Property), 1.15(c) (Safekeeping Property), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
While employed at a law firm, Mr. Burns directed two clients on three occasions to make payments directly to him. Once payment was received, Mr. Burns either wrote off the payment amount or issued a courtesy discount on the firm's billings for the clients. The firm discovered the missing funds based on information

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from Mr. Burns's wife at the time. By diverting funds, Mr. Burns knowingly misappropriated law firm funds by depositing the money into his own personal account. This diversion of funds also resulted in commingling his funds with law firm funds. Mr. Burns failed to notify the firm of the receipt of the funds. At best, based on a claim by Mr. Burns that funds were disputed, he failed to keep the funds separate from his own while the funds were in dispute.

**SUSPENSION**

On October 13, 2005, the Honorable Lyle R. Anderson, Fifth Judicial District Court, entered an Order of Discipline: Suspension suspending Harold J. Dent from the practice of law for six months and one day for violations of Rules 1.5(b) (Fees), 1.7(b) (Conflict of Interest: General Rule), 1.8(a), (b), and (g) (Conflict of Interest: Prohibited Transactions), 1.9(b) (Conflict of Interest: Former Client), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Dent was hired to represent a couple in two different matters, a criminal matter and a juvenile court case that stemmed from the criminal matter. The representations were adverse to each other. One of the spouses subsequently hired Mr. Dent for a divorce action and information relating to the criminal matter was used to the detriment of the opposing spouse in the divorce. Mr. Dent did not consult with or obtain the opposing spouse's consent prior to his representation in the divorce action. Mr. Dent took over the operation of a small business owned by the spouse he represented in the divorce. Mr. Dent did not advise the client to seek independent counsel before turning over the business to him. The client eventually sought counsel and Mr. Dent entered into an agreement making him personally liable on a promissory note and the business debt. Mr. Dent defaulted on the note and the client sued him; the court awarded the client judgment on the note, possession of the collateral, and attorney's fees, but Mr. Dent filed for bankruptcy.

**PUBLIC REPRIMAND**

On November 4, 2005, the Chair of the Ethics and Discipline Committee entered an Order of Discipline: Public Reprimand against Edwin B. Parry for violations of Rules 3.1 (Meritorious Claims and Contentions), 3.3(a) (Candor Toward the Tribunal), 4.4 (Respect for Rights of Third Persons), 5.3(b) (Responsibilities Regarding Nonlawyer Assistants), 8.1(b) (Bar Admissions and Disciplinary Matters), and 8.4(a) (Misconduct).

*In summary:*
While negotiating a settlement with the opposing counsel, Mr. Parry obtained a default judgment. Mr. Parry later obtained a second default judgment when it was not warranted under the facts of the case. Mr. Parry filed an affidavit in support of the request for the second default judgment without making any inquiry into opposing counsel's direct communications to him which would have indicated that the statements in the affidavit were false. Mr. Parry completely ignored communications from opposing counsel not only before he filed the affidavit, but after filing it and before a hearing to set aside the default judgment. The affidavit that was filed was signed by another attorney although it listed Mr. Parry's name. Mr. Parry failed to review the factual basis of the affidavit that was prepared by a non-attorney and he failed to ensure that the signing attorney reviewed the factual basis and had personal knowledge of the affidavit. The affidavit gave the impression that it was based on Mr. Parry's personal knowledge when it was not. Mr. Parry failed to respond to the Office of Professional Conduct's requests for information. Mr. Parry made a false statement to a Screening Panel of the Ethics and Discipline Committee, although he corrected it, concerning whether he maintains a list of attorneys to whom he will speak. Mr. Parry has made no attempt to rectify the defendant's credit report regarding the two default judgments.

**RESIGNATION WITH DISCIPLINE PENDING**
On November 9, 2005, the Honorable Christine M. Durham, Chief Justice, Utah Supreme Court, entered an Order Accepting Resignation with Discipline Pending concerning Dale Hatch.

*In summary:*
Mr. Hatch, while serving as Deputy Executive Director of the Utah Education Savings Plan, withdrew funds from accounts that he controlled, and deposited those funds into a personal account. On March 18, 2005, Mr. Hatch pled guilty to a single charge of theft, second degree felony, in violation of Utah Code Title 76, Chapter 6, section 404.

**INTERIM SUSPENSION**
On October 26, 2005, the Honorable Deno G. Himonas, Third Judicial District Court, entered an Order of Interim Suspension, suspending Kevan C. Eyre from the practice of law pending final disposition of the Complaint filed against him.

*In summary:*
On June 3, 2005, Mr. Eyre was found guilty of six counts of failing to render a proper tax return, Utah Code section 76-8-1011(1)(c)(i), a third-degree felony; and six counts of intent to defeat the payment of a tax, Utah Code section 76-8-1101(1)(d)(i), a second degree felony. The interim suspension is based upon this conviction pursuant to Rule 19 of the Rules of Lawyer Discipline and Disability.

**INTERIM SUSPENSION**
On November 9, 2005, the Honorable Anthony B. Quinn, Third Judicial District Court, entered an Order of Interim Suspension, suspending Howard Johnson from the practice of law pending final disposition of the Complaint filed against him.

*In summary:*
On March 4, 2005, Mr. Johnson was convicted of one count of Unlawful Sexual Activity with a Minor, Utah Code section 76-5-401, a third-degree felony; and one count of Enticing a Minor Over the Internet, Utah Code section 76-4-401, a class-A misdemeanor. The interim suspension is based upon this conviction pursuant to Rule 19 of the Rules of Lawyer Discipline and Disability.

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# *Discipline Corner*

**PUBLIC REPRIMAND**

On August 10, 2004, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court publicly reprimanded Brent R. Chipman for violation of Rules 1.3 (Diligence), 1.5(b) (Fees), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Chipman was retained to represent a client in a divorce case. Mr. Chipman did not communicate the rate or basis of his fee in writing to the client. Mr. Chipman agreed to prepare a Qualified Domestic Relations Order ("QDRO") for the client. Mr. Chipman failed to complete the QDRO despite numerous requests from the client over a two year period to complete the work.

**SUSPENSION**

On August 10, 2004, the Honorable Anthony Quinn, Third Judicial District Court entered an Order of Suspension: Six Months and One Day Suspension, suspending Sheryl L. Gardner Bunker from the practice of law for violation of Rules 1.1 (Competence), 1.7(a) (Conflict of Interest: General Rule), 3.3(d) (Candor Toward the Tribunal), 3.4 (Fairness to Opposing Party and Counsel), 3.7 (Lawyer as a Witness), and 8.4(a) and (d) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Ms. Bunker answered questions about divorce, court procedures, and the legal process posed by both parties in a divorce proceeding. She also gave both parties copies of Utah laws dealing with divorce. After the divorce case had been initiated, the district court disqualified Ms. Bunker from appearing as counsel for one of the parties because Ms. Bunker was a witness on substantive issues. Ms. Bunker continued to assist one of the parties by helping type pleadings, lending forms and sample pleadings, and discussing legal options and procedures.

In the same case, Ms. Bunker later filed a Motion for Protective Order and for Attorney Fees on behalf of two officers of one of her corporate clients. Ms. Bunker did not consult with and obtain a written waiver of conflicts of interest from the relevant parties. The Motion for Protective Order concerned depositions sought by one of the parties to the divorce. In connection with the motion, Ms. Bunker assisted one of the officers in blacking out relevant portions of documentary evidence and filed it with an affidavit in support of the motion. Although Ms. Bunker attempted to serve notice of the motion on opposing counsel, service was not successful. The presiding judge for the district court heard Ms. Bunker's Motion for Protective Order in the absence of the judge assigned to the case. Ms. Bunker did not inform the presiding judge what information had been blacked out in the redacted documentary evidence when she obtained an ex parte order from the judge vacating the witnesses' scheduled deposition.

**PROBATION**

On August 3, 2004, the Honorable J. Dennis Frederick, Third Judicial District Court entered an Order of Discipline: Probation, placing Annalisa A. Steggell on probation for a period of one year. The Office of Professional Conduct ("OPC") alleged violations of Rules 4.3(b) (Dealing with Unrepresented Party), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Ms. Steggell represented a client in a divorce case. The client's spouse claimed that Ms. Steggell represented that she was a neutral party who would act as a mediator during the divorce proceedings and made no effort to correct the spouse's misunderstanding. The spouse was unrepresented. Ms. Steggell failed to respond to the OPC's reasonable requests for information or attend the Utah Supreme Court's Ethics and Discipline Committee's Screening Panel Hearing.

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# Discipline Corner

***PLEASE NOTE:*** *The* Bar Journal *has been requested to clarify that the Charles C. Brown whose disciplinary action was reported in the November edition is not lawyer and former Bar President Charles R. Brown of the law firm of Clyde, Snow, Sessions and Swenson.*

**INTERIM SUSPENSION**

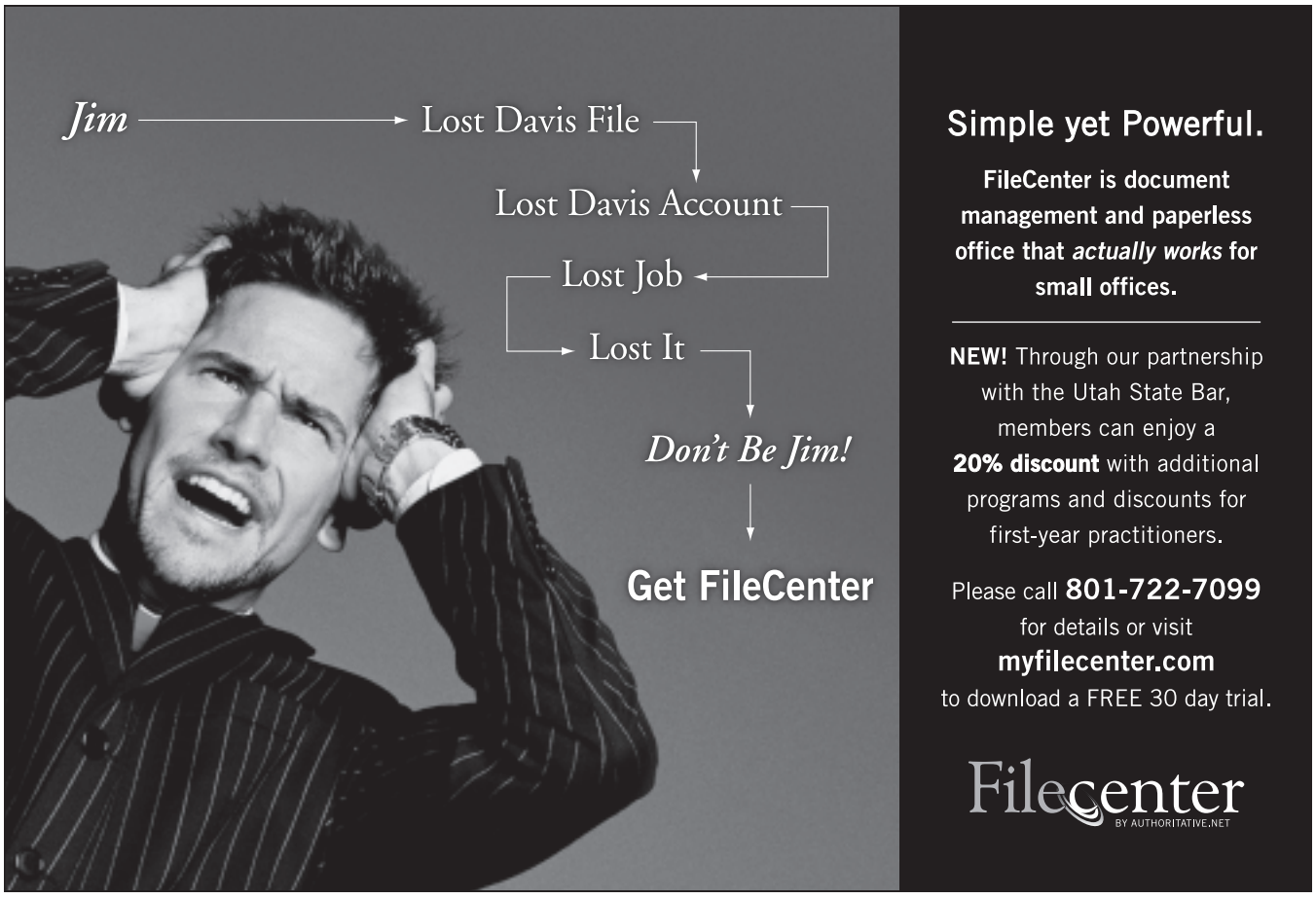
On December 13, 2004, the Honorable Joseph C. Fratto, Jr., Third Judicial District Court, entered an Order of Interim Suspension Pursuant to Rule 18 of the Rules of Lawyer Discipline and Disability immediately suspending Geoffrey L. Clark from the practice of law in Utah pending final disposition of the disciplinary complaints against him.

*In summary:*

On November 19, 2004, criminal charges were filed against Mr. Clark on two felony counts, i.e. distribution of or arranging to distribute a controlled substance and possession and possession or use of a controlled substance (Prior). Subsequent to this, on November 20, 2004, another felony charge of making false or inconsistent statements was filed against Mr. Clark.

On March 18, 2004, Mr. Clark had been previously convicted of the criminal misdemeanor charges of interfering with a legal arrest, driving with measurable controlled substance, possession of a controlled substance without container, and driving on revocation. And, on June 21, 2004, Mr. Clark pled guilty in justice court to charges of speeding and driving on a suspended license.

Mr. Clark does not in any way admit that he has committed the crimes which are the basis of the pending criminal charges against him. However, given the totality of the circumstances, Mr. Clark did not contest the Court's entry of the Rule 18 order.



**RECIPROCAL DISCIPLINE**

On November 4, 2004, the Honorable Sheila K. McCleve, Third Judicial District Court, entered an Order of Discipline: Disbarment disbarring Ben D. Hyde from the practice of law in Utah.

*In summary:*

On July 21, 1998, the Supreme Court of California entered an order disbarring Mr. Hyde from the practice of law in California. Mr. Hyde's misconduct in California included willful failure to comply with orders issued by the Supreme Court directing him to wind down his practice and notify clients of a previous suspension.

**DISBARMENT**

On November 30, 2004, the Utah Supreme Court entered an Order of Disbarment, disbarring Ray Harding, Jr. from the practice of law in Utah.

*In summary:*

On or about July 13, 2002, after being called to Mr. Harding's home on a domestic disturbance call, law enforcement officers found cocaine, heroin and drug paraphernalia. Mr. Harding tested positive for cocaine, opiates, and Valium. Mr. Harding was arrested and charged with two felony criminal counts of unlawful possession or use of a controlled substance. Subsequently, Mr. Harding pled guilty to two counts of attempted possession or use of a controlled substance, a class A misdemeanor. Mr. Harding was a Fourth Judicial District Court judge for the State of Utah at the time of the criminal charges.

Aggravating factors included: After being charged, Mr. Harding continued to publicly maintain his innocence and malign his accusers for over a year. These protestations were widely reported in the media and disseminated to the general public. Mr. Harding did so with full knowledge of his culpability, as evidenced by his subsequent admission of guilt. Furthermore, despite being unable to hear cases due to the pending criminal charges, Mr. Harding continued to draw his full salary and otherwise enjoyed the emoluments of judicial office. Not only did such behavior bring disrepute upon the legal profession and undermine public confidence in the judiciary, it placed an undue burden upon his colleagues on the Fourth Judicial District Court and adversely affected those citizens served by that court. Compounding these abuses, Mr. Harding delayed his decision to resign until the last possible moment, and only did so under intense media coverage of the looming dual threat of impeachment by the Legislature and removal by the Utah Supreme Court.


Congratulations Peter H. Barlow

Peter H. Barlow has been named a shareholder at Strong & Hanni Law Firm. Mr. Barlow's practice focuses in the areas of insurance defense litigation including: automobile liability, premises liability, and construction defect litigation. He is a member of Strong & Hanni's Auto/Premises Practice Group.

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# *Discipline Corner*

**DISBARMENT**

On November 15, 2005, the Honorable William W. Barrett, Third Judicial District Court, entered Findings of Fact, Conclusions of Law, and Order of Disbarment, disbarring Gregory P. Cohen from the practice of law for violations of Rules 8.4(b) (Misconduct), 8.4(c) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

The Third Judicial District Court entered a Judgment in a criminal case against Mr. Cohen for the crime of enticing a minor over the Internet, a third degree felony, pursuant to Utah Code section 76-4-401. The Court in the disciplinary matter found that Mr. Cohen's criminal act reflects adversely on his fitness as a lawyer. The Court also found that Mr. Cohen engaged in conduct involving dishonesty, fraud, deceit or misrepresentation by misrepresenting his age to the agent for the Utah Internet Crimes Against Children Task Force, who posed as a 13-year-old.

**INTERIM SUSPENSION**

On December 1, 2005, the Honorable Anthony B. Quinn, Third Judicial District Court, entered an Order of Interim Suspension, suspending Wesley Sine from the practice of law pending final disposition of the Complaint filed against him.

*In summary:*

On February 4, 2005, Mr. Sine was found guilty of four counts of mail fraud in violation of United States Code, Title 18, section 1341. The interim suspension is based upon this conviction pursuant to Rule 19 of the Rules of Lawyer Discipline and Disability.

**RECIPROCAL DISCIPLINE**

On December 21, 2005, the Honorable Robert K. Hilder, Third Judicial District Court, entered Findings of Fact, Conclusions of Law and Order of Reciprocal Discipline: Disbarment against Robert F. Dodenbier for violations of Rules 1.1 (Competence), 1.2(a) (Scope of Representation), 1.3 (Diligence), 1.4(a) and (b) (Communication), 1.5(c) (Fees), 1.7(b) (Conflict of Interest: General Rule), 1.16(a) (d) (Declining or Terminating Representation), 8.1(b) (Bar Admission and Disciplinary Matters) and 8.4(a), (c), and (d) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Dodenbier was disbarred from the practice of law by the Supreme Court of the State of California. The disbarment was based on two underlying matters.

In the first matter, Mr. Dodenbier was hired to represent two clients in a personal injury matter. One client signed a contingency fee agreement, while the other did not. There was no documentation that excluded one client from representation, or a written waiver of any potential conflict of interest. Mr. Dodenbier failed to serve notice on the entities being sued. He filed suit on behalf of one client after which he did nothing further to pursue the case. The clients began contacting Mr. Dodenbier. Mr. Dodenbier informed them that the matter was being settled. During his representation of the clients, he moved offices and did not provide them with new contact information.

In the second matter, Mr. Dodenbier was hired to represent a client in a child support and custody matter. Mr. Dodenbier failed to file the necessary documents on behalf of his client. Mr. Dodenbier stipulated, without his client's consent, to a reduction in support payments and joint legal custody. Mr. Dodenbier also failed to inform his client of hearings, failed to consult his client concerning continuations in the case, and failed to appear for a hearing. After the client retained new counsel, Mr. Dodenbier failed to return the client's file.

The California Order of Disbarment set forth the following aggravating factors:

1. Mr. Dodenbier had two prior instances of discipline.
2. Mr. Dodenbier engaged in multiple acts of misconduct.
3. Mr. Dodenbier's misconduct significantly harmed his clients.
4. Mr. Dodenbier demonstrated indifference toward rectification of the consequences of his misconduct.

There were no mitigating factors.

**ADMONITION**

On December 21, 2005, the Chair of the Ethics and Discipline Committee entered an Order of Discipline: Admonition against an attorney for violation of 1.5(b) (Fees), 1.15(b) (Safekeeping Property), and 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

*In summary:*

The attorney was hired for a criminal matter and the retainer was paid by a third party. The attorney did not have a written fee agreement or written explanation of how the fee was to be paid beyond the retainer. The client requested that the attorney file income taxes on behalf of the client. The client signed a power of attorney permitting the attorney to take over the tax refund. The attorney did not render an accounting of the tax refund. The attorney failed to provide attorney trust account records to the OPC.

**PUBLIC REPRIMAND**

On November 22, 2005, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against David VanCampen for violation of Rules 1.4(c) (Communication), and 3.2 (Expediting Litigation) of the Rules of Professional Conduct.

*In summary:*

Mr. VanCampen was hired for a criminal matter. Mr. VanCampen did not adequately advise his client. Mr. VanCampen communicated to his client in a minimal way even though his client required more information to help the client understand the risks the client faced concerning the criminal conviction. Mr. VanCampen, on at least one occasion, failed to appear and the court appointed other counsel to finish the case.

**PUBLIC REPRIMAND**

On November 22, 2005, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Richard Hackwell for violation of Rules 1.3 (Diligence), 1.4 (Communication), 1.16(d) (Declining or Terminating Representation), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Hackwell was hired to pursue an action against a public entity as well as pursuing a reduction of the client's conviction. Mr. Hackwell failed to appear at a conviction reduction hearing. Mr. Hackwell failed to notify his client of a court date in the public entity action. Mr. Hackwell failed to respond to his client's attempts to contact him. Mr. Hackwell failed to appear for a hearing in the public entity action and the case was dismissed for failure to prosecute. Mr. Hackwell took no action on behalf of his client, took no steps to withdraw from the action and failed to give any notice to his client.

**PUBLIC REPRIMAND**

On November 22, 2005, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Brent E. Johns for violation of Rules 1.2 (a) (Scope of Representation), 1.8(f) (Conflict of Interest: Prohibited Transactions), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Johns was hired to represent a mother and the mother's new husband where the child's father would relinquish parental rights in exchange for the mother's waiver of past due child support. The birth father was not the client, but paid Mr. Johns's fees. Mr. Johns filed an adoption decree which did not include the stipulation of waiving past due child support. The birth father insisted that Mr. Johns file another decree with the court that included the waiver. Mr. Johns knew his client's then-decision that she was not willing to waive the past due child support but he filed an amended decree that contained the waiver.

**ADMONITION**

On November 22, 2005, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

The OPC received an overdraft notice on the attorney's trust account. The OPC sent requests for information concerning the overdraft to the attorney. The attorney took more than four months to supply the OPC with the requested financial information.

**PUBLIC REPRIMAND**

On December 15, 2005, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Curt W. Morris for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.4(b) (Communication), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Morris was hired to filed a chapter 13 bankruptcy on behalf of a client to stop the foreclosure on the client's home. Mr. Morris failed to file the chapter 13 bankruptcy before the deadline. Mr. Morris did not keep his client informed about the progress of the matter. Mr. Morris failed to timely remind his client that the client needed to meet with him prior to the bankruptcy filing. Mr. Morris's staff informed the client that they would call her for an appointment and either failed to do so or failed to make a new appointment with the client, or warn the client when the client allegedly cancelled the first appointment.

**RECIPROCAL DISCIPLINE**

On January 6, 2006, the Honorable Sandra N. Peuler, Third Judicial District Court entered an Order of Discipline: Admonition against an attorney for violations of Rules 5.5(a) (Unauthorized Practice of Law), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
The attorney was placed on an administrative suspension for non-payment of membership fees. During the suspension, the attorney practiced law.

**ADMONITION**
On December 21, 2005, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.1 (Competence), 1.15(b) (Safekeeping Property), and 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

*In summary:*
The attorney was hired for a personal injury matter, a debt collection matter, and a bankruptcy. During the course of the bankruptcy the attorney did not discover and discharge the lien associated with the debt collection matter. The attorney did not notify the previous attorney that handled the personal injury matter of the settlement and failed to protect the previous attorney's lien. The attorney also failed to secure and provide trust account documents to the OPC.

**ADMONITION**
On September 15, 2005, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Admonition against an attorney for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
The attorney was retained for a personal injury matter. The attorney did not return the client's calls or reply to the client's letter requesting a status update. The client made several requests that the attorney pursue the case, but the attorney did not progess the matter. After the client terminated the relationship with the attorney, the client learned that the matter should have been filed in another jurisdiction and that the statute of limitations had already passed in that jurisdiction.

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# Discipline Corner

**PUBLIC REPRIMAND**
On September 24, 2007, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Samuel H. Adams for violation of Rules 5.3(b) (Responsibilities Regarding Nonlaywer Assistants), 5.3(c)(1) (Responsibilities Regarding Nonlawyer Assistants), 5.3(c)(2) (Responsibilities Regarding Nonlawyer Assistants), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Adams signed a client's name to a settlement agreement in a personal injury case and then had his assistant notarize the signature. Mr. Adams then forwarded the settlement funds to his client.

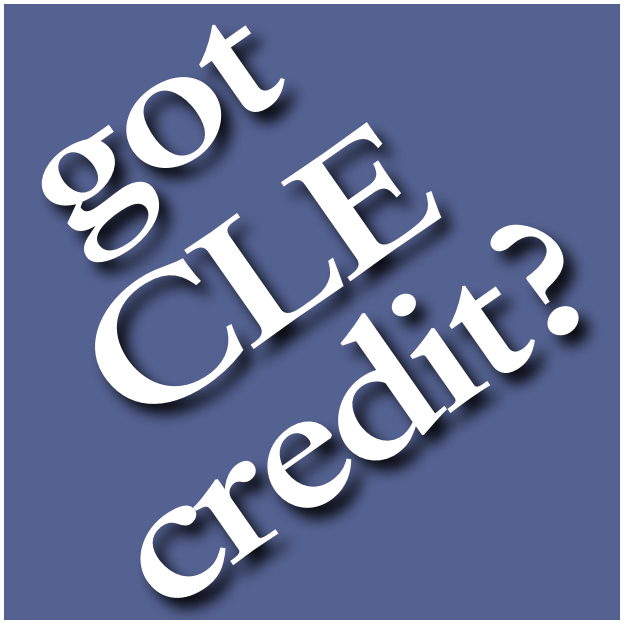
**ADMONITION**
On September 17, 2007, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violations of Rules 1.3 (Diligence), 5.3(a) (Responsibilities Regarding Nonlawyer Assistants), 5.3(b) (Responsibilities Regarding Nonlawyer Assistants), 5.3(c) (Responsibilities Regarding Nonlawyer Assistants), 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
In a bankruptcy proceeding, in order for the attorney's client to sell the client's home, permission was needed from the bankruptcy court. The attorney failed to timely file the request with the court. The attorney's failure was based upon the attorney's failure to properly supervise, train and educate staff concerning the attorney's professional obligations, to ensure that deadlines are met. As a result of the attorney's misconduct, the client's home was foreclosed upon. The attorney's misconduct was mitigated by the fact that the attorney had no prior record of discipline; the attorney's admission of neglect/misconduct; the attorney restored the lost funds in the settlement; and the attorney's candidness with the Ethics and Discipline Committee Screening Panel.

**PUBLIC REPRIMAND**
On September 17, 2007, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Public Reprimand against Franklin L. Slaugh for a violation of Rule 1.15(a) (Safekeeping Property) of the Rules of Professional Conduct.

*In summary:*
Mr. Slaugh accepted a retainer in a chapter 11 bankruptcy case. Mr. Slaugh commingled funds by placing the retainer into his operating account instead of his attorney trust account.

**PUBLIC REPRIMAND**
On September 17, 2007, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Public Reprimand against David Friel for violations of Rules 5.5(a) (Unauthorized Practice of Law), and 5.5(b)(2) (Unauthorized Practice of Law) of the Rules of Professional Conduct.

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*In summary:*
Mr. Friel was notified by the Utah State Bar that his license had been suspended for failure to pay his Bar dues. After notification, Mr. Friel appeared before a court while his license to practice law was suspended.

**RESIGNATION WITH DISCIPLINE PENDING**
On September 13, 2007, the Honorable Chief Justice Christine M. Durham entered an Order Accepting Resignation with Discipline Pending concerning Edmund T. Crowley.

*In summary:*
Mr. Crowley misappropriated funds on two separate occasions from the company he was working for.

**PUBLIC REPRIMAND**
On August 22, 2007, the Honorable John Paul Kennedy, Third Judicial District Court, entered Findings of Fact, Conclusions of Law and Order of Reprimand with conditions against John McCoy for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.16(d) (Declining or Terminating Representation), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
In one matter, Mr. McCoy failed to file a witness list, failed to appear at a scheduling conference, failed to respond to two motions to dismiss and notify his client of those motions to dismiss. Mr. McCoy failed to keep his client informed regarding the case status, including failing to provide documents that were either generated or received. Mr. McCoy failed to notify his client that he was withdrawing from the case and that the client needed a new attorney.

In a second matter, Mr. McCoy failed to take any action on a motion to compel, which was mitigated by strategy considerations and therefore a negligent act. Mr. McCoy failed to respond to a motion to dismiss which resulted in a judgment of attorney fees against his client. Mr. McCoy failed to provide information to his client concerning the status of the case. After the client hired a new attorney, Mr. McCoy failed on at least one occasion to respond to that attorney, failed to timely provide the file, and failed to file a withdrawal in the case. Mr. McCoy's failure to withdraw was mitigated by the fact that he believed a new attorney had appeared in the case.

**SUSPENSION**
On August 6, 2007, the Honorable Glenn K. Iwasaki, Third Judicial District Court, entered an Order of Discipline: Suspension suspending Larry A. Kirkham from the practice of law for a period of six months and one day for violation of Rules 8.4(b) (Misconduct) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Kirkham was convicted of Driving Under the Influence of Alcohol/Drugs (with priors), Utah Code Annotated § 41-6a-502 (2005), a third degree felony. Mr. Kirkham's conviction reflects adversely on his honesty, trustworthiness, and fitness as a lawyer. Mr. Kirkham's misconduct, as reflected by his conviction, was mitigated by the fact he has engaged in rehabilitation and his conduct, in part, relates to his condition.

# *Attorney Discipline*

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More information about the **Bar's Ethics Hotline** may be found at www.utahbar.org/opc/opc_ethics_hotline.html. Information about the formal Ethics Advisory Opinion process can be found at www.utahbar.org/rules_ops_pols/index_of_opinions.html.

**ADMONITION**
On January 5, 2012, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.4(a) (Communication), 8.4(c) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
The attorney missed a trial setting by failing to attend the trial. The attorney did not promptly inform the client of the missed trial. The attorney also tried to cover up the reason for missing the trial.

**ADMONITION**
On January 6, 2012, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.4(a) (Communication), 1.7(a) (Conflict of Interest: Current Clients), 1.7(b)(4) (Conflict of Interest: Current Clients), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
The attorney represented a client in a claim against a woman. At a supplemental proceeding hearing in the case, the woman informed the attorney that she objected to the amount of the claim against her and indicated she was trying to collect money owed to her by her ex-husband from their divorce settlement. The attorney filed a complaint on behalf of the woman against her ex-husband to obtain payment for his client. The attorney did not give the woman a chance to comment on the complaint. The attorney did not provide the woman a copy of the complaint after it was filed. The attorney did not alert the woman to the Motion to Dismiss filed in the case, even though it might adversely affect her rights. The attorney did not consult the woman as to the opposition of the Motion to Dismiss. Based on the brief conversation at the supplemental proceeding, the attorney did not communicate adequate information and explain about the material risks of and reasonably available alternatives to the representation necessary for the woman's informed consent. The attorney did not obtain the woman's informed consent and therefore had an impermissible conflict. Even if the attorney had obtained the woman's informed consent to the conflict of interest, that consent was not confirmed in writing. The attorney's violations were negligent. The woman has suffered little injury.

**ADMONITION**
On December 21, 2011, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of

Rules 1.16(d) (Declining or Terminating Representation), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
The attorney and partner in a firm were representing a client. The firm dissolved and the attorney and the partner divided the cases that were pending. Upon dissolution of the law firm, the attorney should have, but did not, communicate with the client concerning who would be representing the client in the future. The attorney should have, but did not, ascertain who had the client's file. The attorney should have, but did not, see what, if any, fee should have been refunded as unearned to the client. The attorney who had appeared in the client's case should have formally withdrawn from the case.

**ADMONITION**
On January 11, 2012, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.4(a) (Communication), 1.7(a) (Conflict of Interest: Current Clients), 1.7(b) (Conflict of Interest: Current Clients), 1.16(d) (Declining or Terminating Representation), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
The attorney represented a client in two collection actions. The attorney failed to adequately respond to the client's requests for information. The attorney also represented the client's daughter. The attorney did not obtain a waiver based on informed consent for the concurrent representation. The attorney did not explain the implications of the concurrent representation. The implications were highlighted during a hearing where the attorney could not fully respond to the complaint and could not disclose information about future problems facing his client because one of the clients had not consented, even though the information was obtained, at least in part, pursuant to the representation. To the extent that the attorney obtained waivers, the waivers were not confirmed in writing. The attorney did not promptly return his client's file when requested. The attorney's violation of the Rules was negligent and caused little or no injury beyond the toll on his professional relationship with his client.

*Aggravating factors:*
Length of time it took for the attorney to return the file and the attorney's position with respect to attorney-client privilege.

*Mitigating factors:*
Most of the work performed was uncompensated and this was the attorney's first offense.

**PUBLIC REPRIMAND**
On December 21, 2011, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against James F. Nichols, for violation of Rules 1.1 (Competence), 1.5(b) (Fees), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
At no time did Mr. Nichols and his client discuss the ultimate fee agreement or reach an agreement concerning fees and expenses. Mr. Nichols failed to communicate with his client about the true scope of the representation or how the fees and expenses were to be paid. Mr. Nichols did not possess the requisite legal knowledge, skills, and competence to properly advise the client concerning foreclosure matters and Mr. Nichols did not acquire those skills during the representation. There was actual injury in that the client expended unnecessary sums in attorney fees. Mr. Nichols acted negligently.

*Aggravating factors:*
No remorse and excuses contradicted by the Respondent's own evidence.

*Mitigating factors:*
Absence of prior record of discipline; personal or emotional issues; and inexperience in the practice of law.

**PUBLIC REPRIMAND**
On December 21, 2011, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against James F. Nichols, for violation of Rules 1.4(a) (Communication), 1.5(a) (Fees), 1.16(d) (Declining or Terminating Representation), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Prior to his withdrawal as counsel, Mr. Nichols failed to inform his client of a pending Order to Show Cause that had been issued in the case. Since Mr. Nichols did not complete the work to be performed in this case, his retainer was unreasonable and excessive. Even though Mr. Nichols knew how to contact his client, Mr. Nichols took no steps for two months to withdraw. When Mr. Nichols did finally withdraw, he failed to inform his client of the withdrawal. Mr. Nichols did not advise his client concerning the status of the case. Mr. Nichols did not prepare, file and serve a "Notice to Appear or Appoint" as directed by the Court. There was actual injury in that Mr. Nichols's client had to hire new counsel and may have incurred additional fees. Mr. Nichols's mental state was negligent.

*Aggravating factors:*
No restitution; no sincere remorse; excuses contradicted by the evidence; and refusal to acknowledge wrongful conduct.

*Mitigating factors:*
Absence of prior record of discipline; personal or emotional issues; and inexperience in the practice of law.

**PUBLIC REPRIMAND**
On January 9, 2012, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Philip C. Patterson, for violation of Rules 1.2(a) (Scope of Representation and Allocation of Authority Between Client and Lawyer), Rule 1.4(a)(5) (Communication), 1.5(c) (Fees), 1.16(a)(1) (Declining or Terminating Representation), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Patterson knowingly failed to consult with his client and obtain her consent before he stipulated to the opposing party's Summary Judgment Motion and thereby failed to abide by his client's decision concerning the merits of the case. Mr. Patterson's conduct caused injury to the public and the legal system because he deprived his client of the opportunity to have her case considered on the merits as she wished. Mr. Patterson failed to communicate to his client his belief that opposing the Summary Judgment Motion would be a violation of the rules. Mr. Patterson's failure to so communicate was knowing and such failure to communicate caused injury. Mr. Patterson negligently failed to enter into a written contingent fee agreement with his client. Mr. Patterson knowingly failed to withdraw from the representation when he knew that he and his client had fundamentally conflicting views concerning the merits of the case and Mr. Patterson believed that his continuing representation would violate the rules. Mr. Patterson's conduct caused injury to the public and to the legal system because it denied his client the opportunity to engage new counsel or represent herself and have her case decided on the merits.

*Aggravating factors:*
Vulnerability of the complainant due to her lack of legal knowledge and experience.

*Mitigating factors:*
Absence of prior discipline; absence of a dishonest or selfish motive; cooperative attitude in disciplinary proceedings; remorse and acceptance of responsibility.


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**PUBLIC REPRIMAND**

On December 8, 2011, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Shawn D. Turner, for violation of Rules 5.5(a) (Unauthorized Practice of Law; Multijurisdictional Practice of Law), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Turner utilized as a paralegal a person he thought was a retired California attorney when the paralegal came to Mr. Turner with a legal problem of a friend. It was agreed that the paralegal would do as much "ministerial" work as possible to keep costs down and that Mr. Turner would review, correct, and sign pleadings and generally act as counsel. The paralegal prepared and Mr. Turner made "stylistic" changes to an Answer and thereafter an Answer, Counterclaim, and Third-Party Complaint. Mr. Turner communicated with the client through the paralegal. The client paid the paralegal for services rendered believing that the paralegal would pass the money to Mr. Turner. The client viewed the paralegal as his attorney. As a product of the client learning that the paralegal was not paying Mr. Turner and also learning that the paralegal was not a California attorney, the client terminated the services of the paralegal and Mr. Turner. Mr. Turner knew that the paralegal was not admitted to practice law in the State of Utah.

**SUSPENSION**

On December 8, 2011, the Honorable John R. Morris, Second Judicial District Court, entered Findings of Fact, Conclusions of Law, and Order of Discipline suspending Bradley N. Roylance from the practice of law for a period of three years for violation of Rules 8.4(b) (Misconduct) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

On March 11, 2010, Mr. Roylance entered guilty pleas to two counts of Sexual Abuse of a Minor, class A misdemeanors. Mr. Roylance was sentenced to serve 180 days in the Davis County Jail, pay a $400.00 fine, serve 24 months probation, complete DNA testing with payment of the fee, and abide by Group A sex offender conditions.

The Court found that the crimes of which Mr. Roylance has been convicted reflect adversely on his honesty, trustworthiness, or fitness as a lawyer in other respects.

*Aggravating factors:*

Prior record of discipline; dishonest or selfish motive; multiple offenses; vulnerable victim; substantial experience in the practice of law; and illegal conduct.

*Mitigating factors:*

Good faith efforts to make restitution or rectify the consequences of his misconduct; cooperative attitude toward disciplinary proceedings; good character and reputation; interim reform; criminal penalties and sanctions; and remorse.

**DISBARMENT**

On December 16, 2011, the Honorable Thomas Low, Fourth District Court entered Findings of Fact, Conclusions of Law and Order of Disbarment against Nelson A. Moak for violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.4(a) (Communication), 1.5(a) (Fees), 1.15(a) (Safekeeping Property), 1.15(c) (Safekeeping Property), 8.1(b) (Bar Admission and Disciplinary Matters), 8.4(b) (Misconduct), 8.4(c) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary, there are two matters:*

Mr. Moak was hired to represent clients in a bankruptcy matter. At their initial meeting the clients signed a Flat Fee Payment Agreement. After their initial meeting, the clients called Mr. Moak several times to see if their Bankruptcy Petition ("Petition") had been filed. Mr. Moak changed his office phone number without notifying his clients. Mr. Moak filed the Petition several months after the initial meeting. Mr. Moak failed to provide the Court with all the necessary documents for their bankruptcy filing. Mr. Moak did not appear at the Meeting of Creditors. Mr. Moak failed to perform sufficient work to earn the fee that he collected. Mr. Moak did not submit a response to the Notice of Informal Complaint ("NOIC"). Mr. Moak did not appear at the Screening Panel Hearing.

The OPC received three notices of insufficient funds from a financial institution regarding Mr. Moak's attorney trust account. Several checks had been written on Mr. Moak's attorney trust account causing insufficiencies. The OPC sent letters to Mr. Moak requesting a response. Mr. Moak never submitted a response to the OPC. Mr. Moak mismanaged his client trust account by allowing his attorney trust account to go into the negative. Mr. Moak either failed to deposit unearned fees into his trust account and/or withdrew funds that were not earned. The OPC sent a NOIC to Mr. Moak for all three notices of insufficient funds. Mr. Moak did not submit a response to the OPC. Mr. Moak did not appear at the Screening Panel Hearing.

*Aggravating factors:*

Dishonest or selfish motive; Obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary authority; and substantial experience in the practice of law.

# *Attorney Discipline*

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More information about the **Bar's Ethics Hotline** may be found at www.utahbar.org/opc/opc_ethics_hotline.html. Information about the formal Ethics Advisory Opinion process can be found at www.utahbar.org/rules_ops_pols/index_of_opinions.html.

**ADMONITION**
On October 17, 2011, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.8(a) (Conflict of Interest: Current Clients: Specific Rules) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
The attorney entered into a personal business transaction with the client without (a) reducing the terms of the transaction to writing; (b) advising the client to seek independent legal counsel; and (c) receiving informed written consent from the client. The attorney's conduct was knowing and caused significant injury to the client.

Mitigating factors: Lack of prior discipline; Absence of dishonest motive; Timely effort to rectify situation by putting agreement in writing and paying a portion of the loan back; A cooperative attitude in the disciplinary proceedings, including conceding mistakes during the Screening Panel Hearing; Remorse.

**PUBLIC REPRIMAND**
On September 20, 2011, the Honorable Thomas Low, Fourth District Court entered an Order of Discipline: Public Reprimand against Gary L. Blatter, for violation of Rules 8.4(d) (Misconduct) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
A client met with a legal assistant with the law firm of Gary Blatter & Associates to represent her in divorce proceedings. The client paid a retainer to Blatter & Associates. Later the same day that she hired the firm, the client had second thoughts and contacted the legal assistant and told him to hold off on filing the divorce papers. Later, the client called Blatter & Associates and instructed the legal assistant to go forward with the divorce. Several months later the client's husband had not been served with divorce papers, so the client spoke with a legal assistant by telephone and terminated the firm's representation. The legal assistant indicated that there would be a refund to the client. After six weeks had passed, the client received a check and a statement for services. The client had not previously received any statements from Blatter & Associates. After the client filed a Bar complaint, Mr. Blatter prepared a proposed settlement agreement for the client to sign. The purpose of the proposed settlement agreement was for the client to drop her Bar complaint in exchange for $2500.

**PUBLIC REPRIMAND**
On September 19, 2011, the Honorable Glenn K. Iwasaki, Third District Court entered an Order of Discipline: Public Reprimand against Roberto G. Culas, for violation of Rules 5.3(a) (Responsibilities Regarding Nonlawyer Assistants), 5.3(b) (Responsibilities Regarding Nonlawyer Assistants),

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5.3(c) (Responsibilities Regarding Nonlawyer Assistants), 5.5(a) (Unauthorized Practice of Law; Multijurisdictional Practice lf Law), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Culas hired Jamis Johnson and Paul Schwenke to work as paralegals for him. When Mr. Culas hired Mr. Johnson and Mr. Schwenke, he knew that both had been disbarred for misconduct and that neither was licensed to practice law in Utah. Jamis Johnson and Paul Schwenke had a business called HOLD. Mr. Culas rented office space in the same building with HOLD. At some point, Mr. Johnson began providing legal advice to HOLD clients. Mr. Johnson also prepared legal documents on behalf of HOLD clients that were submitted to the court. The documents were stamped with Mr. Culas' signature stamp and purported to have been filed by him. At all times at issue, the HOLD clients believed that Mr. Johnson was an attorney. Mr. Johnson wrote letters on behalf of the HOLD clients representing that he was an attorney working for Mr. Culas. An opposing attorney met with and communicated with Mr. Johnson, believing that he was a licensed attorney working for Mr. Culas. A memorandum was filed in Third District Court, with Mr. Culas as the attorney representing the HOLD clients, and including the stamped signature of Mr. Culas. Mr. Culas represented to the court that he had not prepared the document, although the document bore his signature.

**PUBLIC REPRIMAND**
On September 21, 2011, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Charles A. Schultz for violation of Rules 1.1 (Competence), 3.5(d) (Impartiality and Decorum of the Tribunal), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
In papers to the court, Mr. Schultz made continued miscitation of statutes which was more than a mere "typo." The miscitation was noted by the District Court and not corrected on appeal. Mr. Schultz intentionally omitted the title of "judge" in referring to Justice Court Judges as a sign of disrespect and in protest intended to disrupt the court room and the administration of justice. In responding to the OPC's inquiries, Mr. Schultz utilized the lowercase "j" in the word "judge," continuing the showing of a lack of respect. Mr. Schultz's behavior throughout the process was disrespectful, unprofessional and intended to prejudice the administration of justice. Mr. Schultz referred to judges as "revenue collectors in black dresses." Mr. Schultz submitted a declaration of his client that contained disparaging remarks. The remarks called opposing counsel a "lying piece of trash" and made other inappropriate and unprofessional comments. Mr. Schultz also used derogatory language to describe the investigation at the OPC. Mr. Schultz repeatedly cited the OPC's investigation as "asinine" and "absolute nonsense." Mr. Schultz violated the Rules of Professional Conduct knowingly and intentionally. The level of injury is significant in that the profession as a whole (and the public) is affected by this negative behavior and it contributes to an unprofessional view of lawyers.

*Aggravating factor:*
Prior discipline.

**PUBLIC REPRIMAND**
On October 17, 2011, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against David O. Black for violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.4(a) (Communication), 1.5(a) (Fees), 1.5(b) (Fees), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
A client hired Mr. Black to represent her in three matters: a divorce case; a protective order case; and a criminal case.

*With respect to fees:*
Mr. Black promised to charge a rate of $150 an hour but then later billed his client at the rate of $275 an hour. An integration clause in the Fee Agreement was not a defense or excuse for an ethical violation. Mr. Black also inadvertently charged 3.0 hours for his and the client's attendance at an August hearing in the criminal proceeding. However, no parties or their attorneys appeared at the hearing because the hearing had been cancelled. Despite the incorrect billing charge, Mr. Black has neither reversed the charge nor refunded the fees paid against this charge.

*With respect to competence:*
Mr. Black advised his client to continue filing for unemployment benefits rather than seeking temporary support. Mr. Black claims he told his client that temporary support would require a "claim that she was incapable of working which would have been inconsistent with her claim for unemployment," and that she elected to continue seeking unemployment benefits. However, the client's subsequent counsel secured temporary benefits for her while she continued to receive unemployment benefits.

*With respect to diligence:*
Mr. Black was not diligent in pursuing temporary support for his client as she repeatedly requested. Mr. Black's office did attempt to obtain financial information from the client's ex, but

their efforts to obtain voluntary compliance took four months, which was unreasonable in light of the client's circumstances and the need for immediate relief and the other avenues available for more expedited production (or estimation) of the necessary information.

*With respect to communication:*
Mr. Black did not reasonably respond to his client's repeated requests for communications, personal meetings and preparation sessions throughout the representation. Apart from his attendance at hearings with his client, Mr. Black's bill discloses only limited contacts between Mr. Black and his client. Likewise, the substance of the emails reflect very little direct contact between the client and Mr. Black. Mr. Black concedes that he overestimated his capability to emotionally handle the communications demands imposed by a client with his client's emotional needs.

All of Mr. Black's misconduct was negligent and caused a level of harm to the client.

**INTERIM SUSPENSION**
On September 19, 2011, the Honorable Denise P. Lindberg, Third Judicial District Court, entered an Order of Interim Suspension Pursuant to Rule 14-519 of the Rules of Lawyer Discipline and Disability, suspending Cheri K. Gochberg from the practice of law pending final disposition of the Complaint filed against her.

*In summary:*
On November 5, 2010, Ms. Gochberg was charged with Driving Under the Influence of Alcohol and/or Drugs (four counts), Possession or Use of A Controlled Substance (two counts), Reckless Driving, and No Proof of Insurance. On March 25, 2011, Ms. Gochberg pled guilty to and was convicted of Driving Under the Influence of Alcohol or Drugs, a third degree felony, for that incident.

On March 4, 2011, Ms. Gochberg was charged with Driving Under the Influence of Alcohol and/or Drugs while an Alcohol Restricted Driver. On March 28, 2011, Ms. Gochberg pled guilty to and was convicted of Driving Under the Influence of Alcohol or Drugs, a third degree felony. These felony convictions were Ms. Gochberg's fourth and fifth related DUI convictions within the last ten years. The interim suspension is based upon the felony convictions.


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# *Discipline Corner*

**ADMONITION**

On September 27, 2007, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.4(a) (Communication), 1.4(b) (Communication), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
In a civil litigation matter, the attorney failed to explain to the clients the effects of a binding settlement offer, and failed to adequately respond to the clients' requests for information. The attorney provided no documented evidence of communication with the clients.

**SUSPENSION**

On September 24, 2007, the Honorable Glenn K. Iwasaki, Third Judicial District Court, entered Findings of Fact and Conclusions of Law and Order of Discipline: Suspension against Mark A. Besendorfer, for violations of Rules 1.1 (Competence), 1.2(a) (Scope of Representation), 1.3 (Diligence), 1.4(a) (Communication), 1.4(b) (Communication), 1.5(a) (Fees), 1.16(a) (Declining or Terminating Representation), 3.2 (Expediting Litigation), 8.4(b) (Misconduct), 8.4(c) (Misconduct), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct. Mr. Besendorfer has been suspended for a period of three years, two years of the suspension are stayed with Mr. Besendorfer serving a one year unstayed suspension, effective November 15, 2007.

*In summary:*
In one matter, Mr. Besendorfer was hired to pursue a medical malpractice action. After Mr. Besendorfer filed a complaint, it was dismissed for failure to serve the summons. Mr. Besendorfer refiled the action. Thereafter, the opposing party filed a motion for summary judgment which was granted. Mr. Besendorfer informed his client that the case was proceeding, including that opposing party's motion for summary judgment was not successful. Mr. Besendorfer had not responded to the motion for summary judgment. Throughout the representation, Mr. Besendorfer informed his client that the trial dates were set, but were subsequently postponed. He also informed his client that there was settlement offer when there was not. The client sued Mr. Besendorfer and was awarded damages based on Mr. Besendorfer's misconduct.

In a second matter, Mr. Besendorfer was hired to pursue a civil claim. The clients paid Mr. Besendorfer for the filing costs. Mr. Besendorfer informed his clients that he had obtained a judgment on their behalf and the matter was on appeal, when in fact no judgment had been obtained on their behalf. During the representation, which lasted nearly eight years, Mr. Besendorfer generated voluminous paperwork although he had failed to proceed with the lawsuit. The paperwork included pleadings and documents that he photocopied from other client files that included judges signatures to mislead the clients to appear that the matter was proceeding forward. Mr. Besendorfer also paid money out of his own pocket to his clients to further fabricate that there was collection on the judgment. At the time Mr. Besendorfer admitted his failures, some of the statute of limitations had passed on the clients' claim.

**ADMONITION**

On October 10, 2007, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violations of Rules 1.3 (Diligence) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
The attorney was appointed to represent an individual in a criminal case. After a guilty plea had been entered, the individual requested that the plea be withdrawn. The plea was not timely withdrawn because the attorney failed to open mail and/or properly calendar the plea withdrawal deadline.

**PUBLIC REPRIMAND**

On September 13, 2007, the Honorable John R. Anderson, Eighth Judicial District Court, entered an Order of Discipline: Public Reprimand against Karen Allen for violations of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.4(b) (Communication), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
In her representation of a client in a divorce matter, Ms. Allen did not open all of her mail and missed the notice the court issued setting the matter for a bench trial. Due to her mismanagement of her mail, Ms. Allen did not prepare for the bench trial nor did she inform her client of the bench trial. Also during the representation, Ms. Allen did not explain the divorce process and a stipulation to the extent that her client understood the process. Ms. Allen failed to respond to opposing counsel's request that she approve as to form the decree of divorce. Ms. Allen failed to provide a copy of the proposed decree of divorce to her client prior to submission with the court. Ms. Allen also failed to notify her client of the conclusion of the case. Ms. Allen failed to timely submit a response to the Office of Professional Conduct's Notice of Informal Complaint.

# *Discipline Corner*

**ADMONITION**

On July 13, 2007, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.15(a) (Safekeeping Property), 1.15(c) (Safekeeping Property), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

An attorney failed to deposit clients funds in an attorney trust account thereby commingling personal funds with client funds. The attorney's fee agreement provided that in order for the attorney to represent clients, the clients were required to waive the attorney's duty to act as a fiduciary with regard to the attorney's trust account.

**ADMONITION**

On July 11, 2007, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.3 (Diligence), 1.4(b) (Communication), 3.4(d) (Fairness to Opposing Party and Counsel), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

In divorce proceedings, an attorney failed to protect the client's interests by failing to advise the client that the attorney would be out of the country for an extended period of time and failing to get another attorney to cover a hearing while the attorney was out of the country. The attorney also failed to communicate with opposing counsel, including not sending critical information to opposing counsel and not producing documents after the attorney committed to do so.

**PUBLIC REPRIMAND**

On July 5, 2007, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Larry K. Yazzie for violation of Rules 1.4(b) (Communication), 1.5(a) (Fees), 7.1(a) (Communications Concerning a Lawyer's Services), 7.4 (Communication of Fields of Practice), 7.5(a) (Firm Names and Letterheads), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Yazzie represented a client in a criminal matter and the client's son in a personal injury matter. The clients' cases were in another state's jurisdiction. Mr. Yazzie is not licensed in the other state. Mr. Yazzie failed to communicate his status to his client. Mr. Yazzie charged for work that he was not able to complete because he was not a licensed attorney of that state. Mr. Yazzie had misleading letterhead and advertising, including holding himself out to be a specialist in personal injury matters.

**PUBLIC REPRIMAND**

On June 25, 2007, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Denney S. Berrett for violation of Rules 1.2(a) (Scope of Representation), 1.3 (Diligence), 1.4(a) (Communication), 1.4(b) (Communication), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Berrett failed to inform one client about a settlement offer. Without the client's consent, Mr. Berrett settled the case and failed to inform the client of the settlement. In another client's case, Mr. Berrett failed to file an opposition to a motion for summary judgment. Thereafter, Mr. Berrett failed to take any steps to cure the missed deadline, which resulted in the client's case being dismissed with prejudice.

**PUBLIC REPRIMAND**

On May 25, 2007, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Denney S. Berrett for violation of Rules 8.4(c) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Berrett misrepresented the status of the case to a client's daughter, who was acting on behalf of the client. His misrepresentation included the identification of defendants and the type and amount of work he had performed on the case.

**ADMONITION**

On June 25, 2007, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.4(b) (Communication), 1.4(b) (Communication), 1.16(d) (Declining or Terminating Representation), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

In divorce proceedings, an attorney failed to ascertain where the proceedings were filed, and failed to answer the complaint

and appear on behalf of the client. The attorney failed to keep the client reasonably informed after the default was set aside. The occasional phone calls and 2 or 3 e-mails in over a year were not reasonable communications when the matter required immediate action and diligence on the part of the attorney. The attorney failed to adequately communicate with the client to allow the client to make informed decisions regarding the representation. The attorney failed to act with reasonable diligence at the beginning of the representation and also after the default judgment was set aside. The attorney failed to take action, failed to protect the client's interests, failed to act, and failed to complete the matter.

**SUSPENSION**

On June 20, 2007, the Honorable Ernie W. Jones, Second Judicial District Court, entered an Order of Discipline: One Year Suspension against Thomas A. Blakely for violation of a previous disciplinary order.

*In summary:*

The Court entered an Order of Discipline: Public Reprimand and Probation on April 27, 2006, placing Mr. Blakely on a one-year probation with certain conditions. Mr. Blakely failed to comply with the terms of his probation and the Office of Professional Conduct initiated an Order to Show Cause proceeding. Based upon Mr. Blakey's failure to comply with the terms of his probation, the Court suspended Mr. Blakely from practicing law for one year.

**ADMONITION**

On April 9, 2007, the Honorable Joseph C. Fratto, Third Judicial District Court, entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.16(d) (Declining or Terminating Representation), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

The attorney was hired to pursue a malpractice action. The attorney filed a complaint to initiate the action. Nearly a year and a half after the action was filed, it was dismissed for failure to prosecute. A month after it was dismissed, and prior to the statute of limitations running, the attorney filed another action on behalf of the client. Eight months after that action was filed, it was dismissed for failure to file a summons. During the time of the filings, the client contacted the attorney for status updates. Many times the attorney failed to return the client's calls. When the client was able to speak with the attorney, the attorney assured the client that the case was proceeding. After the client hired another attorney to review the attorney's work, the client requested the client file. The client file was returned nine months after the request was made. The attorney initially failed to account and return the unearned portion of the retainer. Thereafter, the client filed a malpractice action against the attorney and judgment was entered against the attorney. The attorney returned the retainer as part of the judgment.

## *Pro Bono Honor Roll*

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# *Attorney Discipline*

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**ADMONITION**
On March 1, 2012, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.15(a) (Safekeeping Property) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
The attorney held personal funds in the attorney's client trust account in excess of the minimal amount allowed to maintain the account.

**ADMONITION**
On January 26, 2012, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.3 (Diligence), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
The attorney failed to respond to requests for admissions served on the client which resulted in the facts being deemed admitted. The attorney failed to respond to the Office of Professional Conduct's Notice of Informal Complaint. The attorney's conduct caused little harm as it is not clear whether the judge considered the deemed admissions. The attorney's conduct was negligent.

*Mitigating factors:*
Remorse; absence of prior record of discipline; absence of a dishonest or selfish motive.

**ADMONITION**
On January 26, 2012, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
The attorney failed to timely prepare documents needed to finalize a client's divorce decree. The attorney failed to diligently pursue child support issues raised by his client. The attorney failed to keep the client informed about the status of the finalization of the divorce decree. The attorney failed to inform the client about opposing counsel's motion seeking the release of the monies held in escrow that the client wanted held until the child support dispute was resolved. The attorney failed to respond to the Office of Professional Conduct's Notice of Informal Complaint. The attorney's conduct was negligent and caused little injury.

*Mitigating factors:*
Remorse; absence of prior record of discipline; absence of a dishonest or selfish motive.

**PROBATION**
On February 8, 2012, the Honorable Deno G. Himonas, Third Judicial District Court, entered an Order of Discipline: Probation against Holly J. Mahoney for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.15(d) (Safekeeping Property), 1.16(d) (Declining or Terminating Representation), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Ms. Mahoney was hired to represent a client regarding the special education needs of the client's son. The client paid Ms. Mahoney a retainer fee and signed a retainer agreement. Ms. Mahoney failed to file a due process request with the school on behalf of the client's son. The attorney failed to respond to

numerous e-mails and telephone calls from the client over a nine month period. Ms. Mahoney did not send monthly billing statements to the client as outlined in the retainer agreement. Due to Ms. Mahoney's lack of diligence and communication, the client terminated her services and sought new counsel. The client asked Ms. Mahoney for his file and a refund. After the client submitted his complaint to the OPC, Ms. Mahoney returned his file, but did not refund his fees. Ms. Mahoney indicated to the client that he owed additional fees but that she was willing to waive the fees and call it even.

**PUBLIC REPRIMAND**

On February 28, 2012, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Douglas A. Baxter, for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.4(b) (Communication), 1.5(b) Fees, and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Baxter failed to prosecute a case. Mr. Baxter failed to advise his client on the status of the case and failed to express his views on the merits of the case. Mr. Baxter failed to discuss the effect of the dismissal without prejudice. Mr. Baxter failed to have a clear communication on fees. In this respect, the client thought the amount paid was the total fee and Mr. Baxter thought it was a retainer. Mr. Baxter's mental state was generally negligent behavior. Mr. Baxter caused actual injury to the client in the form of stress and in the form of the dismissal of the action. Mr. Baxter's actions also damaged the legal system generally.

**PUBLIC REPRIMAND**

On January 26, 2012, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Jeanne T. Campbell, for violation of Rules 5.5(a) (Unauthorized Practice of Law; Multijurisdictional Practice of Law), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Ms. Campbell assisted a non-lawyer in the unauthorized practice of law when she returned phone calls to his clients while he was in the hospital. Ms. Campbell was aware that the non-lawyer was doing legal work for individuals and, at the very least, should have been aware that his preparation of bankruptcy petitions in Colorado without supervision violated the professional standards in that jurisdiction. Ms. Campbell's mental state was generally negligent in that she failed to heed a substantial risk that the non-lawyer was practicing law without a license in violation of Colorado's professional standards. Ms. Campbell's conduct did not cause injury to the client, but did cause some injury to the legal profession by allowing a non-lawyer, who failed to meet a client's needs, purport to be an attorney. Ms. Campbell failed to respond to the Office of Professional Conduct's Notice of Informal Complaint. The Notice of Informal Complaint was sent to Ms. Campbell's address of record which she did not consistently occupy. It was Ms. Campbell's obligation to take steps to ensure she received correspondence from the Bar.

**PUBLIC REPRIMAND**

On February 28, 2012, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Marlin G. Criddle, for violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.4(a) (Communication), 1.4(b) (Communication), 1.5(c) (Fees), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Criddle was hired to represent the Complainant in pursuing a wrongful death case on a contingency fee basis. No fee agreement was signed. Mr. Criddle failed to provide competent representation by accepting and attempting to litigate a medical malpractice/wrongful death case, for which he lacked knowledge, experience, and competence. Mr. Criddle failed to pursue the medical malpractice/wrongful death action in a reasonable time frame. Mr. Criddle failed to reasonably consult with his client regarding his client's objectives. Mr. Criddle failed to keep his client reasonably informed about the status of the action. Mr. Criddle failed to explain the dismissal options to his client so that the client could make an informed decision regarding the dismissal. Mr. Criddle's communication failures and dismissal of his client's case without consent caused injury to the public, the legal system, and his client's right to make decisions regarding the prosecution of the case.

*Aggravating factors:*

Vulnerability of victim; substantial experience in the practice of law; and failure to satisfy conditions of a Diversion Agreement.

*Mitigating factors:*
Absence of prior discipline; absence of a dishonest or selfish motive; personal or emotional problems; remorse; and acceptance of responsibility.

**SUSPENSION**

On January 31, 2012, the Honorable Samuel D. McVey, Fourth Judicial District Court, entered an Order of Discipline: Suspension suspending Allen F. Thomason from the practice of law for a period of one year for violation of Rules 3.3(a) and (d) (Candor Toward the Tribunal), 4.4(a) (Respect for Rights of Third Persons), 8.4(b), (c), (d), and (e) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
The Complainant and his wife, had been having domestic problems and were seeking a divorce. Mr. Thomason befriended the wife and attempted to assist her with a DUI. Mr. Thomason went to the marital home on one occasion and had words with the husband. After a domestic dispute in which police were called and the wife was told to leave the home, Mr. Thomason went to the marital home on behalf of the wife and removed the locks from the doors. The husband went to the home to see if his wife was gone and saw the locks had been removed. He went into the home and encountered Mr. Thomason. After the two had words again, the husband left the home and called the police. The husband then asked his mother if she would go to the marital home and retrieve his camcorder and camera. When the mother went to the marital home to pick up the camera, Mr. Thomason confronted her and blocked her from leaving the room. Mr. Thomason told her that he was a judge and she was under arrest. After several minutes, the mother put down the camcorder and was allowed to leave the room. When the officers arrived Mr. Thomason refused to wait near the curb as instructed by the police. Mr. Thomason declared several times that the responding police officers were "under arrest." Mr. Thomason made threats against the officers, claiming that he was a judge, and held more arrest authority than the officers. Mr. Thomason was cited for "Interfering w/Legal Arrest," a violation of Utah Code Section 76-8-305, for his interference with the officers' investigation. The Provo City Justice Court held a trial where Mr. Thomason was found guilty of interfering with a legal arrest. Mr. Thomason appealed the conviction and later entered into a Diversion. After the incident at the marital home,


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Mr. Thomason filed an Ex Parte Stalking Injunction against the husband, claiming that he had been assaulted when the evidence did not support this. The Ex Parte Stalking Injunction obtained by Mr. Thomason caused harm to the husband. Mr. Thomason exhibited a lack of candor in his filings with the court. Mr. Thomason attempted to delay the stalking injunction hearing so that the husband would not be able to participate in hunting season. Mr. Thomason also sent several e-mails to the husband's divorce attorney that contained numerous misrepresentations. Mr. Thomason threatened to file Judicial Conduct complaints against the police officers when he had no grounds to do so. Mr. Thomason threatened to file civil suits against the Complainants unless they dropped their Bar complaint. Mr. Thomason made unfounded accusations of unethical conduct against the husband's attorney.

**DISBARMENT**

On January 10, 2012, the Honorable Steven Hansen, Fourth District Court, entered Findings of Fact, Conclusions of Law and Order of Disbarment against Ross K. Moore for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.15(c) (Safekeeping Property), 1.15(d) (Safekeeping Property), 1.16(d) (Declining or Terminating Representation), 8.1(b) (Bar Admission and Disciplinary Matters), 8.4(b) (Misconduct), 8.4(c) (Misconduct), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary, there are several matters:*

Mr. Moore agreed to hold in escrow a large sum of money for investors. The money was transferred by wire to Mr. Moore by a client, who was assisting with the investment of the funds. The funds were to be invested in a franchise in a particular location. Mr. Moore failed to place the funds in a separate trust account, but rather put the money in his own account. A month later, the investors requested the return of the money because the deal did not materialize and the investors wanted the money back to secure another building for the investment. Mr. Moore returned some of the funds but retained the rest. Over the next several weeks the investors demanded an accounting of the funds and demanded return of the remaining funds. Mr. Moore sent an e-mail letter to the investors stating that the money has been "illegally seized" by a bank when it had not. He told the investors that if they complained to the Bar, it would take longer and cost the investors more to get the money back. Months later, Mr. Moore had not returned the remaining funds and the investors again demanded the money. Mr. Moore continued to promise to pay but failed to pay the money. The investors called Mr. Moore several times, but the calls were not answered and messages were not returned by Mr. Moore. Mr. Moore finally met with the investors and agreed to pay an additional amount of money at a specified time. Mr. Moore indicated that the funds already paid to the investors came from funds owned by other clients. As part of a settlement agreement between Mr. Moore and the investors, the Complainant was to withdraw his Bar Complaint in exchange for the return. The investors wrote to Mr. Moore that they were in serious trouble because of the delay in the return of the money. Mr. Moore then represented that he was getting the money from a wealthy client to pay the investors. After the investors hired an attorney to assist in collecting the funds, Mr. Moore paid the investors by cashiers check. Mr. Moore had not earned any of the money entrusted to him to be held in escrow. Mr. Moore did not provide an accounting to the investors.

Mr. Moore was retained to represent a homeowner in warranty claims against her home builder. The homeowner paid Mr. Moore to prepare a demand letter listing the defects she wanted corrected. The homeowner's only contact with Mr. Moore's office was through a paralegal. Mr. Moore never completed the letter. The homeowner left several voicemails in an attempt to contact Mr. Moore or his paralegal by telephone. Mr. Moore did not return the phone calls. Mr. Moore did not respond to several e-mails sent to him and his paralegal. Eventually, all communication between the homeowner and Mr. Moore's office ceased. The homeowner tried to obtain a copy of her file, which contained original closing documents, but Mr. Moore did not return the file. When the homeowner went to Mr. Moore's office, she found it vacant.

Mr. Moore represented a client in a criminal matter. A pretrial conference was held and Mr. Moore failed to appear, although his client did appear. Another pretrial conference was held and again Mr. Moore failed to appear even though his client did appear. When the court issued an Order to Show Cause for Mr. Moore to appear and show cause why he should not be held in contempt. Mr. Moore failed to respond. The court issued a bench warrant against Mr. Moore.

Mr. Moore was retained initially to assist with the wind down of a client's company. As part of the representation, Mr. Moore was to respond in a civil case and to file petitions for personal bankruptcy for the owner and his son. Mr. Moore was paid for

the work. After the wind down of the company and after cashing out insurance policies, the owner put money in a bank account for further negotiations. Mr. Moore advised the owner to give him the money to put in his trust account for safe keeping; the owner agreed and the money was given to Mr. Moore. After retaining Mr. Moore to file a personal bankruptcy for him, the son became concerned because he had not heard from Mr. Moore. The son contacted Mr. Moore; and Mr. Moore responded by giving him a case number and stating that his bankruptcy petition had been filed. After many attempts to contact Mr. Moore without a response, the son hired a new attorney to pursue the bankruptcy. The son's new attorney discovered that no Petition for Bankruptcy had been filed and that the case number given by Mr. Moore was not valid. Mr. Moore had also failed to file an Answer in the civil matter and Judgment was entered against the owner's company in the civil case. The owner became concerned about the money he had given Mr. Moore to hold in trust and told Mr. Moore that he wanted the money returned. Mr. Moore did not respond, so the owner went to Mr. Moore's home. Mr. Moore sent a text message stating that he would send the owner the address of a bank where the owner could get the money that day. The owner did not receive the bank address and demanded his money and his files to be returned that day. In response to the demand, Mr. Moore admitted that he had not deposited the money in trust but had deposited the money into his account to secure a short term line of credit for some "deals" that Mr. Moore was making. Mr. Moore stated "if you are willing to wait six weeks without making any waves, I will happily pay you an additional $5K for your trouble." Mr. Moore stated that he would pay some of the funds and left a portion of the money in a drain spout at the owner's home texting him about where the money was. The owner asked Mr. Moore to provide an accounting of what he had done with the money; Mr. Moore did not respond. The owner's son made several attempts to get Mr. Moore to return the money, but Mr. Moore did not return calls. The owner then hired an attorney to assist in obtaining the money from Mr. Moore and to assist with his company's legal representation. The new attorney sent a letter to Mr. Moore demanding that the money be returned and that Mr. Moore provide an accounting; Mr. Moore did not respond. To date, Mr. Moore has returned only a small portion of the original funds.

The OPC served a Notice of Informal Complaint on Mr. Moore, requesting information from him in all of the matters. Mr. Moore did not respond in writing to these requests. Mr. Moore also failed to appear at the Screening Panel Hearing in two of the matters.

*Aggravating factors:*
Refusal to acknowledge the wrongful nature of the misconduct; dishonest or selfish motive; a pattern of misconduct; multiple offenses; vulnerability of victims; and illegal conduct.

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## *Discipline Corner*

**ADMONITION**

On February 10, 2006, the Chair of the Ethics and Discipline Committee entered an Order of Discipline: Admonition against an attorney for violation of 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

The attorney was served with a Notice of Informal Complaint from the Office of Professional Conduct. The attorney failed to respond timely.

**PUBLIC REPRIMAND**

On February 10, 2006, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Alan Stewart for violation of Rules 1.15(a) (Safekeeping Property), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Stewart failed to supervise his employee who embezzled money from his attorney trust account. In Mr. Stewart's initial response concerning an overdraft on his attorney trust account, he provided information that was untrue. Mr. Stewart voluntarily admitted the truth near or around the time of a Screening Panel of the Ethics and Discipline Committee. Mitigating factors included: absence of prior record of discipline; absence of dishonest or selfish motive; and remorse.

**ADMONITION**

On February 10, 2006, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.3 (Diligence, 1.4 (Communication), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.


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*In summary:*
The attorney was hired to pursue a personal injury claim that occurred in another state. The attorney failed to inform the client of the applicable statute of limitation in the other state. The attorney failed to advise the client of the advantages and risks regarding statute of limitations in choosing where to file the claim. The client was not allowed to participate in the decision of where the claim should have been filed. The attorney was negligent in not communicating with the client in writing concerning the decision of where to file the claim.

**ADMONITION**
On March 15, 2006, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.15(a) (Safekeeping Property), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
The attorney did not keep unearned client funds in a separate account in a financial institution that agrees to report insufficient funds to the Office of Professional Conduct.

**PUBLIC REPRIMAND**
On March 10, 2006, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Jonathan Pace for violation of Rule 1.1 (Competence) of the Rules of Professional Conduct.

*In summary:*
Mr. Pace failed to protect the interests of his client by failing to ensure that a meeting between his client and a law enforcement agency would not take place in his absence.

**ADMONITION**
On March 10, 2006, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rule 1.4(a) (Communication) of the Rules of Professional Conduct.

*In summary:*
The attorney was hired to pursue an out of state small claims dispute. The attorney failed to return the client's phone calls, failed to explain the strategy to the client, and failed to explain the necessity of hiring an in-state attorney for an appeal.

**PUBLIC REPRIMAND**
On March 10, 2006, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Christopher Edwards for violation of Rules 1.1 (Competence), 1.2(a) (Scope of Representation), 1.3 (Diligence), 1.4(a) (Communication), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Edwards was hired to pursue a personal injury claim as well as a matter involving the Office of Recovery Services ("ORS"). In the personal injury claim, Mr. Edwards failed to take action on behalf of his client prior to the expiration of the statute of limitations. Mr. Edwards failed to keep his client adequately informed concerning the case status and failed to protect his client's claim. In the ORS matter, Mr. Edwards failed to serve the defendants and proceed with the action, failed to pursue the relief necessary for his client by failing to secure the entry of an order to show cause, and failed to adequately inform his client regarding the ORS matter.

**SUSPENSION**
On February 16, 2006, the Honorable Robert K. Hilder, Third Judicial District Court, entered an Order of Discipline: Two-Year Suspension suspending Carlos Chavez from the practice of law for violating Rules 1.3 (Diligence), 5.3(a), (b), and (c) (Responsibilities Regarding Nonlawyer Assistants), 8.1(b) (Bar Admissions and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Chavez employed Jose Luis Trujillo, a disbarred attorney. Mr. Trujillo met with a client, who signed two retainers that named Mr. Chavez as the attorney being retained. The client had never met Mr. Chavez, and Mr. Chavez never informed the client, either orally or in writing, that Mr. Trujillo was disbarred. The client paid fees to Mr. Trujillo. Mr. Chavez never filed an action on behalf of the client, although he worked on drafting a Complaint. Mr. Chavez's office attempted to file the Complaint but the filing fee was incorrect. Before it could be refiled, the client terminated the representation. Mr. Chavez failed to ensure that Mr. Trujillo's conduct was compatible with his professional obligations. Mr. Chavez also failed to respond to the Notice of Informal Complaint and failed to appear for a Screening Panel hearing of the Ethics and Discipline Committee.

**PUBLIC REPRIMAND**
On February 23, 2006, the Honorable W. Brent West, Second Judicial District Court, entered Findings of Fact, Conclusions of Law, and Order of Discipline publicly reprimanding Alyson Draper for violations of Rules 1.2 (Scope of Representation), 1.3 (Diligence), and 1.4(a) and (b) (Communication) of the Rules of Professional Conduct.

*In summary:*
Ms. Draper undertook the representation of a client in a job discrimination case in 1999. In the course of that representation, Ms. Draper failed to adequately communicate with the client, failed to pursue the client's objective in a timely fashion, and decided not to submit the client's claim without notifying the client of this decision in advance of the deadline.

# *Discipline Corner*

**PUBLIC REPRIMAND**

On June 6, 2006, the Honorable Leon A. Dever, Third Judicial District Court, entered Findings of Fact and Conclusions of Law and Order of Discipline: Public Reprimand against April Freedman for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Ms. Freedman failed to act with reasonable diligence and promptness in representing her client. Ms. Freedman failed to keep her client informed of the case status and failed to reply to requests for information from the client. Ms. Freedman failed to adequately respond to the Office of Professional Conduct when it asked for clarification concerning her previous response.

**PUBLIC REPRIMAND**

On June 30, 2006, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Travis Bowen for violation of Rules 1.5(a) (Fees), 1.7(b) (Conflict of Interest: General Rule), 7.1(a) (Communications Concerning a Lawyer's Services), 7.5(a) (Firm Names and Letterheads), 7.5(d) (Firms Names and Letterhead), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Bowen charged his client an excessive fee in trade for services. The fee was excessive considering the time, labor, and skill required to provide legal services and in light of the fees typically charged for similar services in the community. Mr. Bowen instructed his staff to increase his standard legal fee in order to pay for the furniture sold to his firm by the client. Mr. Bowen recommended certain life insurance products without informing his clients of his or his firm's financial interest in the profits to be gained if the clients purchased those products. Mr. Bowen's letterhead was misleading as he identified other office locations on the letterhead when he did not have offices in those locations. Mr. Bowen's letterhead also listed an "of counsel" relationship with another attorney when he did not have such a relationship. Mr. Bowen failed to provide certain documents requested by the Office of Professional Conduct, which impeded the disciplinary process.

**SUSPENSION, PROBATION**

On May 3, 2006, the Honorable Dennis M. Fuchs, Third Judicial District Court, entered an Order of Discipline: Nine Months Suspension, Fifteen Months Probation against John R. Bucher for violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.4 (Communication), 1.5(a) (Fees), 1.5(b) (Fees), 3.3 (Candor Toward the Tribunal), 3.5(d) (Impartiality and Decorum of the Tribunal), 8.2(a) (Judicial Officials), 8.4(b) (Misconduct), 8.4(c) (Misconduct), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

In one matter, Mr. Bucher was hired to represent a criminal defendant. The spouse of the defendant contacted Mr. Bucher. Mr. Bucher requested a retainer fee and told the spouse that he would be visiting the defendant in jail. The family of the defendant paid the retainer on behalf of the defendant. No fee agreement was executed by the defendant. After Mr. Bucher entered his appearance in the case, he failed to schedule and attend the bond reduction hearing and the preliminary hearing. Mr. Bucher did not visit the defendant in jail and did not take calls from the defendant. The spouse terminated the representation. Mr. Bucher refused to return the funds from the representation. In response to an inquiry from the Office of Professional Conduct, Mr. Bucher constructed his accounting of time spent on the case, after the fact. He included a fee for an investigator and no report has been provided to the defendant or defendant's spouse.

In a second matter, Mr. Bucher was hired to probate a client's deceased common-law spouse's will. On the day he was hired, the client gave Mr. Bucher half of the fee, the original will, and contact information of the client and the executor. Thereafter, the client sent by mail the other half of the fee. The client wrote to Mr. Bucher requesting a status update. Mr. Bucher never responded. Four years after hiring Mr. Bucher, the client contacted Mr. Bucher and they met. Mr. Bucher informed the client that the three-year deadline for informal probate had lapsed and that it was the client's fault that the three-year deadline had lapsed. A couple of months after Mr. Bucher met with the client, Mr. Bucher filed an application for informal probate, and an ex-parte motion to amend the application claiming the original will was lost. Mr. Bucher's office produced an affidavit based on a note from the executor that the original will was not available or found until approximately a month or two prior to the probate action being filed. The affidavit did not state that Mr. Bucher was the one who lost the will and he was the one who found it a month or two before filing the probate action. Nine months after the probate action was filed, Mr. Bucher withdrew from the case.

In a third matter, Mr. Bucher appeared in front of a judge in a criminal case in or about 1989. The judge accused Mr. Bucher of being under the influence of alcohol in the judge's courtroom. Mr. Bucher filed a complaint with the Judicial Conduct Commission ("JCC"), which was found to be baseless and without merit. In 1995, Mr. Bucher appeared again in front of the same judge in another case. Mr. Bucher filed a Motion for Recusal and Affidavit of Prejudice stating that the JCC issued an admonition against the judge. The judge recused himself and made a telephone a call to Mr. Bucher notifying him of the same. During the telephone conversation, the judge indicated to Mr. Bucher that the JCC action

had been dismissed and inquired of Mr. Bucher the basis of Mr. Bucher's claim. Mr. Bucher indicated that he received a letter from the JCC concerning his complaint that the judge had been sanctioned. The judge requested that Mr. Bucher send a copy of the letter to the judge. Mr. Bucher never sent a copy of the letter. In 2003, the judge received a call from a reporter stating that the paper was doing a feature article on Mr. Bucher and the reporter wanted the judge to respond to Mr. Bucher's claim that the judge had threatened Mr. Bucher, and the judge had been sanctioned by JCC. The judge had to spend considerable resources with legal counsel, the director of JCC, and the media to set the record straight.

In a fourth matter, Mr. Bucher represented a criminal defendant. In the course of the case, Mr. Bucher filed numerous motions to continue the pre-trial conference. When the pre-trial was held the defendant did not appear and a warrant was issued for the defendant's arrest. The defendant called the court indicating that he did not have an attorney because he was unable to reach his attorney's office. The court set the matter for a bench trial, and notice was given to the defendant and a copy was mailed to Mr. Bucher. Some of the notices that were sent to Mr. Bucher were returned because Mr. Bucher was moving offices. However, notices were sent to Mr. Bucher's new address and the court contacted Mr. Bucher's office by phone. The defendant appeared pro se at the bench trial and was found guilty of the charges. The afternoon after the bench trial, Mr. Bucher's office contacted the court indicating that Mr. Bucher would not be present and requested the court's fax number to file a motion to continue.

In a fifth matter, Mr. Bucher pled guilty to a class B misdemeanor for driving under the influence of alcohol/drugs, and pled guilty to a class C misdemeanor for violation of a restricted license. Mr. Bucher was sentenced to 180 days and 90 days, both sentences were concurrent and suspended. Mr. Bucher was also fined and placed on a 12-month probation. Mr. Bucher was arrested on new charges and a warrant was issued. Mr. Bucher failed to appear before the court on the bench warrant. The probation was ultimately revoked and Mr. Bucher was committed to the sheriff for confinement for 30 days. Mr. Bucher's probation was reinstated for 18 months.

## *Pro Bono Honor Roll*

Eric Barnes
Lauren Barros
David Berceau
Jim Brady
David Broadbent
May Pat Cashman
Kenyon Dove
Brent Hall
C. Richard Henriksen
Roger Hoole
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Jim Slemboski
Travis Terry
James Mitch Vilos
Greg Wall
Orson West Jr
Mary Jane Whisenant
Jeanine Williams
Robert Wing
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Utah Legal Services and the Utah State Bar wish to thank these attorneys for either accepting a pro bono case or volunteering at clinic during the months of June and July. Call Brenda Teig at (801) 924-3376 to volunteer.


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*References available on request.*

**DISBARMENT**

On June 1, 2006, the Honorable James L. Shumate, Fifth Judicial District Court, entered Findings of Fact, Conclusions of Law, and Order of Disbarment disbarring Paul C. Droz from the practice of law for violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.4(a) (Communication), 1.4(b) (Communication), 1.5(a) (Fees), 1.15(a) (Safekeeping Property), 1.15(b) (Safekeeping Property), 1.16(d) (Declining or Terminating Representation), 3.4(c) (Fairness to Opposing Party and Counsel), 8.1(b) (Bar Admission and Disciplinary Matters), 8.4(c) (Misconduct), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

In one matter, Mr. Droz represented a client in an employment termination matter. The client paid for the representation, and Mr. Droz did not keep the funds separate from his own. Mr. Droz wrote one letter on behalf of the client and did no further work on the case. The client unsuccessfully attempted to contact Mr. Droz on numerous occasions. After the client terminated Mr. Droz's representation, Mr. Droz did not refund the unearned fee to the client. Mr. Droz failed to respond to the Office of Professional Conduct's written requests for information.

In a second matter, Mr. Droz was retained to represent a defendant in a federal lawsuit. The defendant paid Mr. Droz a retainer and they entered into a verbal agreement on an hourly rate. Mr. Droz did not follow-up with a written communication with the basis or rate of his fee. Initially, Mr. Droz performed work on behalf of the defendant, but eventually stopped working on the case, even failing to respond to a motion and a discovery request. The defendant left messages, sent faxes and e-mails, but Mr. Droz never replied. The defendant terminated the representation. Mr. Droz failed to refund the unearned portion of the fee, and failed to provide an accounting to the defendant. Mr. Droz eventually told the defendant that he did not have the money that was paid to return to the defendant. Mr. Droz signed a promissory note, but has not paid on the note. Mr. Droz failed to respond to the Office of Professional Conduct's written requests for information.

In a third matter, a couple retained Mr. Droz to represent them in a business dispute. The couple paid Mr. Droz for his services. Mr. Droz has failed to provide an accounting of the fee, and failed to deposit the fee into his attorney trust account. During the representation, Mr. Droz failed to timely request a jury trial, failed to propound discovery requests, failed to participate in a planning meeting, failed to provide his client's initial disclosures, failed to respond to an order to show cause, failed to move to set aside a default judgment, failed to inform his clients that an order had been entered which required the clients to respond to discovery requests, and failed to inform his clients that an order had been entered which required his clients to pay a sanction. Mr. Droz also failed to inform his clients that the court gave them two opportunities to comply with previous orders before entering a default judgment against them. Mr. Droz misrepresented the case to the clients informing them that the case was moving forward and everything was being handled. The clients terminated Mr. Droz's representation and made written requests for the return of their documents, which Mr. Droz failed to return. Mr. Droz failed to respond to the Office of Professional Conduct's written requests for information.

**PUBLIC REPRIMAND**

On June 30, 2006, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Kathleen McConkie for violation of Rules 1.4(a) (Communication), 1.4(b) (Communication), 1.7(b) (Conflict of Interest: General Rule), 1.8(h) (Conflict of Interest: Prohibited Transactions), 5.1(b) (Responsibilities of Partner or Supervisory Lawyer), 8.4(c) (Misconduct), and 8.4(d) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Two individuals hired Ms. McConkie to represent them in a lawsuit. Ms. McConkie failed to adequately communicate with her clients regarding their case to allow them to be reasonably involved and understand decisions made in the case. Ms. McConkie failed to ensure measures were in place and followed by her staff and an attorney working under her supervision concerning professional responsibilities. Ms. McConkie also prepared a settlement that included a clause that would release the attorney, and that failed to allow for the clients to seek independent counsel prior to signing it.

**ADMONITION**

On June 27, 2006, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.1 (Competence), 1.3 (Diligence), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

The attorney took fees and agreed to file a bankruptcy on behalf of his clients to stop a foreclosure on the client's home. The attorney failed to file the bankruptcy. A civil judgment has been entered against the attorney.

**ADMONITION**

On June 26, 2006, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.1 (Competence), 1.2(a) (Scope of Representation), 1.3 (Diligence), 1.4(a) (Communication), 1.7(b) (Conflict of Interest: General Rule), 1.16(d) (Declining or Terminating Representation), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
The attorney was hired to file a bankruptcy in order to save the client's house prior to it being sold at a public auction. The attorney failed to file the bankruptcy. After the client received the eviction paperwork, the client contacted the attorney, leaving several messages. The attorney told the client that the bankruptcy was not filed, the attorney was not aware of the auction date, and that the client would need to move out of the house. The attorney refunded the filing fee in cash.

**ADMONITION**
On June 26, 2006, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.4(a) and (b) (Communication), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
The attorney was hired concerning an immigration matter that was pending in another state. In advance of the deportation hearing, the attorney filed a motion for change of venue and to be able to appear telephonically. The client was not able to attend the hearing. On the morning of the hearing, the attorney learned that the motions were denied, and the client was deported in absentia. The attorney failed to communicate properly with the client before and after the motions were filed.

**ADMONITION**
On June 27, 2006, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.4(a) (Communication), 1.4(b) (Communication), 1.15(b) (Safekeeping Property), 7.3(a) (Direct Contact with Prospective Clients), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
The attorney solicited the client, in person, without a prior relationship with the client. The attorney represented the client in a wrongful death action and a collection action. The attorney did not keep the client adequately informed about the matter. The attorney did not adequately respond to the client's questions about costs submitted for reimbursement. The attorney failed to provide an accounting as requested by the client.

**PUBLIC REPRIMAND**
On June 27, 2006, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Stanley S. Adams for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.16(d) (Declining or Terminating Representation), 8.4(c) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Adams was hired to draft and file two Qualified Domestic Relations Order ("QDRO"). Mr. Adams did not complete the QDROs. He withdrew without protecting his client's interests and failed to promptly refund unearned fees. Mr. Adams also misled his client concerning the status of the QDRO. The client was injured by the delay and loss of interest on the client's 401(k) accounts.

**ADMONITION**
On June 26, 2006, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.2(a) (Scope of Representation), 1.3 (Diligence), 1.4(a) (Communication), 1.4(b) (Communication), 1.14(a) (Client Under a Disability), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
The attorney was hired to pursue enforcement of the client's divorce decree. The attorney failed to pursue the matters which the attorney agreed to undertake. The attorney stated that the attorney abandoned the case because the client had become delinquent in paying fees. However, the client had recently made a payment and had a low balance. The attorney avoided the client's attempts to communicate. No accounting was provided to the client. The attorney failed to explain details of the fee agreement, in particular fees associated with clerical work and contact with the attorney's office. The attorney failed to advise the client of the opposing party's desire to settle the case and how settling could resolve the client's claims. The attorney failed to consider the client's language difficulties and was indifferent to the client's failure to understand the lack of progress in the case.

**PUBLIC REPRIMAND**
On June 14, 2006, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Patrick Osmond for violation of Rules 1.15(a) (Safekeeping Property), 1.15(b) (Safekeeping Property), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Osmond formed a corporation with an individual. Mr. Osmond received repayment on a loan made by the individual to an excavating company, which he placed in his trust account. Mr. Osmond failed to provide an accounting and used the funds to pay bills to a development company. Thereafter, Mr. Osmond became the attorney for the individual's family. Mr. Osmond stated he notified the individual when the payment had been made to the excavating company. The individual contacted the excavating company and confirmed that payment had not been made, and an employee of the company confirmed the same by e-mail.

# *Discipline Corner*

**ADMONITION**

On September 12, 2006, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.1 (Competence), 1.2(a) (Scope of Representation), 1.3 (Diligence), 1.4(a) (Communication), 1.4(b) (Communication), 1.5(a) (Fees), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
The attorney failed to abide by the client's instruction concerning the timeframe of the case, and failed to diligently pursue the client's case. The attorney failed to communicate with the client, and failed to respond to the client's requests for information. The attorney did not communicate the basis of the fee to the client. The attorney charged an excessive fee in light of the minimal work performed. The attorney failed to respond to the Office of Professional Conduct's Notice of Informal Complaint.

**RECIPROCAL DISCIPLINE**

On July 23, 2006 the Honorable Dennis Fuchs, Third Judicial District Court, entered Findings of Fact, Conclusions of Law, and Order of Disbarment disbarring Daniel R. Boone from the practice of law for violation of Rules 3.3 (Candor Toward the Tribunal), 4.1 (Truthfulness in Statements to Others), 8.4(c) (Misconduct), and Rule 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Boone was disbarred from the practice of law by the United States District Court. Mr. Boone's misconduct included repeatedly filing false statements and absent action taken by United States Trustee's Office prohibiting him from filing applications for installment payment of filing fees, there is no indication this practice would not have continued. Mr. Boone also engaged in the practice of law before the United States District Court while under a suspension order from another disciplinary authority. Boone's continued practice of law is detrimental to the public interest and the administration of justice.

The foregoing misconduct meets the standard for the presumptive sanction of disbarment in Utah, and the Court accordingly entered reciprocal discipline on that basis.

**DISBARMENT**

On August 18, 2006, the Honorable Fred D. Howard, Fourth Judicial District Court, entered Findings of Fact, Conclusions of Law, and Order of Disbarment disbarring Trevor L. Zabriskie from the practice of law for violation of Rules 8.4(b) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Zabriskie was convicted of endangerment of a child, a third degree felony in violation of Utah Code Annotated section 76-5-112.5, and sexual battery, a class A misdemeanor, in violation of Utah Code Annotated section 76-9-702(3). The charges were later reduced to a class A misdemeanor and a class B misdemeanor, pursuant to a 402(b) reduction. The Court in the disciplinary matter found that Mr. Zabriskie's criminal act reflects adversely on his fitness as a lawyer.

**PUBLIC REPRIMAND**

On August 17, 2006, the Honorable Eric A. Ludlow, Fifth Judicial District Court, entered an Order of Discipline: Public Reprimand against Ricky D. Bonewell for violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.4 (Communication), 1.4(a) (Communication), 1.16(d) (Declining or Terminating Representation), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
In one matter, Mr. Bonewell prepared a stipulated agreement for child support on behalf of his client. The client's ex-spouse was not represented by counsel. Both the client and ex-spouse signed the agreement, and the document was filed with the court. Thereafter, the ex-spouse provided additional income verification from the spouse's employer to Mr. Bonewell indicating that the spouse's wages were less than the amount stated in the signed agreement. Based on the income verification and the statutory guidelines, the ex-spouse's child support payment would be reduced. Mr. Bonewell felt obligated to amend the Decree of Divorce. Mr. Bonewell drafted and filed an amended Decree of Divorce without informing or consulting with his client concerning the changes nor did the client approve the amended Decree of Divorce. The client requested that Mr. Bonewell file the necessary paperwork to increase the child support which was due to the client. Mr. Bonewell did not respond to the client's request for three months. Thereafter, Mr. Bonewell indicated to the client that he would need an additional retainer to amend the Decree of Divorce.

In the second matter, Mr. Bonewell was retained to pursue a medical malpractice claim against a chiropractor. During the representation, Mr. Bonewell failed to timely return the client's phone calls. Mr. Bonewell contacted a medical expert who stated that the chiropractor had not breached the standard of care. Sometime after, Mr. Bonewell relayed this information on to his client, indicating that he would not take her case and giving the client referrals to other attorneys. This was approximately a year after the client retained Mr. Bonewell. After the representation terminated, Mr. Bonewell failed to inform the client of the two-year statute of limitation on the claim, or that it would run in seven months.

**ADMONITION**
On August 17, 2006, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.1 (Competence), 1.2(a) (Scope of Representation), 1.4(a) (Communication), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
The attorney represented the client in a litigation matter. The attorney filed a motion to recuse the judge, but proceeded with a hearing in the absence of the opposing party and verbally withdrew the motion. The attorney negligently submitted an incorrect order and failed to take action to rectify the error. The attorney also attempted to settle the case without consulting with the client.

**ADMONITION**
On August 15, 2006, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violations of Rule 1.4(a) (Communication), 1.4(b) (Communication), 1.5(b) (Fees), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
The attorney was hired to represent a client in an immigration matter. The attorney failed to inform the client of the Court's decision concerning the client's case. The attorney failed to communicate with the client to allow the client to make informed decisions. There was no written agreement between the client and attorney for the attorney to speak with the client's spouse concerning the matter in place of the client. The attorney failed to have a written fee agreement to evidence that the attorney communicated the basis and rate of the fee for fees charged over $750.00.

**PUBLIC REPRIMAND, PROBATION**
On April 27, 2006, the Honorable Ernie W. Jones, Second Judicial District Court, entered an Order of Discipline: Public Reprimand and Probation against Thomas A. Blakely for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.5(a) (Fees), 1.16(d) (Declining or Terminating Representation), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Blakely was hired to represent a client in a bankruptcy, and to draft a will. The client paid for the representation. Mr. Blakely failed to keep the funds separate from his own. Mr. Blakely filed the bankruptcy petition five months after representation commenced. Mr. Blakely failed to appear for the creditor's meeting, and the matter was dismissed. The dismissal order was vacated, but Mr. Blakely failed to appear for the second creditor's meeting. Based on the failure to appear the action was dismissed again. The will was never drafted. Mr. Blakely failed to keep the client reasonably informed about the bankruptcy matter. Mr. Blakely moved, and failed to inform the client. No meaningful work was performed on behalf of the client to justify the amount Mr. Blakely collected from the client. Mr. Blakely abandoned the representation and failed to return the file and unearned fee.

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# *Discipline Corner*

**PUBLIC REPRIMAND, PROBATION**

On March 21, 2007, the Honorable Robert Hilder, Third Judicial District Court, entered an Order of Discipline: Public Reprimand and [Six Months] Probation against Mitchell R. Jensen for violations of Rules 5.3(a) (Responsibilities Regarding Nonlawyer Assistants), 5.3(b) (Responsibilities Regarding Nonlawyer Assistants), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

On two occasions concerning the same client, Mr. Jensen failed to supervise his non-lawyer assistants. On the first occasion, one of Mr. Jensen's non-lawyer assistants obtained the client's husband's signature on documents. Another of Mr. Jensen's non-lawyer assistants then notarized the client's signature on the documents without being present at the time the signing of the documents.

On the second occasion, the non-lawyer assistant signed for and notarized the client's name to a release form without indicating that the release was signed based on the power of attorney.

**RESIGNATION WITH DISCIPLINE PENDING**

On March 14, 2007, the Honorable Christine M. Durham, Chief Justice, Utah Supreme Court, entered an Order Accepting Resignation with Discipline Pending, effective November 9, 2005, the date of his interim suspension, concerning Howard Johnson.

*In summary:*

Mr. Johnson pled guilty to one count of Unlawful Sexual Activity With a Minor, pursuant to Utah Code Annotated section 76-5-401, a third degree felony; and pled guilty as an Alford plea to one count of Enticing a Minor Over the Internet, pursuant to Utah Code Annotated section 76-4-401, a class A misdemeanor.

**ADMONITION**

On March 14, 2007, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rule 1.15(b) (Safekeeping Property) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

In a personal injury case, an attorney received a settlement check from an insurance company. A lien holder, a medical service provider, had a claim to the settlement monies. However, the attorney used a large portion of the settlement funds in trust to pay a doctor's witness fees without the lien holder's agreeing to this use of the money it was claiming.

**RECIPROCAL DISCIPLINE**

On February 26, 2007, the Honorable Pamela Heffernan, Second Judicial District Court, entered an Order of Discipline by Consent: Public Reprimand against Roy Cole for violation of Rules 1.1 (Competence), 1.3 (Diligence), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

In an appeal before the Tenth Circuit Court of Appeals, Mr. Cole failed to make his appearance, order a transcript, file a docketing statement, and submit a filing fee in a timely fashion; all after he received notice from the court, and the deadline to comply was extended. Thereafter, Mr. Cole filed a deficient docketing statement. Although the court notified Mr. Cole of the deficiencies and gave him additional time to comply, Mr. Cole failed to correct the deficiencies. Mr. Cole also filed a deficient motion to appoint new counsel, which was denied giving Mr. Cole an express directive on how to proceed. Mr. Cole took no action. The Tenth Circuit then issued an Order to Show Cause for his failure to comply to which Mr. Cole submitted an inappropriate pleading attempting to explain his conduct. The Tenth Circuit entered an order removing Mr. Cole from the case, and suspending him from appearing before the Tenth Circuit Court of Appeals for a period of not less than three months.

**INTERIM SUSPENSION**

On March 12, 2007, the Honorable Glenn K. Iwasaki, Third Judicial District Court, entered an Order of Interim Suspension, suspending Larry A. Kirkham from the practice of law pending final disposition of the Complaint filed against him.

*In summary:*

On February 21, 2007, Mr. Kirkham was convicted of Driving Under the Influence of Alcohol/Drugs (with priors), Utah Code Annotated section 41-6a-502, a third-degree felony. The interim suspension is based upon this conviction pursuant to Rule 14-519 of the Rules of Lawyer Discipline and Disability.

**PUBLIC REPRIMAND**

On February 28, 2007, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Matthew Storey for violation of Rules 5.3(b) (Responsibilities Regarding Nonlawyer Assistants), 5.3(c) (Responsibilities Regarding Nonlawyer Assistants), 8.4(c) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Storey directed his paralegal to sign his client's name to a settlement release pursuant to a power of attorney. Mr. Storey's paralegal signed the client's name to the release without indicating that the release was being signed pursuant to a power of attorney. The paralegal then signed the release as a witness to the client's signature when in fact the client had not signed it.

**DISBARMENT**
On February 14, 2007, the Honorable Denise Lindberg, Third Judicial District Court, entered Findings of Fact, Conclusions of Law and Judgment of Disbarment, disbarring Kevan Eyre from the practice of law, effective October 26, 2005, the date of his interim suspension, for violations of Rules 8.4(b) (Misconduct, 8.4(c) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Eyre was convicted of six counts of failing to render a proper tax return in violation of Utah Code section 76-8-1101(a)(c)(i), a third degree felony, and six counts of intent to defeat the payment of a tax in violation of Utah Code section 76-8-1101(1)(d)(i), a second degree felony. The crimes committed reflect adversely on Mr. Eyre's honesty, trustworthiness, and fitness as a lawyer.

**ADMONITION**
On February 28, 2007, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.15(b) (Safekeeping Property), 1.16(d) (Declining or Terminating Representation), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
In a criminal matter, the attorney destroyed the client's file which included the client's vehicle title. The attorney did not take reasonable or prompt efforts to assist the client in replacing the file or the vehicle title. There was little or no harm to the client.

**DISBARMENT**
On February 20, 2007, the Honorable Joseph C. Fratto, Jr., Third Judicial District Court, entered an Order of Discipline: Disbarment, disbarring Geoffrey L. Clark from the practice of law, effective December 13, 2004, the date of his interim suspension, for violations of Rules 8.4(b) (Misconduct), 8.4(c) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
On September 14, 2005, Mr. Clark was convicted of Attempted Distribute/Offer/Arrange to Distribute a Controlled Substance, Utah Code Annotated section 58-37-8(1)(a)(ii), a third degree felony; Possession of a Controlled Substance, Utah Code Annotated section 58-37-8(2)(a)(i), a third degree felony; Attempted False/Inconsistent Material Statement, Utah Code Annotated section 76-8-502, a third degree felony; and Simple Assault, Utah Code Annotated section 76-5-102, a class A misdemeanor. The convictions reflect adversely on Mr. Clark's honesty, trustworthiness and fitness as a lawyer.

**PROBATION**
On February 14, 2007, the Honorable Wallace A. Lee, Sixth Judicial District Court, entered Findings of Fact, Conclusions of Law, and Order of Discipline suspending Richard L. Musick from the practice of law for a period of one year, with the suspension stayed in favor of probation for a period of one year, for violations of Rules 1.1 (Competence), 1.3 (Diligence), 1.4 (Communication), 1.16(d) (Declining or Terminating Representation), 3.2 (Expediting Litigation), 3.4(d) (Fairness to Opposing Party and Counsel), 8.1(b) (Bar Admission and Disciplinary Matters), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
In one matter, Mr. Musick failed to notify his client of outstanding discovery requests, failed to respond to those discovery requests, failed to respond to a motion to compel and a motion to dismiss, and failed to overall communicate with his client. Mr. Musick abandoned his client without taking steps to protect the client including failing to file a withdrawal and providing the file to the client. Mr. Musick's failures to respond not only delayed the case but caused harm to the client. Mr. Musick's conduct also caused the court to expend time and resources in addressing his failures to represent his client. Mr. Musick also failed to respond to the Office of Professional Conduct's Notice of Informal Complaint.

In a second matter, Mr. Musick filed two separate personal injury cases on behalf of one client. In the first action filed, Mr. Musick abandoned his client by failing to diligently represent the client and by failing to formally withdraw from the case. In the second action filed, the case was dismissed because Mr. Musick failed to ensure that the complaint was served in a timely manner. Mr. Musick also failed to withdraw from the case to protect his client's interests. In both cases Mr. Musick failed to communicate and adequately explain information to the client to keep the client informed and able to make informed decisions. Mr. Musick also failed to respond to the Office of Professional Conduct's Notice of Informal Complaint.

**ADMONITION**
On February 12, 2007, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of

Discipline: Admonition against an attorney for violation of Rules 1.3 (Diligence), 5.3(b) (Responsibilities Regarding Nonlawyer Assistants), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
In an immigration matter, an attorney failed to perform a diligent review of the client's file which evidenced that the client was illegally in the country. The attorney also failed to review the work of the attorney's paralegal.

**ADMONITION**
On February 12, 2007, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.15(a) (Safekeeping Property) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
An attorney ordered that a client's file and documents be destroyed less than 90 days after the termination of the representation. The notice given to the client regarding the destruction was inadequate in light of a subsequent phone call from the client followed up by a postcard from the client.

**ADMONITION**
On March 20, 2007, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 8.4(d) (Misconduct) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
In a criminal matter, an attorney failed to appear for a scheduled hearing and had no excuse for not appearing at the hearing.

**SUSPENSION**
On March 21, 2007, the Honorable Bruce C. Lubeck, Third Judicial District Court, entered an Order of Discipline: Suspension, suspending James L. Stith from the practice of law for a period of twenty-one (21) months for violation of Rules 1.2 (Scope of Representation), 1.4(a) (Communication), 3.3(a)(4) (Candor Toward the Tribunal), 8.1(b) (Bar Admission and Disciplinary Matters), 8.4(b) (Misconduct), 8.4(c) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
On behalf of a client, Mr. Stith extended and entered into a settlement offer. The offer was accepted, however Mr. Stith did not provide any of the proposed settlement documents to his client. Unaware that the settlement had been reached, the client instructed that the offer be withdrawn, and Mr. Stith conveyed the withdrawal by letter stating that the offer was withdrawn because of damage to the property that was subject of the settlement and a typographical error in the original offer. The error was a difference of a year in the payoff date of the agreement. Opposing counsel filed a motion to enforce the settlement. In response to the motion to enforce, Mr. Stith filed his reply along with an affidavit that purported to be from his client. The affidavit was not false from the standpoint that if the client had reviewed the affidavit, he was in agreement with the substance of the affidavit. However, Mr. Stith's client did not approve or sign the affidavit. The motion to enforce was granted and served on Mr. Stith. Mr. Stith did not object. Thereafter, the court awarded attorney fees to opposing counsel. Mr. Stith did not inform his client that an award for attorney fees was entered and that the client was under an obligation to pay attorney fees. Opposing counsel on several occasions communicated with Mr. Stith concerning the paying of the attorney fees. Opposing counsel filed a motion seeking entry of judgment, which was granted by the court. Thereafter, the client terminated Mr. Stith's representation. Mr. Stith also failed to respond to the Office of Professional Conduct's Notice of Informal Complaint.

**PUBLIC REPRIMAND, PROBATION**
On March 5, 2007, the Honorable David L. Mower, Fifth Judicial District Court, entered an Order of Discipline: Public Reprimand, [Six-Month] Probation against Shawn T. Farris for violations of Rules 1.1 (Competence), 1.3 (Diligence), 1.4(a) (Communication), 1.4(b) (Communication), 8.4(c) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
In a civil action, Mr. Farris failed to respond to discovery requests. Mr. Farris also failed to respond to a Motion to Compel Discovery. The court granted the Motion to Compel and awarded attorney's fees. Mr. Farris failed to comply with the order and failed to inform his clients of the order. Thereafter the court granted the opposing counsel's Motion to Dismiss. Mr. Farris did not inform his clients of the dismissal. Mr. Farris failed to keep his client apprised of the status of the case and failed to timely respond to his clients' requests for information about the case. Mr. Farris failed to timely inform and explain developments in the case to his clients. After the dismissal of the case, Mr. Farris informed his clients that the case had been set for trial, but then the trial setting had been vacated and he was working to get it back on the court's calendar. Mr. Farris filed a notice of appeal, but did not inform his clients of his actions. Mitigation: Absence of prior discipline; cooperative attitude toward proceedings; inexperience in the practice of law; and remorse.

# *Discipline Corner*

**ADMONITION**

On January 18, 2007, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.5(b) (Fees), 1.15(c) (Safekeeping Property), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

In a divorce proceeding, the attorney failed to communicate the basis and rate of the attorney's fee within a reasonable time and failed to account for the retainer in the attorney's trust account after a dispute arose regarding attorney's fees.

**PROBATION**

On January 16, 2007, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Non-Public Probation against an attorney for violation of Rules 1.1 (Competence), 1.3 (Diligence), 3.2 (Expediting Litigation), 3.4(c) (Fairness to Opposing Party and Counsel), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

In two cases, the attorney failed to competently and diligently represent the client by failing to respond to numerous motions, failing to follow court's orders, and expending the court's time and resources in addressing the delays caused by the attorney.

**ADMONITION**

On January 2, 2007, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 5.5(a) (Unauthorized Practice of Law), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

The attorney agreed to take a case in another state in which the attorney was not licensed to practice. The attorney needed to associate with counsel to enable the attorney to appear on behalf of the client but failed to obtain local counsel. The attorney handled the case for over six months which included appearing in court. The attorney improperly attempted to condition settlement with the client on the client's withdrawal of the Bar complaint.

**ADMONITION**

On January 2, 2007, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rule 1.4(b) (Communication), 1.5(a) (Fees), 1.15(d) (Safekeeping Property), 1.16(d) (Declining or Terminating Representation), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

At the initial meeting, the attorney collected a retainer, and thereafter performed no meaningful work. The attorney failed to explain to the client the nonrefundable aspect of the retainer agreement. The attorney failed to communicate with the client. The attorney failed to provide the client with an accounting of the work done even though it was in dispute. The attorney failed to properly terminate the representation by failing to refund unearned fees. The attorney also failed to provide responsive information to the OPC that would have supported or clarified the record.

**ADMONITION**

On December 18, 2006, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.2(a) (Scope of Representation), 1.3 (Diligence), 1.15(b) (Safekeeping Property), 1.16(d) (Declining or Terminating Representation), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

In a divorce and custody action, the attorney failed to diligently pursue the divorce as directed by the client. Upon withdrawal, the attorney failed to refund unearned fees and failed to give advance notice to the client or make an effort to protect the client's interests.

**PUBLIC REPRIMAND**

On December 4, 2006, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against David L. Cooley for violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.16(d) (Declining or Terminating Representation), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Cooley represented a client in a medical malpractice action even though he admitted that he had no experience in that area of law. Mr. Cooley's lack of competence affected the unsuccessful pursuit of the action and appeal. For the same client in a wrongful termination action, Mr. Cooley failed to respond to a motion to dismiss. Mr. Cooley failed to communicate to his client concerning the motion to dismiss and his decision to not respond to it. Mr. Cooley also took no action to withdraw from the case.

**ADMONITION**
On November 13, 2006, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Admonition against an attorney for violation of Rules 1.7(b) (Conflict of Interest: General Rule), 3.7(a) (Lawyer as a Witness), 4.2(a) (Communication with Persons Represented by Counsel), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
In one matter, the attorney contacted a represented person without seeking permission from the person's counsel.

In another matter, the attorney filed suit on behalf of one company, against a company in which the attorney held a financial interest as a shareholder. In a related case, the shareholders of the company, represented by the attorney, filed suit against several individual company employees. The cases were consolidated and the court ordered the attorney to withdraw as counsel from both companies. The attorney now appears pro se, solely as a shareholder.


# National Institute for Trial Advocacy CLE Program

24 HRS CLE

The National Institute for Trial Advocacy ("NITA") and the Litigation Section of the Utah State Bar are extremely pleased to announce their second NITA program in Utah.

NITA brings its international expertise in trial skills training featuring learning-by-doing exercises that emphasize persuasive presentation of case story in bench and jury trials.

**May 16–19**
**9 am–5 pm**

Salt Palace Convention Center

$1200 Litigation Members
$1250 Non-Litigation Members*
$2000 Non-Utah State Bar Members*
*space permitting

**Register online at: www.utahbar.org/cle**

NITA

LITIGATION SECTION OF THE UTAH STATE BAR

# Discipline Corner

**RESIGNATION WITH DISCIPLINE PENDING**

On April 25, 2007, the Honorable Christine M. Durham, Chief Justice, Utah Supreme Court, entered an Order Accepting Resignation with Discipline Pending concerning Lona Monson Webb.

*In summary:*

Ms. Webb was associated with a business that engaged in direct mailings to the public to identify people who were interested in estate planning. After the business identified people non-lawyer agents would visit the potential customers. During the initial visit, the non-lawyer agents gave a presentation about the benefits and would recommend living trusts to potential clients. The non-lawyer agents also provided a brochure with Ms. Webb's name and phone number on it. If the potential client was interested, the non-lawyer agent presented an engagement letter drafted by Ms. Webb. The non-lawyer agent then forwarded the signed engagement letter and the client's information to Ms. Webb. The engagement letter did not disclose Ms. Webb's nature or terms of her relationship with the business. Ms. Webb would prepare estate planning documents. Ms. Webb would receive part of the money paid and turn over the majority of the money paid to the business. The non-lawyer agents would then present the estate documents to clients for signature. Ms. Webb knew that the non-lawyer agents would attempt to sell insurance products to her clients and that they received a commission for this.

**ADMONITION**

On April 5, 2007, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violations of Rules 8.1(b) (Bar Admission and Disciplinary Matters), 8.4(c) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

An attorney borrowed money in the form of a cash advance on a credit card charge account. The attorney misrepresented the transaction to the bank and credit company by labeling the charge as legal fees. The attorney's response to the Informal Complaint was not in compliance with the Rule 8.1(b) of the Rules of Professional Conduct.

**ADMONITION**

On March 28, 2007, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violations of Rule 1.8(h) (Conflict of Interest: Current Clients), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

An attorney entered into an agreement with an indigent client whereby the client waived all rights to file a Bar complaint and released the attorney from all other claims. Prior to the client signing the agreement, the attorney did not advise the client to seek independent counsel. The agreement interferes with attorney discipline oversight and undermines the integrity of the profession.

**PROBATION**

On November 27, 2006, the Honorable Joseph C. Fratto, Third Judicial District Court, entered Findings of Fact, Conclusions of Law and Order Sealing File against an attorney. The attorney was placed on a six-month probation and anger management counseling. Upon the successful completion of the probation and counseling, the action was dismissed with prejudice.

*In summary:*

An attorney engaged in inappropriate behavior and anger in an incident involving parking lot security guards.

## Pro Bono Honor Roll

Andres Alarcon
James Baker
Lauren Barros
Charles Brown
Russell Cannon
Shelly Coudreaut
Roberto Culas
Meredith Dinkins
Peter Donaldson
H.D. Gailey
Jason Grant
Brent Hall
Lincoln Harris
Michael Johnson
Louise Knauer
Rick Lundell
John Maddox
Michael Mohrman
Allen Moore
William Morrison
Todd Olsen
Adam Price
Stewart Ralphs
Robin Ravert
Jon Rogers
Leslie Schaar
Linda Smith
Matthew Storey
Virginia Sudbury
Pam Thompson
Carrie Turner
Renon Warner
Tracey Watson

Utah Legal Services and the Utah State Bar wish to thank these volunteers for their time and assistance during the months of April and May. Call Brenda Teig at (801) 924-3376 to volunteer.

# *Discipline Corner*

**ADMONITION**

On November 27, 2006, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.4(b) (Communication), 3.2 (Expediting Litigation), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

The attorney failed to timely draft and file an order as instructed by the court to do so on behalf of the attorney's client. The attorney failed to keep the client reasonably informed of the case status and failed to respond to the client's phone calls. The attorney failed to properly explain the legal work necessary to accomplish the client's desired result. The attorney's failure to do so resulted in the client's misunderstanding of the attorney's scope of representation and the necessary legal work to accomplish the client's goals. Mitigating factors were: absence of a prior record of discipline; absence of a dishonest or selfish motive; personal or emotional problems; and full and free disclosure to the client or the disciplinary authority prior to the discovery of any misconduct or cooperative attitude toward proceedings.

**PUBLIC REPRIMAND**

On November 3, 2006, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Mark R. Emmett for violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.4 (Communication), 1.5(a) (Fees), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

In a bankruptcy matter, Mr. Emmett failed to manage his caseload in order for him to provide competent services to his client, which led to the dismissal of the client's bankruptcy. Mr. Emmett failed to submit the required documents to the bankruptcy court to proceed with his client's case. Mr. Emmett admittedly failed to keep his client reasonably informed and failed to comply with the client's requests for information. Mr. Emmett charged his client for work not completed, and for work completed without meaningful results.

**RESIGNATION WITH DISCIPLINE PENDING**

On November 8, 2006, the Honorable Christine M. Durham, Chief Justice, Utah Supreme Court, entered an Order Accepting Resignation with Discipline Pending concerning Craig P. Orrock.

*In summary:*

Mr. Orrock failed to fully account for funds in his trust account.

**SUSPENSION**

On October 30, 2006, the Honorable Sandra N. Peuler, Third Judicial District Court, entered Findings of Fact and Conclusions of Law, and Order of Discipline: Suspension suspending Karen Thomas for six months from the practice of law for violations of Rules 1.1 (Competence), 1.3 (Diligence), 1.4(a) (Communication), 1.5(a) (Fees), 1.16(d) (Declining or Terminating Representation), 3.2 (Expediting Litigation), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct. Ms. Thomas's suspension was effective thirty days from the date of its entry.

*In summary:*

Ms. Thomas was hired to finalize an adoption, in which the natural mother had agreed to relinquish her parental rights. The client paid Ms. Thomas for the drafting of the adoption agreement, the finalization of the adoption and the filing fee. The client notified Ms. Thomas of the birth of the baby. The client took the baby home from the hospital. Five weeks after the baby's birth, Ms. Thomas had not arranged for the natural mother to sign the required relinquishment papers in front of a signing judge. The client left numerous messages for Ms. Thomas concerning the status of the relinquishment. Ms. Thomas failed to keep the client informed of the status and failed to promptly comply with the client's requests for information. Ms. Thomas informed her client that the delay was due in part because the signing judge was out of town. The natural mother became frustrated with Ms. Thomas and the delay. The client arranged, on her own, for the natural mother to appear before the judge to sign the relinquishment papers. At the hearing, the natural mother demanded that the baby be returned. The court ordered that the client return the baby within an hour's time. Ms. Thomas informed the client that she would help the client try to get the baby back without charge to the client. Ms. Thomas did not earn the fees she collected from the client. Ms. Thomas collected an excessive fee given the work performed in the adoption.

**ADMONITION**

On October 20, 2006, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violations of Rule 1.3 (Diligence), 1.16(c) (Declining or Terminating Representation), 1.16(d) (Declining or Terminating Representation), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

In a custody case, the attorney failed to follow up with opposing counsel regarding a stipulation and other issues that required

action, or enforcement. The attorney failed to pursue the issue before the court concerning the opposing party's relocation to another state although a stipulation was in place for joint legal custody. The attorney failed to provide the court and the client notice of the attorney's withdrawal in the case.

**PUBLIC REPRIMAND**

On October 20, 2006, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Alejandro Maynez for violations of Rules 1.4(a) (Communication), 1.4(b) (Communication), 3.3(a)(1) (Candor Towards the Tribunal), 3.3(a)(4) (Candor Towards the Tribunal), 3.4(b) (Fairness to Opposing Party and Counsel), 4.1(a) (Truthfulness in Statements to Others), 8.4(c) (Misconduct), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

In a bankruptcy matter, Mr. Maynez changed the signing date of his client's signature and estimated the client's financial figures to correspond with the new signing date. Mr. Maynez did not consult with his client concerning the changes. The altered documents were filed with the court and without the client's authority. Mr. Maynez was not candid with the trustee concerning the change in the documents. Mitigating factors were: remorse; candor to the Ethics and Discipline Committee's Screening Panel; attempt to resolve harm to client and Trustee; and Mr. Maynez's self report of the matter to the OPC, albeit under threat that the bankruptcy Trustee would report the conduct if Mr. Maynez did not report it.

**PUBLIC REPRIMAND**

On October 12, 2006, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Philip Danielson for violations of Rules 1.4(b) (Communication), 1.15(b) (Safekeeping of Property), 1.16(d) (Declining or Terminating Representation), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

After being hired for a criminal matter, Mr. Danielson left the law firm he was with, turning all of his cases over to another attorney. Mr. Danielson's failure to communicate the reasons for his withdrawal did not allow his clients to make informed decisions. Mr. Danielson failed to give his clients adequate notice of his withdrawal. Mr. Danielson failed to provide an accounting until long after it was requested by his client. Mr. Danielson knowingly failed to respond to requests for information by the OPC.

**SUSPENSION**

On October 4, 2006, the Honorable Judith Atherton, Third Judicial District Court, entered an Order of Discipline: Six Month Suspension suspending Gordon W. DeBoer from the practice of law for violations of Rules 8.1(a) (Bar Admission and Disciplinary Matters), 8.4(c) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. DeBoer made false statements or omitted material facts on his application for admission to the Utah State Bar.

**ADMONITION**

On October 10, 2006, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violations of Rules 1.4(b) (Communication), 5.1(b) (Responsibilities of a Partner or Supervisory Lawyer), 7.1(a) (Communications Concerning a Lawyer's Services), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

The attorney was in a supervisory role in the firm. A client approached the attorney when the client was having problems with another attorney in the firm. The attorney agreed to take the case from the other attorney. After taking the case, the attorney failed to explain statute of limitations issues. The attorney failed to take reasonable efforts to ensure the performance of the other attorney, who was a new attorney. The attorney also held out the nature of the law practice as a firm when it was not.

**ADMONITION**

On October 10, 2006, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violations of Rules 1.3 (Diligence), 1.5(b) (Fees), 1.6(a) (Confidentiality of Information), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

The attorney was hired to defend a notice to vacate. The attorney failed to follow-up on the changes made by the client to the complaint. The attorney did not have a signed fee agreement with the client, which would have evidenced that the attorney communicated the basis and rate of his fee to his client. The attorney shared confidential information with another attorney, not associated with the attorney, without the client's consent.

# *Attorney Discipline*

**UTAH STATE BAR ETHICS HOTLINE**

Call the Bar's Ethics Hotline at (801) 531-9110 Monday through Friday from 8:00 a.m. to 5:00 p.m. for fast, informal ethics advice. Leave a detailed message describing the problem and within a twenty-four hour workday period a lawyer from the Office of Professional Conduct will give you ethical help about small everyday matters and larger complex issues.

More information about the **Bar's Ethics Hotline** may be found at www.utahbar.org/opc/opc_ethics_hotline.html. Information about the formal Ethics Advisory Opinion process can be found at www.utahbar.org/rules_ops_pols/index_of_opinions.html.

**ADMONITION**

On March 15, 2012, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 3.5(b) (Impartiality and Decorum of the Tribunal), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Utah Rules of Professional Conduct.

*In summary:*

The attorney represented an employer in an administrative hearing before the Workforce Services Board. After receiving an unfavorable ruling, the attorney represented the employer in an appeal of the unemployment eligibility decision before the Utah Court of Appeals. The Utah Court of Appeals affirmed the decision and issued its decision. The attorney sent a letter to the judges involved in the case. The letter was entered on the court's docket. A copy of the letter was not sent to opposing counsel on the case. The letter criticized the court's decision and asked the court to reconsider the merits of his arguments. The criticism was made in a disrespectful and condescending manner. At the time the attorney sent the letter to the judges, the time for appealing the decision had passed.

*Mitigating factors:*

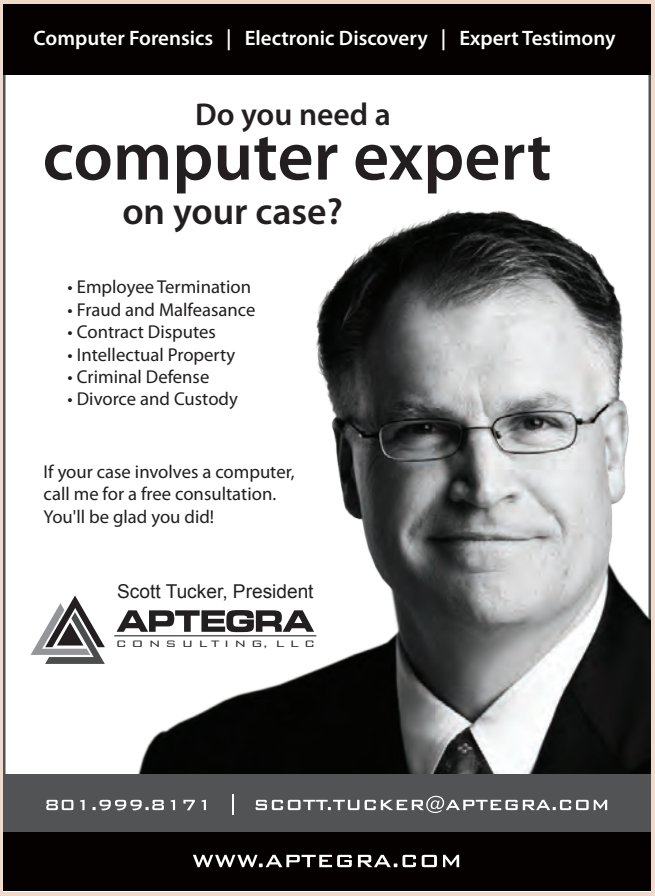
Absence of prior discipline and absence of dishonest or selfish motive.

*Aggravating factors:*

Refusal to acknowledge wrongful conduct and begrudging acknowledgment that the language could be offensive.

**ADMONITION**

On March 22, 2012, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.2(a) (Scope of Representation) and 8.4(a) (Misconduct) of the Utah Rules of Professional Conduct.



*In summary:*
An attorney was hired for a bankruptcy matter. The attorney failed to adequately communicate with the client regarding the consequences of the trustees' objections. The failed communication with the clients resulted in the attorney allowing the conformation hearing to go forward with an unacceptable payment plan for the debtors. The client should have approved the payment in advance. The attorney failed to communicate with the clients regarding the consequences of the hearing and the strategy being employed. The attorney's behavior was generally negligent and caused injury.

*Mitigating factors:*
Lack of prior discipline.

**ADMONITION**

On March 26, 2012, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 8.4(c) (Misconduct) and 8.4(a) (Misconduct) of the Utah Rules of Professional Conduct.

*In summary:*
The attorney was hired to represent a client in a custody and child support matter. The attorney received an initial payment with additional payments to be paid in the future. As the representation progressed, the client was unable to make payments and the amount owed to the attorney continued to grow. The client and the attorney exchanged text messages where the attorney indicated the client could pay the bills in "other ways." In an effort to persuade the client, the attorney indicated they would write off a set amount of the bill for each "visit." Although it appears that the client considered accepting the attorney's offer, the client did so only because the client did not want the attorney to withdraw from representation. The client acknowledged that the attorney's representation was not negatively impacted by the text message exchanges. After the client submitted the complaint to the OPC, the attorney was offered a diversion, with one of the terms being that the attorney would write off the remainder of the client's bill. The attorney negligently sent an email to the client believing that the client was aware of the diversion proposal. The attorney believed that the terms of diversion were not determined with regard to whether any fee waiver would be less than the total outstanding amount. Little injury was caused.

*Mitigating factors:*
Personal problems; seeking and receiving counseling; and remorse.

**ADMONITION**

On March 26, 2012, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.1 (Competence), 1.3 (Diligence), and 8.4(a) (Misconduct) of the Utah Rules of Professional Conduct.

*In summary:*
The attorney failed to review the client's documentation. The attorney failed to adequately prepare for the client's administrative hearing. The attorney failed to timely submit evidence and review documents submitted by the client and others. This resulted in little or no injury.

*Mitigating factors:*
Lack of prior discipline.

**ADMONITION**

On April 12, 2012, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.4(a) (Communication), 1.15(d) (Safekeeping Property), and 8.4(a) (Misconduct) of the Utah Rules of Professional Conduct.

*In summary:*
Following the termination of the representation, the attorney knowingly failed to provide the former client a full accounting of the retainer despite requests for such accounting. The attorney negligently failed to keep the client reasonably informed about the status of the retainer. The attorney failed to inform the client about circumstances when disgorgement of the retainer might occur by including a disgorgement provision in the fee agreement. There was generally little or no injury because the fee was earned and reasonable in light of the services rendered.

*Mitigating factors:*
No prior history of discipline; no dishonest or selfish motive;

and eventual (although untimely) accounting was provided.

*Aggravating factors:*
Refusal to acknowledge wrongful conduct; substantial experience in practice; and vulnerability of the client.

**PUBLIC REPRIMAND**

On February 28, 2012, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Bryan T. Adamson, for violation of Rules 1.4(a) (Communication), 1.5(b) (Fees), 1.15(d) (Safekeeping Property), 7.1 (Communications Concerning a Lawyer's Services), 7.2(c) (Advertising), and 8.4(a) (Misconduct) of the Utah Rules of Professional Conduct.

*In summary:*
Mr. Adamson and his client entered into a contingency fee agreement wherein Mr. Adamson agreed to represent the client in a medical malpractice case. The client paid Mr. Adamson an advance to cover filing costs. The client later sent Mr. Adamson an email terminating the representation and requesting a return of the filing costs. Mr. Adamson responded that he would not refund any money because he had spent significant hours on the case. Mr. Adamson further told the client that he would place a lien on the case if she took the case to a new attorney. Mr. Adamson told the client her case was not worth pursuing. The client sent three follow up requests for Mr. Adamson to provide an itemization of his fees. Mr. Adamson refused to provide an itemization of his fees. The client again requested that Mr. Adamson document his lien claim so that she could make a decision about whether to proceed with her case. Mr. Adamson did not respond to this request. Mr. Adamson had not done the amount of work on the case to justify the figure he used when threatening to place the lien. Mr. Adamson's yellow page advertising included a guarantee that he would pay a client $1000 if they did not win their case. Mr. Adamson's firm website did not contain his name. Mr. Adamson was informed by the OPC that the website did not contain his name, but he failed to


# Family Law in Utah

## *Fourth* Edition coming soon!

**A COMPLETE ANALYSIS OF FAMILY LAW BY TOPIC**

**Family Law in Utah 4th Edition includes a discussion of family law by topic including an analysis of Utah cases and codes through summer 2012.**

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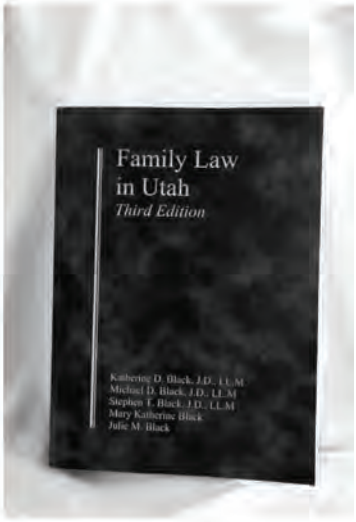
- Divorce
- Annulment
- Separate Maintenance
- Property Division
- Alimony
- Child Support
- Imputation of Income
- Custody & Visitation
- Abuse

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take steps to correct it.

**PUBLIC REPRIMAND**

On April 9, 2012, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Bryan T. Adamson, for violation of Rules 1.4(a) (Communication), 1.4(b) (Communication), 1.5(b) (Fees), 1.16(b) (Declining or Terminating Representation), 1.16(d) (Declining or Terminating Representation), and 8.4(a) (Misconduct) of the Utah Rules of Professional Conduct.

*In summary:*

Mr. Adamson was retained to represent a client in a divorce. The fee agreement was signed by the client's mother, who also paid the fee. The fee agreement was entitled "Stipulated Divorce Flat Fee Retainer Agreement." The fee agreement provided that the case would be handled on a flat fee basis, but in the event of trial, the client would pay an hourly rate. Mr. Adamson filed the Petition for Divorce and later sent the client an invoice for an amount over and above the flat fee already paid. Prior to sending the bill, Mr. Adamson did not communicate to the client that he had converted the case from a flat fee to an hourly rate. Later Mr. Adamson told the client he would not complete the case until the fees were paid. Mr. Adamson eventually withdrew from the case. Mr. Adamson admitted that when he withdrew from the case there was only about thirty minutes of work left to do on the case to get the divorce finalized.

**SUSPENSION**

On April 17, 2012, the Honorable Steven L. Hansen, Fourth District Court, entered an Order of Discipline: One Year Suspension suspending Earl B. Taylor from the practice of law for one year for violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.4(a) (Communication), 1.15(a) (Safekeeping Property), 7.3(c) (Direct Contact with Prospective Clients), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Utah Rules of Professional Conduct.

*In summary:*

Potential clients received a form letter from Mr. Taylor advertising Mr. Taylor's bankruptcy-related services. The form letter indicated that Mr. Taylor could assist them in preventing foreclosure of their home. The phrase "Advertising Material" was not located on the form letter or the envelope. At their initial consultation, the clients paid Mr. Taylor money toward his advance fee and provided Mr. Taylor with a packet containing their asset and debt information. Later, when the clients sought to pay the remainder of the advance fee, Mr. Taylor asked them to deposit cash directly into his personal bank account. They deposited the money into his account. During the period of the representation, Mr. Taylor did not have a client trust account. Mr. Taylor also did not place the advance fee into a client trust account. The clients were expecting to pay the remaining balance at the next court date. Mr. Taylor filed a Petition for Chapter 7 Bankruptcy on behalf of the clients. The clients paid the filing fee. Later, the clients were notified that Mr. Taylor failed to submit numerous required documents to further their Bankruptcy. Mr. Taylor had to provide the documents or the Petition would be dismissed. Mr. Taylor failed to submit the documents and the Petition was dismissed. After learning of the dismissal, the clients confronted Mr. Taylor who agreed to re-file their Petition. A second Petition was filed. The Bankruptcy Court served Mr. Taylor with a Deficiency Notice identifying numerous documents that he had failed to provide. Later the client's second Petition for Bankruptcy was dismissed. The clients contacted Mr. Taylor upon learning that their second Petition for Bankruptcy had been dismissed. Mr. Taylor indicated he would pay for and re-file the Petition for a third time. Mr. Taylor failed to file the third Petition for Bankruptcy. The clients repeatedly tried to communicate with Mr. Taylor. Mr. Taylor stopped responding to the client's telephone calls and emails. The clients were forced to retain another attorney to complete their Bankruptcy. Mr. Taylor was served with a Notice of Informal Complaint ("NOIC"). Mr. Taylor failed to submit a response to the NOIC.

**SUSPENSION**

On March 29, 2012, the Honorable Paul G. Maughan, Third District Court, entered an Order of Discipline: Suspension suspending Jeffrey M. Gallup from the practice of law from January 26, 2010 until March 29, 2012 for violation of Rules 8.4(b) (Misconduct), 8.4(c) (Misconduct), and 8.4(a) (Misconduct) of the Utah Rules of Professional Conduct.

*In summary:*

On January 22, 2009, Mr. Gallup entered a no contest plea to one count of Violation of a Protective Order, a 3rd degree

felony. On April 30, 2009, Mr. Gallup entered a guilty plea to one count of Violation of a Protective Order, a 3rd degree felony. On June 30, 2009, Mr. Gallup entered a guilty plea to one count of Violation of a Protective Order, a 3rd degree felony. On August 18, 2009, Mr. Gallup entered a guilty plea to two counts of Driving Under the Influence of Alcohol/Drugs. Mr. Gallup was placed on interim suspension on January 26, 2010 based upon the felony convictions. The suspension was lifted on March 29, 2012 allowing Mr. Gallup to file for reinstatement when he chooses to do so.

**RESIGNATION WITH DISCIPLINE PENDING**

On March 28, 2012, the Utah Supreme Court entered an Order Accepting Resignation with Discipline Pending concerning Cheri K. Gochberg for violation of Rules 8.4(b) (Misconduct) and 8.4(a) (Misconduct) of the Utah Rules of Professional Conduct. The effective date of the Order is September 19, 2011.

*In summary:*

On November 5, 2010, Ms. Gochberg was charged with Driving Under the Influence of Alcohol and/or Drugs (4 counts), Possession or Use of A Controlled Substance (2 counts), Reckless Driving, and No Proof of Insurance. On March 25, 2011, Ms. Gochberg pled guilty to and was convicted of Driving Under the Influence of Alcohol or Drugs, a third degree felony, for that incident.

On March 4, 2011 Ms. Gochberg was charged with Driving Under the Influence of Alcohol and/or Drugs while an Alcohol Restricted Driver. On March 28, 2011, Ms. Gochberg pled guilty to and was convicted of Driving Under the Influence of Alcohol or Drugs, a third degree felony. These felony convictions were Ms. Gochberg's fourth and fifth related DUI convictions within the last ten years.

Ms. Gochberg was placed on interim suspension on September 19, 2011, as a result of the convictions.

**DISBARMENT**

On March 27, 2012, Justice Thomas R. Lee, Utah Supreme Court, issued an Opinion disbarring Clayne I. Corey from the practice of law.

In 1999, a client retained Corey & Lund to represent her in a personal injury action. The client signed a fee agreement with Corey & Lund. The fee agreement allowed for a contingent fee of 33.3% of the settlement, unless the case went to trial. The case settled prior to trial. In 2000, the client accepted a settlement offer of $122,500. On February 25, 2000, Mr. Corey spoke with the insurance adjuster. A settlement check in the amount of $122,500 made out to the client and to her attorney, Clayne I. Corey was issued on February 25, 2000. On February 29, 2000, $124,803.60 was deposited into Mr. Corey's

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operating account. This amount included the client's settlement funds. Mr. Corey was the signator on this operating account and had control over the account. Mr. Corey knew early on that the client's settlement funds went into his operating account. Mr. Corey failed to deposit the client's settlement funds into a client trust account. Mr. Corey knew that checks were being written against the funds in the operating account. The account balance for the operating account went from $128,916.14 at the end of February, 2000 to $2909.12 at the end of June, 2000. The client did not authorize her settlement funds to be used by Mr. Corey for any purpose. She did not authorize or sign the Trust documents prepared by Mr. Corey and did not authorize or sign the Promissory Note prepared by Mr. Corey.

The client thought that the money was in Mr. Corey's trust account for safekeeping and agreed to receive $500 payments each month for a period of time. The client received twenty-one payments of $500. The client eventually decided that she wanted to receive the bulk of her settlement funds. The client requested a return of her file, the return of the remaining settlement money, and an accounting of her settlement. Mr. Corey failed to return his client's file. Mr. Corey failed to return unearned excess funds to his client. Mr. Corey failed to properly account for the settlement funds. Although the case settled in early 2000 Mr. Corey did not pay the majority of the lien holders until December 2000 leaving the client exposed for those bills. Mr. Corey failed to handle the third party claims in a timely way. Mr. Corey failed to protect funds belonging to his client.

*Aggravating factors:*
Prior discipline, pattern of carelessness relating to the safekeeping of client funds, substantial experience in the practice of law, no good faith effort to make restitution.

*Mitigating factors:*
Medical problems, absence of dishonest or selfish motive, remorse.

On November 23, 2010, the Honorable John Paul Kennedy, Third District Court, suspended Mr. Corey for three years, and stayed the suspension, for violation of Rules 1.15(a) (Safekeeping Property), 1.15(b) (Safekeeping Property), 1.15(c) (Safekeeping Property), 1.16(d) (Declining or Terminating Representation), and 8.4(a) (Misconduct) of the Utah Rules of Professional Conduct.

The OPC filed an appeal with the Utah Supreme Court. The Supreme Court's Opinion stated,

> We reverse the district court and conclude that Corey should be disbarred for intentional misappropriation of [his client's] funds. We first hold that Corey's acquisition and use of [his client's] funds for the operational needs of the firm was knowing and intentional, thereby placing him squarely under a presumptive disbarment standard. Second, we hold that Corey's mental impairment does not represent truly compelling mitigation evidence sufficient to rebut the presumption of disbarment. We accordingly reverse and order that Corey be disbarred.

**DISBARMENT**

On January 26, 2012, the Honorable Deno Himonas, Third District Court, entered an Order of Discipline: Disbarment against Steven B. Smith for violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.4(a) (Communication), 1.15(a) (Safekeeping Property), 1.15(c) (Safekeeping Property), 1.15(d) (Safekeeping Property), 1.16(d) (Declining Representation), 8.1(b) (Bar Admission and Disciplinary Matters), 8.4(c) (Misconduct), and 8.4(a) (Misconduct) of the Utah Rules of Professional Conduct.

*In summary there are three matters:*
Mr. Smith filed a complaint but did not diligently prosecute the case. Mr. Smith did not inform his clients about milestones or developments in their case. Mr. Smith did not timely file a response to a Motion for Summary Judgment filed by the first defendant and did not inform his clients about the court's order granting partial summary judgment. Shortly thereafter, the first defendant passed away and Mr. Smith did not timely inform his clients about the death. Although Mr. Smith felt incompetent to pursue the claim against the estate of a deceased defendant, he did not withdraw from the representation. He informed his clients he would pursue claims against the defendant's heirs but he did not pursue the claim nor did he inform his clients that he was not pursuing the claim. Mr. Smith misled his clients about the status of their case. At an Order to Show Cause hearing, the court ordered the parties to certify the case for trial within 120 days or the case would be dismissed. Mr. Smith informed his

clients that he met with the court and opposing counsel but did not inform them the meeting was due to the court's Order to Show Cause. Mr. Smith did not timely proceed with discovery. Mr. Smith did not respond to the second defendant's motion for Summary Judgment which was granted by the court. Later, Mr. Smith informed his clients that the second defendant's attorney wanted to take their deposition and did not inform them that the court had granted summary judgment for the second defendant. The owner of the third defendant company filed an answer for the company pro se. Mr. Smith informed his clients that he would move to strike the answer for the third defendant. Mr. Smith did not move to strike the remaining third defendant's answer and did not pursue the case against the remaining defendant. Mr. Smith did not submit a certificate of readiness for trial and the court dismissed the case for lack of prosecution. Mr. Smith did not inform his clients that the court dismissed the case. Mr. Smith did not respond to the Notice of Informal Complaint served by the OPC.

In the second matter, Mr. Smith wrote a check to be paid from his attorney trust account. The check was presented for payment from funds in Mr. Smith's attorney trust account. There were insufficient funds in Mr. Smith's trust account to cover the check. A financial institution sent the OPC a notice of insufficient funds ("NSF") regarding Mr. Smith's trust account. The OPC sent Mr. Smith several requests for a written response and documentation supporting his explanation for the NSF. Mr. Smith did not respond to the OPC's request for a written response regarding the NSF. The OPC served Mr. Smith with a NOIC. Mr. Smith did not timely respond to the NOIC.

In the last matter, a client sustained severe injuries while at work. The client had settled with an insurance company; however the payments had not been made. The insurance company had become insolvent and Mr. Smith was working with an insolvency group to obtain payments for his client. The client understood Mr. Smith would be paid one-third of anything they received and would work out any fees owed to Mr. Smith's old firm from the one-third paid to Mr. Smith. The client received a partial payment from the insolvency group. After the payment was received, Mr. Smith informed the client that he was working on the case and trying to secure the additional settlement funds. Later a check was issued to the client and Steven B. Smith, Esq. as payment of $412,500.00. The check was endorsed by Mr. Smith. The check was deposited into Mr. Smith's trust account. The client did not endorse the check nor did the client give Mr. Smith permission to endorse the check on the client's behalf. Mr. Smith did not notify the client that Mr. Smith had received the check. Mr. Smith wrote numerous checks against his account totaling roughly about $405,000.00. Mr. Smith continued to tell the client that he was working on the case. The client had financial difficulties due to his inability to continue his job as a result of his injuries. The client asked Mr. Smith if it was possible to get some of the settlement at that time. During the time Mr. Smith was purportedly working on the client's matter, Mr. Smith advanced the client payments that were to be deducted from the settlement monies once the settlement monies were received. Mr. Smith did not inform the client he had received the settlement funds. Mr. Smith helped the client find a third party lender to lend the client additional funds. Mr. Smith did not inform the client he had previously received the check when he helped the client find a lender. The client eventually called the insolvency group directly and was informed that two years previously a check had been issued to him and Steven B. Smith, Esq. When the client confronted Mr. Smith about the check, Mr. Smith initially indicated there had been a mistake. The client has not received the monies from the check from Mr. Smith. The client's new counsel requested the file from Mr. Smith. Mr. Smith did not timely provide the file to the client or the client's new counsel.

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## RESIGNATION WITH DISCIPLINE PENDING

On April 16, 2014, the Utah Supreme Court entered an Order Accepting Resignation with Discipline Pending concerning Luc D. Nguyen, for violation of Rule 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

On April 10, 2013, Mr. Nguyen pled guilty to a one-count felony Information of Money Laundering, admitting that during 2007 and 2008, he solicited and induced investors by making false representations regarding the nature of the investment and the risk involved. Mr. Nguyen made payments to many investors and represented that these payments were profits generated by private traders without personally verifying that any private trader existed. He also created the misleading impression that the company was able to meet all of its business obligations when he was aware that the company was actually not able to do so. Additionally, Mr. Nguyen transferred funds to his personal bank account and used the monies to pay his personal expenses without disclosing this information to investors.

## ADMONITION

On April 21, 2014, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rule 1.4(a) (Communication) of the Rules of Professional Conduct.

*In summary:*

The attorney was hired by a financial institution to represent the company in connection with multiple deficient accounts. The collections manager of the financial institution emailed the attorney and requested the balance owing on an account and requested an accurate accounting for all accounts. An attorney for the financial institution followed up on the credit manager's request via letter to the attorney.

When the credit manager again emailed the attorney regarding a discrepancy in the accounting provided by the attorney for one of the accounts, the attorney failed to respond. Subsequently the credit manager emailed the attorney. The email indicated that the attorney failed to respond to five requests for accounting information made over the prior two months.

The credit manager continued to email the attorney requesting information on the accounts that had previously been requested but the attorney failed to respond.

**ADMONITION**

On March 28, 2014, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.5(a) (Fees) and 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Over a period of several months, the attorney billed hours to a firm client for work the attorney did not perform. The client paid the bills as they were submitted by the firm. A firm audit of the client's account revealed the improperly billed hours. The firm informed the client and refunded the overpayment to the client.


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*Mitigating factors:*

Personal or emotional problems; full and free disclosure to the disciplinary authority; cooperative attitude towards proceedings; participation in rehabilitation with continued counseling; acceptance of significant oversight in his work and billing of clients; and remorse.

**DISBARMENT**

On April 14, 2014, the Honorable Judge Gary D. Stott, Fifth Judicial District Court, entered an Order of Sanction Disbarment against Mr. John L. Ciardi for violation of Rule 3.5(d) (Impartiality and Decorum of the Tribunal) and 8.4(d) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Ciardi appeared in the Fifth District Court in St. George to represent a client in a criminal matter. The client had appealed a case from the Washington County Justice Court. When the case was called neither the client nor Mr. Ciardi were present. The judge dismissed the case and remanded it back to the justice court. During the next roll call Mr. Ciardi entered the courtroom, interrupted the judge's calendar and asked the court to recall the case. The court instructed Mr. Ciardi to sit down or he would be removed from the courtroom. Mr. Ciardi did not sit down and persisted in his request to have the case recalled. The judge then ordered him out of the courtroom, which was full of attorneys and members of the public. It was necessary for a bailiff to escort Mr. Ciardi from the courtroom. Mr. Ciardi caused a disruption and swore loudly as he was leaving the courtroom, and he continued to yell loudly outside the courtroom and made disparaging remarks about the judge. Mr. Ciardi then went to the court clerk's office, which is open to the public. He continued to yell and make disparaging remarks about the judge in the clerk's office.

Mr. Ciardi became belligerent with court personnel and the clerk requested the assistance of a bailiff. A bailiff came to the clerk's office and asked Mr. Ciardi numerous times to leave the courthouse. Mr. Ciardi refused and continued to yell at the bailiff and make disparaging remarks about the judge. At one point, there were three bailiff's in the public area of the clerk's office dealing with Mr. Ciardi. The bailiffs had to leave their assignments in three different courtrooms in order to deal with him. The incident with Mr. Ciardi in the clerk's office lasted for approximately one hour.

After Mr. Ciardi was escorted from the clerk's office by two bailiffs he continued to yell at the bailiffs. While in the rotunda of the courthouse he yelled obscenities directed toward one of the bailiffs. There were members of the public in the rotunda that witnessed Mr. Ciardi's conduct. Mr. Ciardi yelled other profanities and vulgarities that were heard by the public. Mr. Ciardi was cited for Disorderly Conduct and Refusing a Lawful Order/Interfering.

As a result of Mr. Ciardi's conduct at the courthouse, a Screening Panel hearing was held before the Utah Supreme Court Ethics and Discipline Committee. At the Screening Panel hearing Mr. Ciardi made disparaging comments about the Utah judicial system, Utah Courts, Utah Judges, the Screening Panel members and the proceedings. Mr. Ciardi repeatedly interrupted witnesses who were attempting to offer testimony, and referred to witnesses as liars and idiots.

**PROBATION**

On April 22, 2014, the Honorable Keith C. Barnes, Fifth Judicial District Court, entered an Order of Discipline: Probation against Kerry F. Willets for violation of Rules 1.4(a) (Communication), 1.5(a) Fees, 1.16(d) (Declining or Terminating Representation), and 8.1(b) (Bar Admissions and Disciplinary Matters) of the Rules of Professional Conduct.

*In summary there are four matters:*

In the first matter, Mr. Willets was hired to represent a client in a Chapter 7 Bankruptcy Petition. Mr. Willets filed the Petition on behalf of the client and the court subsequently discharged the client's Petition. The court notified the client of the discharge by letter sent to the address Mr. Willets provided for the client in the bankruptcy filings; however, Mr. Willets did not directly notify the client that the Court had discharged his Petition.

In the second matter, Mr. Willets was hired to represent a client in a bankruptcy matter. The client paid Mr. Willets a fee to pursue the bankruptcy matter. Mr. Willets never filed a bankruptcy petition on behalf of the client.

Even though requests for a refund were made, Mr. Willets never provided an accounting of the fees he received from the client. Some work was performed; however, Mr. Willets never refunded any portion of the fees to the client.

The Office of Professional Conduct ("OPC") sent a Notice of Informal Complaint ("NOIC") to Mr. Willets requiring him to respond to the informal Bar complaint in writing within twenty days. Mr. Willets did not submit a timely NOIC response.

In the third matter, the OPC sent an NOIC to Mr. Willets requiring him to respond to the informal Bar complaint in writing within

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twenty days. Mr. Willets did not submit a timely NOIC response.

In the final matter, Mr. Willets was retained to modify a divorce petition. Mr. Willets did not file any paperwork with the court on behalf of the client. Subsequently, the client decided to terminate the services of Mr. Willets and asked for a refund of the fees paid. Even though Mr. Willets had earned some of the fees paid, Mr. Willets never refunded any portion of the monies paid by the client.

The OPC sent an NOIC to Mr. Willets requiring him to respond to the informal Bar complaint in writing within twenty days. Mr. Willets did not submit a timely NOIC response.

*Aggravating factors:*
Prior record of discipline.

*Mitigating factors:*
Family medical problems.

**PUBLIC REPRIMAND**

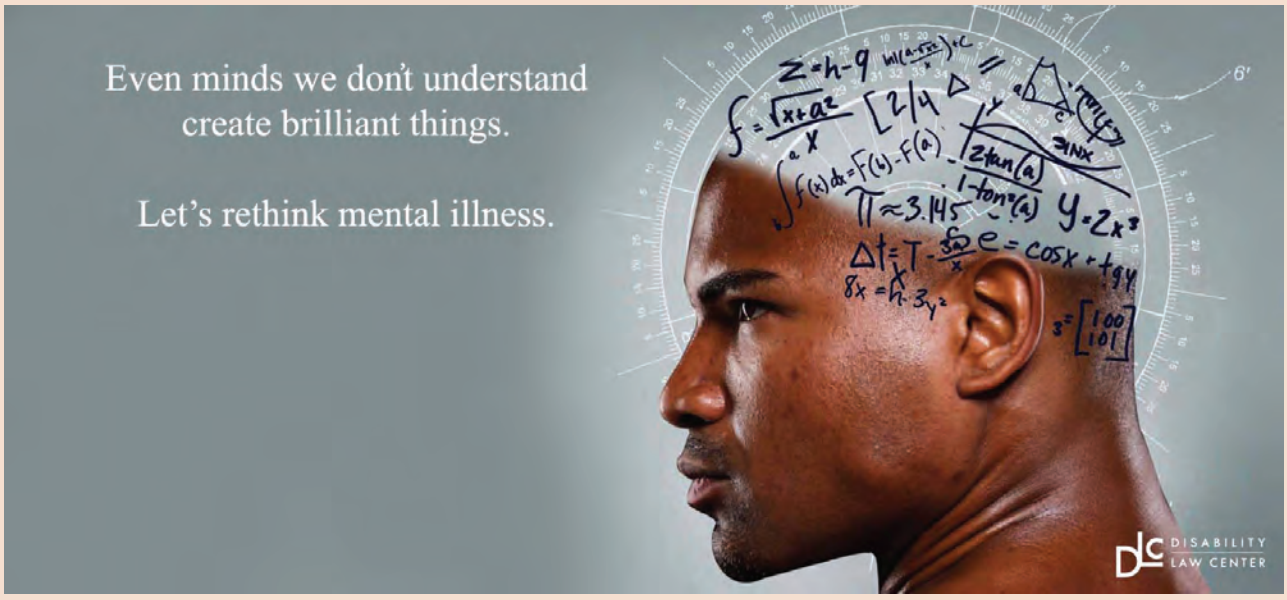
On April 21, 2014, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Roland F. Uresk for violation of Rules 1.3 (Diligence), 1.4(a) (Communication) and 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

*In summary:*
Roland F. Uresk was hired by the executors of an estate to represent the estate in a probate matter. Mr. Uresk was retained by the executors to have the primary house of the estate and other properties appraised; ready the house and other properties for sale; contact a realtor; and to identify and pay the taxes of the estate. Mr. Uresk paid the estate's taxes, but failed to accomplish any of the other tasks he was hired to perform. Mr. Uresk also failed to timely and regularly communicate with the executors of the estate and failed to respond to any of their written correspondence in writing. Mr. Uresk failed to provide the executors with an accounting of the expenses incurred and/or paid by the estate and he failed to properly advise them regarding their responsibilities as fiduciaries. Mr. Uresk also failed to assist the executors in their responsibilities as executors of the estate.

The Office of Professional Conduct sent a Notice of Informal Complaint ("NOIC") to Mr. Uresk requiring him to respond in writing to the informal Bar complaint. Mr. Uresk failed to submit a timely NOIC response despite admitting that he received the NOIC sent by the OPC.

**NOTICE OF TRANSFER OF PHILIP J. DANIELSON TO DISABILITY STATUS**

On May 2, 2014, the Honorable Judge Kate Toomey, Third Judicial District Court, entered an Order Transferring Philip J. Danielson to Disability Status.



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## SUSPENSION

On January 6, 2014, the Honorable Judge Ryan Harris, Third Judicial District Court, entered an Order of Discipline: Suspension for six months and one day and probation for 18 months, for Mr. McKay Marsden's violation of Rule 8.4(b) (Misconduct) of the Rules of Professional Conduct. The Suspension Order is effective as of the date of an Interim Suspension Order entered on November 12, 2013.

*In summary:*

On November 4, 2011, Mr. Marsden was charged with Driving Under the Influence of Alcohol and/or Drugs ("DUI"), Open Container in a Vehicle, Failure to stay in One Lane and Failure to Yield to Emergency Vehicle; a third degree felony because of two prior DUI's within the prior ten year period and due to a pending DUI in another court. On August 14, 2012, Mr. Marsden pled guilty to and was convicted of Driving Under the Influence of Alcohol or Drugs, a third degree felony.

## ADMONITION

On March 6, 2014, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rule 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

*In summary:*

The Office of Professional Conduct served the attorney with a Notice of Informal Complaint. The attorney failed to respond to the Notice of Informal Complaint as required by the Rules of Lawyer Discipline and Disability.

*Mitigating factors:*

Remorse and absence of a prior record of discipline.

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**ADMONITION**

On March 12, 2014, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.5(a) (Fees) and 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

*In summary, there are two matters:*

In the first matter, the attorney was retained to represent a client in connection with an immigration matter. The client paid the attorney an initial retainer. After taking the client's payment, the attorney's office informed the client that the next available appointment to meet with the attorney was not for several weeks. The client terminated the attorney's representation and requested a refund of the retainer. The attorney initially refused to refund the client's retainer on the basis that the retainer was a non-refundable fee.

The Office of Professional Conduct served a Notice of Informal Complaint upon the attorney, requiring the attorney to respond in writing to the client's informal Bar complaint. The attorney failed to respond to the Notice of Informal Complaint.

In the second matter, the attorney was retained to represent a husband and wife in their efforts to obtain U Visas as victims of a crime. The clients paid the attorney for both representations. The attorney submitted paperwork to the Department of Homeland Security on behalf of the clients which incorrectly cited a non-qualifying criminal offense as the basis for the clients' requests for U Visa status. The Department of Homeland Security sent the clients a Request for Evidence, requiring them to demonstrate how the non-qualifying offense was similar to a crime that would qualify the clients for U Visa status. The attorney requested additional fees from the clients to respond to the Request for Information and provide corrected information.

*Mitigating factors:*

Timely good faith effort to make restitution or to rectify the consequences of the misconduct involved.

**SUSPENSION**

On January 30, 2014, the Honorable Judge Ryan Harris, Third Judicial District Court, entered an Order of Discipline: Suspension against Mr. Paul R. Poulsen for violation of Rule 8.4(b) (Misconduct) and 8.4(c) (Misconduct) of the Rules of Professional Conduct. Mr. Poulsen was suspended for one year. The effective date of the suspension is the date of an Order of Interim Suspension against Mr. Poulsen dated May 7, 2013.

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*In summary:*
On October 1, 2012, Mr. Poulsen pled guilty and was convicted of one count of wrongful appropriation, a Class A misdemeanor. Mr. Poulsen pled guilty to the facts as described in the Amended Information filed against him, admitting that from approximately January 2006 through June 2012, while employed by a law firm, he billed for legal services to at least four closed files for work that he did not perform.

**SUSPENSION**

On January 27, 2014, the Honorable W. Brent West, Second Judicial District Court, entered Findings of Fact, Conclusions of Law and Order of Discipline suspending Ronald E. Griffin from the practice of law for a period of eight months with four months stayed and one year of probation, for Mr. Griffin's violation of Rules 3.4(c) (Fairness to Opposing Party and Counsel), Rule 5.5(a) (Unauthorized Practice of Law; Multijurisdictional Practice of Law), Rule 8.1(b) (Bar Admission and Disciplinary Matters), and Rule 8.2(a) (Judicial Officials) of the Rules of Professional Conduct.


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*In summary:*
Mr. Griffin was involved in a civil case where pursuant to the settlement of the case, his clients were entitled to an award of their costs and attorney's fees. Opposing counsel made requests for Mr. Griffin's billings records showing the attorney's fees he was claiming in the case. Mr. Griffin did not produce his billing records in response to the requests from opposing counsel. Mr. Griffin was directed by the judge presiding over the case to submit evidence of his attorney's fees. Mr. Griffin did not submit his billing records for attorney's fees as the court directed.

While Mr. Griffin's attorney membership was on inactive status, Mr. Griffin filed papers with the court as an attorney; made appearances on behalf of clients in a case at status conference hearings before the court and at a mediation. During the time Mr. Griffin's license was on inactive status, he charged attorney's fees in billings for work he performed for his clients and negotiated and signed a settlement agreement on behalf of the parties to a civil action as their attorney in the case.

Mr. Griffin filed a Rule 54(b) motion for reassessment and revision of a prior ruling, judgment and Court order, along with a supporting memorandum. In his memorandum, Mr. Griffin made statements asserting that the judge's ruling and judgment raised the specter of judicial paternalism or bias and favoritism. Mr. Griffin did not include facts to support his statements.

The Office of Professional Conduct served Mr. Griffin with a Notice of Informal Complaint requesting his written response to an informal Bar complaint within 20 days pursuant to the Rules of Lawyer Discipline and Disability. Mr. Griffin did not respond in writing to the Notice of Informal Complaint within 20 days.

*Aggravating and mitigating circumstances:*
The Court found some aggravating and some mitigating circumstances. Based on the mitigating circumstances, the court shortened and stayed some of the suspension time in this matter.

**INTERIM SUSPENSION**

On October 28, 2013, the Honorable James L. Shumate, Fifth Judicial District Court, entered an Order of Interim Suspension pursuant to Rule 14-519 of the Rules of Lawyer Discipline and Disability granting the OPC's Motion for Interim Suspension against John E. Hummel.

*In summary:*
Mr. Hummel took money and other things from indigent clients as payment of his legal fees, even though he was already receiving compensation for the same legal services from the County. As a result, he was found guilty of three counts of felony theft by extortion; one count of felony theft by deception; and one count of felony attempted theft by extortion.

# *Attorney Discipline*

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**RESIGNATION WITH DISCIPLINE PENDING**

On August 1, 2014, the Utah Supreme Court entered an Order Accepting Resignation with Discipline Pending concerning James F. Nichols, for violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.4(a) (Communication), 1.5(a) (Fees), 1.15(a) (Safekeeping Property), 1.15(c) (Safekeeping Property), 1.15(d) (Safekeeping Property), 1.16(d) (Declining or Terminating Representation), 3.1 (Meritorious Claims and Contentions), 3.3(a) (Candor Toward the Tribunal), 3.4 (Fairness to Opposing Party and Counsel), 4.1 (Truthfulness in Statements to Others), 4.4 (Respect for Rights of Third Persons), 5.3(c) (Responsibilities Regarding Nonlawyer Assistants), 8.4(b) (Misconduct), 8.4(c) (Misconduct), and 8.4(d) (Misconduct) of the Rules of Professional Conduct.

*In summary, there are five matters:*
In the first matter, Mr. Nichols hired an associate attorney to work at his firm. The attorney transferred trust funds for one of her clients into Mr. Nichols' IOLTA account when she started working for Mr. Nichols and over the next three months, added to the amount held in Mr. Nichols' trust account.

Subsequently, the attorney left Mr. Nichols' employment and many of the clients chose to go with her. After she joined a new firm, she contacted Mr. Nichols requesting that all of her clients' funds be turned over so that she could put the funds in her trust account.

The attorney requested an accounting from Mr. Nichols of all of the funds in his trust account. Mr. Nichols refused to provide an accounting or to give any of the funds to the attorney. In response to the attorney's request for the clients' funds, Mr. Nichols stated that there were no funds in his trust account and claimed that he either transferred the funds to his operating account or retained the funds for himself even though he had not done

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work on the cases to earn the fees. Mr. Nichols also falsely claimed that his receptionist failed to put the money in trust.

One client who stayed with Mr. Nichols was in the middle of settlement negotiations when the associate attorney left. Opposing counsel, in the case, drafted settlement papers and sent them to Mr. Nichols so that the client could sign. The client attempted to contact Mr. Nichols but he had closed his office and vanished resulting in a significant delay in settling the case.

In the second matter, Mr. Nichols was hired by a client to represent her during her production of an event at the Sundance Film Festival. During the festival, Mr. Nichols' client hosted an event and sub-let portions of a building to vendors. One of the vendors signed a contract with the client and paid for use of the space for one week.

At the conclusion of the week, Mr. Nichols removed the vendor's equipment from the building and told the vendor that he would return the equipment only if he received additional money. Mr. Nichols filed a Writ of Replevin in another County requesting that he be given a Writ to take the property even though he had already taken the property and placed it in a storage unit. In support of the Writ, Mr. Nichols made misrepresentations to the Court. Based upon Mr. Nichols misrepresentations to the Court, the Court signed the Writ.

The vendor had to hire counsel to have the Writ quashed based upon the fact that Mr. Nichols had inappropriately obtained the Writ. Mr. Nichols was ordered to return all of the property to the vendor. When the vendor retrieved the equipment from Mr. Nichols, some of the equipment was missing.

Both Mr. Nichols and his client were charged with Theft, a Second Degree Felony. As a result of Mr. Nichols' actions, his client was arrested and spent 30 days in jail before she was able to have the charges against her dismissed.

Mr. Nichols eventually pled guilty to a reduced charge of Attempted Wrongful Appropriation, a Class A Misdemeanor, but the vendor never received the missing equipment which had significant irreplaceable value. Mr. Nichols was ordered to pay restitution, serve 60 days in jail and was placed on supervised probation for 24 months.

In the third matter, Mr. Nichols was hired to represent a client in matters relating to child support issues. An Order to Show Cause hearing was held in the matter and the court later issued a ruling affecting the client's rights. Mr. Nichols never sent his client a copy or explained the ruling. The client emailed Mr. Nichols inquiring about what he needed to do pursuant to the ruling. Mr. Nichols notified the client that his mailing address had changed but did not respond to his client's questions.

The client made numerous subsequent attempts to contact Mr. Nichols to find out what he needed to do pursuant to the ruling, but he either received no response from Mr. Nichols or a response without any substantive information. Mr. Nichols' phone numbers were later disconnected or not in service.

The client never received a copy of his file, and despite the client's multiple requests for statements, Mr. Nichols never sent him any statements regarding his fees or a refund. The client was forced to hire a second attorney to represent him in the matter.

In the fourth matter, Mr. Nichols was retained to represent a client in a custody matter in Idaho. Mr. Nichols advised the client regarding the case and told the client he would assist her in modifying the order even though he was not licensed in Idaho. When the client's children moved to Washington, Mr. Nichols


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continued with the representation even though he is not licensed to practice in Washington. As part of the retainer agreement, the client granted Mr. Nichols a lien on her automobiles.

Mr. Nichols sent an email to his client providing advice regarding a California Order and the litigation in Washington. Subsequently, the client sent numerous emails requesting information about the case and informing Mr. Nichols that she needed to appear in court in ten days.

Mr. Nichols sent the client an email informing her that the documents related to the Washington case were available to be picked up at his office. When the client went to Mr. Nichols' office, it was empty and her papers were found in a drawer.

When the client received an order in Utah stating that there was an urgent matter that needed to be addressed, she made numerous attempts to reach Mr. Nichols, but received no further response. Mr. Nichols never released the liens on the client's automobiles, paid a refund or gave the client a complete copy of her file.

In the final matter, Mr. Nichols was retained to represent a client in a divorce case. The client paid Mr. Nichols a flat fee to draft, file and serve a Complaint and to file the decree, findings of fact and necessary supporting documents in his divorce. Mr. Nichols prepared a draft of the Summons and Complaint and met with the client who requested that several changes be made.

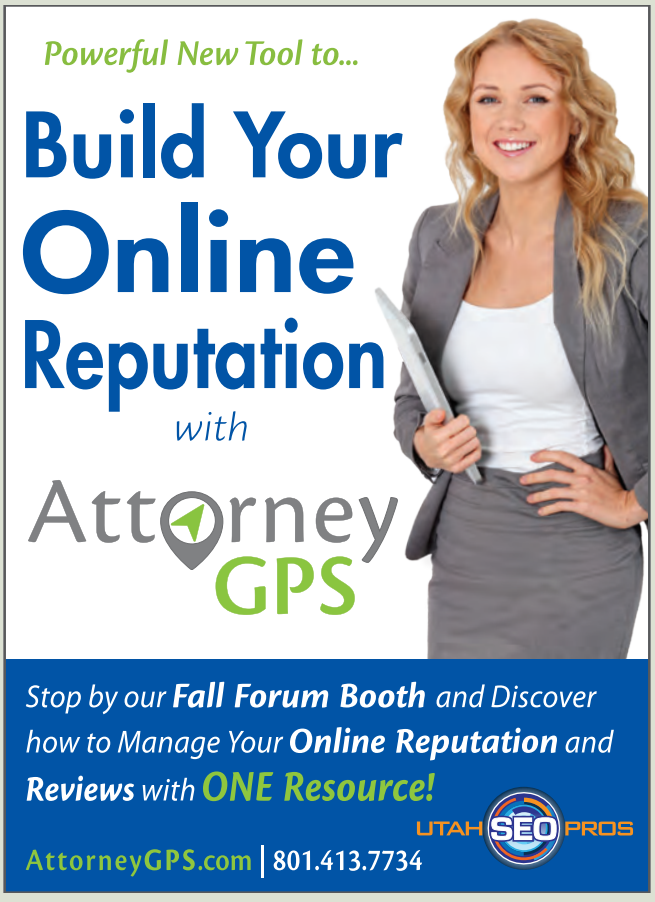
After the meeting, the client made numerous attempts to reach Mr. Nichols by telephone and by email, but never received a response. Ultimately, Mr. Nichols' telephone numbers were disconnected and Mr. Nichols could not be found. The client went to Mr. Nichols' office and found it to be vacant. The client had to hire a second attorney to represent him in the matter. The client did not receive his file or a refund from Mr. Nichols.

**FEDERAL COURT PUBLIC REPRIMAND AND PROBATION**

On September 24, 2014, the Chair of the Attorney Discipline Panel of the United States District Court for the District of Utah, entered an Order of Discipline publically reprimanding Hunt W. Garner for violation of Rule 4.2(a) (Communications with Persons Represented by Counsel) of the Rules of Professional Conduct. The Attorney Discipline Panel also imposed a one year probationary period during which Mr. Garner is restricted in his ability to appear in the United States District Court for the District of Utah. The restrictions are as follows: Mr. Garner may only appear in the United States District Court for the District of Utah if he is associated in the case with a member in good standing of the bar of that Court, who will serve as co-counsel and as a mentor for Mr. Garner's representation. The mentor must be identified and approved by the Chair of the Attorney Discipline Panel of the United States District Court for the District of Utah prior to the filing of an action of the entry of an appearance by Mr. Garner and must maintain co-representation throughout the period of probation or the period of representation, whichever ends first.

*In summary:*
Mr. Garner represented a client in a criminal matter. On four occasions in a single month, Mr. Garner visited a co-defendant of his client, who was represented by counsel, at the Cache Valley County Jail without permission from the co-defendant's attorney and the criminal case was discussed to the extent of whether Mr. Garner would represent the co-defendant. Mr. Garner knew that the co-defendant was represented by counsel and made no effort to speak with the co-defendant's attorney to authorize Mr. Garner's contact with the client.

*Aggravating circumstances:*
Multiple offenses and refusal to acknowledge the wrongful nature of the misconduct involved.



# Attorney Discipline

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**SUSPENSION**

On July 10, 2014, the Honorable Judge Keith Kelly, Third Judicial District Court, entered an Order of Discipline against Mr. Dwight B. Williams, suspending Mr. Williams' license to practice law for one year for his violation of Rule 1.3 (Diligence), Rule 1.7(a)(2) (Conflict of Interest: Current Clients), Rule 1.15(a) (Safekeeping Property), Rule 1.15(d) (Safekeeping Property), and 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Williams was appointed as trustee of a trust which was created by the trust grantor to serve as a supplemental needs trust. Mr. Williams also served as attorney for the trust and for the trust grantor. Mr. Williams as attorney and trustee, did not perform proper due diligence prior to investing trust funds. Mr. Williams, as attorney and trustee, failed to diligently secure loans made to persons from the trust. Mr. Williams, as attorney and trustee, failed to diligently pursue collections of loans and lost investment monies for the trust. Mr. Williams did not obtain adequate security before or simultaneously with the dispensing of trust funds for loans and investments and did not diligently pursue collection of funds from the transactions.

Mr. Williams, as attorney and trustee, made loans from the trust to friends, colleagues and former associates. Mr. Williams, as attorney and trustee, made investments based upon his own personal friendships and relationships without performing any objective due diligence. Mr. Williams used trust funds to fund transactions in which he had a personal interest with the third parties.

Mr. Williams as attorney for the trust moved trust funds from the trust account to his firm and placed the funds in the firm client trust account. He did not hold the funds separately from other client funds or from firm funds. Mr. Williams failed to keep the trust funds safe.

Mr. Williams failed to provide any information to the trust beneficiaries regarding losses of funds each year while the trust funds were under his control. Mr. Williams did not disclose to the beneficiaries that he was making loans from the trust funds to friends and colleagues without fully securing the loans for repayment. Mr. Williams failed to disclose to the beneficiaries that he was using trust funds for investments that were high risk

and not appropriately safeguarded. Mr. Williams failed to create separate trusts as required under the trust agreement, failed to promptly deliver funds to the separate trusts as required under the trust agreement and then failed to disclose this information to the beneficiaries. Mr. Williams failed to disclose to the beneficiaries any information that would allow them to make informed decisions regarding the funds.

Mr. Williams represented to the beneficiaries that he had given oral accounting to the trust grantor when he had not. Mr. Williams was asked repeatedly to account for the funds under his control and failed to provide accountings of the funds.

*Mitigating factors:*
Absence of prior discipline; good character and reputation; and efforts at making restitution.

**SUSPENSION**

On March 29, 2014, the Honorable Judge Paul Parker, Third Judicial District Court, entered Findings of Fact, Conclusions of Law and Order of Discipline: Suspension against Mr. Chad D. Noakes suspending Mr. Noakes' license to practice law for one year for his violation of Rule 8.1(b) (Bar Admission and Disciplinary Matters) and Rule 8.4(b) (Misconduct) of the Rules of Professional Conduct.

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*In summary:*
While conducting a routine traffic stop of Mr. Noakes' vehicle, a Salt Lake City police officer found a substance which tested positive as methamphetamine inside Mr. Noakes' vehicle. Mr. Noakes informed the officer he had given another male $300 for an amount of methamphetamine worth $260. Mr. Noakes was charged with Possession or Use of a Controlled Substance, a Third Degree Felony (Utah Code Ann. §58-37-8(2)(A)(I)). Mr. Noakes pled guilty to an amended charge of Attempted Possession of a Controlled Substance, a class A Misdemeanor, which was to be held in abeyance for one year and dismissed if Mr. Noakes completed the conditions of the plea deal. Mr. Noakes also violated the ethical rules when he was sent a Notice of Informal Complaint (NOIC) requiring him to respond in writing to the informal Bar complaint and Mr. Noakes failed to submit a NOIC response.

**PUBLIC REPRIMAND**
On May 28, 2014, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Walter T. Keane for violation of Rules 1.1 (Competence), 1.2(a) (Scope of Representation and Allocation of Authority), and 1.4(a) (Communication) of the Rules of Professional Conduct.

*In summary:*
Mr. Keane was hired to represent two defendants in a debt collection/foreclosure matter filed against them by a law firm for unpaid attorney fees. Mr. Keane was paid a flat fee for his legal representation.

After Mr. Keane filed an appearance of counsel on behalf of his clients, a telephone conference was held by the court and Mr. Keane failed to appear. The court could not reach Mr. Keane. Mr. Keane's clients were not informed of the court date in advance of the telephone conference.

Subsequently, Mr. Keane filed a Certificate of Completion of Discovery and Request for Trial Date. The court held a telephone conference. Mr. Keane's clients were not informed of the court date in advance of the telephone conference. At the telephone conference, without his clients' consent and against his clients' instruction to litigate the issue, Mr. Keane offered to settle the matter by stipulating to an amount of damages and agreeing that a final judgment be entered against his clients. The amount of the damages and judgment that Mr. Keane agreed to was in excess of the amount of damages sought in the complaint filed against Mr. Keane's clients.

Plaintiff's counsel prepared and sent a stipulation and other documents to Mr. Keane for signature. They were never signed by Mr. Keane or his clients. As a result, the plaintiff filed a motion to enforce the settlement, which was granted by the court.

*Aggravating factors:*
Lack of good faith effort to make restitution or to rectify the consequences of the misconduct involved.

*Mitigating factors:*
Lack of prior discipline.

**SUSPENSION & PROBATION**
On May 27, 2014, the Honorable Judge Robert Faust, Third Judicial District Court, entered an Order of Discipline: Suspension and Probation against Ms. April R. Morrissette for violation of Rule 8.4(b) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Ms. Morrissette pled guilty to and was convicted in Colorado of one count of Felony Menacing – Real/Simulated a class 5 felony, C.R.S. § 18-3-206(1)(a)/(b). Ms. Morrissette also pled guilty to a related crime of one count of Child Abuse – Negligence a class 3 misdemeanor, C.R.S. §18-6-401(1), (7)(b)(II). Ms. Morrissette violated the statutes by aiming a gun at a group of people in a threatening manner while yelling obscenities, and then shooting into the ground. One of the members of the group was a three-year old child.

Ms. Morrissette's term of suspension began on April 22, 2013. Following the one-year suspension period, Ms. Morrissette will be on probation for a period of two years.

*Mitigating factors:*
Absence of prior discipline; and full and free disclosure to the client or the disciplinary authority prior to the discovery of any misconduct or cooperative attitude toward proceedings.

**PUBLIC REPRIMAND**
On June 12, 2014, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Stuwert B. Johnson for violation of Rules 1.1 (Competence) and 8.1(b) (Bar

Admission and Disciplinary Matters) of the Rules of Professional Conduct.

*In summary:*
Mr. Johnson was hired to represent a client in a paternity action involving the custody and support of a minor child. Pursuant to Mr. Johnson's legal advice, his client relocated out of state with the minor child without providing sixty days notice of the relocation as required by statute. At a hearing on an Order to Show Cause, Mr. Johnson's client was held in contempt of court for moving without giving sixty days notice and for denying parent time. As a result, Mr. Johnson's client was ordered to perform community service and to pay attorney fees.

The Office of Professional Conduct sent a Notice of Informal Complaint (NOIC) to Mr. Johnson requiring him to respond in writing to the informal Bar complaint. Mr. Johnson failed to submit a NOIC response.

**PUBLIC REPRIMAND**

On June 5, 2014, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against J. Keith Henderson for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), and 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

*In summary:*
Mr. J. Keith Henderson was hired to assist with a disability claim. After Mr. Henderson was hired, his client was unable to contact him for two months. After finally getting in touch with Mr. Henderson, Mr. Henderson explained that personal circumstances had put him behind and he would send a report assessing the disability claim right away. After two more months of not hearing anything, the client again tried to contact Mr. Henderson. Mr. Henderson said he would send the report the following Monday. Mr. Henderson never sent the report.

The Office of Professional Conduct (OPC) sent a Notice of Informal Complaint (NOIC) to Mr. Henderson requiring him to respond in writing to the informal Bar complaint. Mr. Henderson failed to submit a NOIC response despite admitting that he received the NOIC sent by the OPC.

**ADMONITION**

On June 30, 2014, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.7(a) (Conflict of Interest: Current Clients) and 1.8(a) and Rule 1.8(i) (Conflict of Interest: Current Clients: Specific Rules) of the Rules of Professional Conduct.

*In summary:*
The attorney acted as legal counsel and advisor for an individual from whom the attorney purchased a business ownership

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interest. The attorney entered into the business transaction with the client without securing the client's informed consent, in writing, to attorney's role in the transaction. The attorney also used information relating to the representation of the client to the client's disadvantage in obtaining a purchase price for the business ownership interest. Through the business transaction, the attorney acquired a proprietary interest in the subject matter of a lawsuit in which the attorney was counsel of record for most of the defendants named in the lawsuit.

*Mitigating factors:*
Absence of a prior record of discipline; absence of a dishonest motive; timely good faith effort to make restitution or to rectify the situation; and genuine remorse.

## RESIGNATION WITH DISCIPLINE PENDING

On July 18, 2014, the Utah Supreme Court entered an Order Accepting Resignation with Discipline Pending concerning Steven Kuhnhausen, for violation of Rule 8.4(b) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
On April 28, 2014, Mr. Kuhnhausen pled guilty to two counts of Unlawful Sexual Conduct with a sixteen- or seventeen-year-old, both 3rd degree felonies, in violation of Utah Code section 76-5-401.2.

## SUSPENSION

On July 20, 2014, the Honorable Judge Robert Faust, Third Judicial District Court, entered Findings of Fact, Conclusions of Law, and Order of Suspension against Mr. Huy Ngoc Vu, suspending Mr. Vu's license to practice law for three years for his violations of Rule 1.3 (Diligence), Rule 1.4(a) (Communication), Rule 1.5(a) (Fees), Rule 1.16(d) (Declining or Terminating Representation), and Rule 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

*In summary, there are five matters:*
In the first matter, Mr. Vu was hired for legal representation in a divorce matter. Mr. Vu filed several documents with the court including the Verified Complaint for Divorce and also sent and received several email correspondences in connection with his representation of the client. Subsequently, Mr. Vu stopped responding to the client's emails and phone calls. There is no evidence through invoices and/or an accounting to show that Mr. Vu earned the entire fee he collected. Mr. Vu failed to return unearned fees and return the client's papers.

In the second matter, Mr. Vu was hired for legal representation for modification of a divorce involving child custody issues. Mr. Vu had several communications with the client about the case during the month in which he was hired. Mr. Vu failed to obtain documents and coordinate visitation times as requested by the client. Despite the client's multiple attempts to communicate with Mr. Vu, Mr. Vu did not have any contact with his client following the communications which transpired during the month in which he was hired and he failed to inform the client he would no longer be representing the client.

In the third matter, Mr. Vu was hired to represent a client in divorce modification proceedings. Mr. Vu was ordered to prepare the court's order but failed to do so. Mr. Vu failed to communicate the client's upcoming travel plans with opposing counsel as requested and issues arose regarding the client's child and ex-spouse. When the client returned from the trip, Mr. Vu did not respond to the client's communications. Mr. Vu did not file or send documents for an Order to Show Cause hearing to opposing counsel. Despite repeated attempts to communicate by the client, Mr. Vu did not respond. Mr. Vu failed to give notice that he would no longer represent the client and failed to respond to requests for the client's file.

In the fourth matter, Mr. Vu was hired for legal representation in a divorce matter. During the first two months of the representation, Mr. Vu did some work on the case. Subsequently, despite numerous attempts by the client to communicate, Mr. Vu failed to communicate with the client. Mr. Vu did not send the documents filed by opposing counsel to his client and also failed to return the client's file.

In the final matter, Mr. Vu entered into a fee agreement with a client to finish a Qualified Domestic Relations Order (QDRO) from the client's divorce. During the first two months of the representation, Mr. Vu regularly communicated with the client via email and discussed the process by which he would get information necessary to complete the QDRO. Thereafter, Mr. Vu failed to communicate with the client despite the client's repeated attempts to communicate with him. Mr. Vu did not follow through with the work he agreed to perform. Mr. Vu abandoned the client and failed to give the client notice that he was no longer representing the client.

In all five matters, Mr. Vu was served with a Notice of Informal Complaint requesting information from him concerning the informal Bar complaints. Mr. Vu failed to submit responses in writing to the OPC's requests for information concerning the informal Bar complaints against him.

# *Attorney Discipline*

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**RECIPROCAL DISCIPLINE**

On December 1, 2014, the Honorable Richard McKelvie, Third Judicial District Court, entered Findings of Fact, Conclusions of Law and Order of Reciprocal Discipline: Public Reprimand against Julie C. Molloy for violating Rule 1.15(a) (Safekeeping Property) and Rule 8.4(c) (Misconduct) of the Rule of Professional Conduct.

Ms. Molloy is a member of the Utah State Bar and is also licensed to practice law in Massachusetts. The Commonwealth of Massachusetts Board of Bar Overseers of the Supreme Judicial Court issued an Order of Public Reprimand reprimanding Ms. Molloy for her conduct in violation of the Massachusetts Rules of Professional Conduct. An Order was entered in Utah based upon the discipline order in Massachusetts.

*In summary:*

Ms. Molloy deposited personal funds to her IOLTA account and kept earned fees in her IOLTA account to avoid an Internal Revenue Service levy against her personal account and operating account.

Ms. Molloy made cash withdrawals and internal debits from the IOLTA account that did not identify the recipient or source of the funds. Ms. Molloy made payments from her IOLTA account from personal funds and earned fees directly to creditors or vendors for her personal expenses. Ms. Molloy did not maintain a ledger

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for each client matter that listed all transactions for the client and the balance remaining for the client after each transaction.

In addition, Ms. Molloy did not perform a three-way reconciliation of her IOLTA account at least every sixty days. To the extent that Ms. Molloy reconciled her IOLTA account, she did so incorrectly and calculated incorrect balances. Ms. Molloy did not maintain and retain any reconciliation reports.

*Aggravating factors:*
Prior record of discipline.

*Mitigating factors:*
Health problems.

**ADMONITION**

On December 15, 2014, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rule 1.6 (Confidentiality of Information) of the Rules of Professional Conduct.

*In summary:*
A law firm was hired to represent a client in a family law matter. After the representation was terminated, the client posted an anonymous and disparaging comment regarding the law firm online. The attorney who owned the firm posted some general information regarding the representation as a rebuttal on the website, including the disclosure of the client's name.

## *Named in a Bar Complaint?*

Many complaints are dismissed in the early stage of the discipline process, and less than 3% result in Orders of Discipline, but all are disconcerting.

The newly formed Discipline Process Information Office is here to help. Jeannine P. Timothy will answer questions about the discipline process, refer you to the appropriate procedural rules at various points in the process, and inform you about the progress of your individual matter with the Office of Professional Conduct. Call Jeannine at 801-257-5515 or email her at DisciplineInfo@UtahBar.org.

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# *Attorney Discipline*

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More information about the Bar's Ethics Hotline may be found at www.utahbar.org/opc/office-of-professional-conduct-ethics-hotline/. Information about the formal Ethics Advisory Opinion process can be found at www.utahbar.org/opc/bar-committee-ethics-advisory-opinions/eaoc-rules-of-governance/.

**PUBLIC REPRIMAND**

On October 13, 2014, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Scott T. Poston for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.5(a) Fees, 1.15(c) (Safekeeping Property), and 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

*In summary:*

Mr. Poston was hired to represent a client in a criminal matter and an immigration matter. Mr. Poston was paid a flat fee for his legal representation. Mr. Poston did not earn the entire flat fee and failed to place the flat fee in to his trust account.

At the time Mr. Poston was retained, the client filled out and signed the necessary forms required for Mr. Poston to enter an appearance on his behalf and to submit a Freedom of Information Act (FOIA) Request to obtain his applicable records. Mr. Poston did not file the FOIA Request until two months after the request was ready to be sent and took three months to report to his client on the information he received.

Mr. Poston failed to contact the criminal prosecutor for months after he was retained, after telling his client it would only take a few weeks to resolve. Mr. Poston failed to follow up on his conversation with the criminal prosecution and ultimately did nothing to address his client's criminal charge. The client made several attempts to speak with Mr. Poston by contacting his office. Mr. Poston did not return the client's calls. Mr. Poston failed to report to his client in a timely manner regarding the work he performed.

The OPC sent a Notice of Informal Complaint ("NOIC") to Mr. Poston requiring him to respond to the informal Bar complaint in writing within 20 days. Mr. Poston did not submit a timely NOIC response.

# *Attorney Discipline*

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## ADMONITION

On June 28, 2012, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.2(a) (Scope of Representation and Allocation of Authority Between Client and Lawyer), 1.4(a) (Communication), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

The attorney acted negligently in stipulating to the Memorandum of Understanding and causing the dismissal of the client's case after the attorney's office received the client's faxed letter stating that the client had reconsidered the settlement and did not want the Memorandum of Understanding submitted to the Court. The attorney's conduct caused potential injury because the client's decision on this matter should have been honored and the client should have been allowed an opportunity to challenge the enforcement of the Memorandum of Understanding. The attorney did subsequently file a motion to set aside the divorce decree; however, that motion was denied. The attorney negligently failed to reasonably communicate with the client prior to stipulating to the divorce decree.

## ADMONITION

On August 8, 2012, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

An attorney was hired to have a juvenile's criminal record expunged. The attorney failed to reasonably communicate with his clients. The attorney failed to timely respond to the OPC's request for information. The attorney was negligent and his misconduct inflicted little or no injury.

*Aggravating factors:*

Prior discipline history and substantial experience in the practice.

*Mitigating factors:*

Remorse and recent personal issues.

## PUBLIC REPRIMAND

On August 27, 2012, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Kimberly J. Trupiano, for violation of Rules 3.3(a) (Candor Toward the Tribunal), 8.4(c) (Misconduct), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

A pro se individual pleaded guilty to criminal charges; was placed on probation; fined and ordered to complete further evaluation. Almost two years after the conviction, the judge was notified that the individual had not paid the fines nor completed the evaluation. The individual failed to appear and a warrant was issued for his arrest. Four years after the warrant was issued, Ms. Trupiano made a motion to recall the warrant on the individual on the basis that he had been deported shortly after his plea and sentencing so he could not complete the criminal

matter. The documents filed by Ms. Trupiano implied that the individual had remained outside the country since his deportation. At the same time that Ms. Trupiano filed her motion to recall the warrant, Ms. Trupiano was representing the individual in a child custody matter in Utah that was scheduled to be heard approximately nine days after she had filed the motion to recall the warrant. Among the documents that Ms. Trupiano filed as part of the motion to recall and subsequent hearing on behalf of the individual was a non-notarized affidavit giving Ms. Trupiano permission to represent the individual. A notarized affidavit would have revealed that the individual was presently living in Kansas. In response to questions from the judge about Ms. Trupiano's client's sentencing, Ms. Trupiano never clarified that her client had returned to the United States after deportation. Ms. Trupiano phrased her responses to avoid disclosing her client's location and trips to Utah. Ms. Trupiano's statements were misleading and in fact misled the prosecution and the Court and she did nothing to correct the misrepresentation. The level of injury is injury to the legal system.

*Mitigating factors:*
No prior discipline; inexperience in the law; value of her services to the community; the judge's belief that Ms. Trupiano is a good lawyer.

**SUSPENSION AND PROBATION**

On August 20, 2012, the Honorable L. A. Dever, Third Judicial District Court, entered an Order of Sanction suspending D. Scott Berrett from the practice of law for three years and placing him on probation for three years for violation of Rules 1.1 (Competence), 1.2(a) (Scope of Representation), 1.3 (Diligence), 1.4(a) (Communication), 1.4(b) (Communication), 1.5(a) (Fees), 1.5(c) (Fees), 1.15(a) (Safekeeping Property), 1.15(c) (Safekeeping Property), 1.16(d) (Declining or Terminating Representation), 8.1(b) (Bar Admission and Disciplinary Matters), 8.4(c) (Misconduct), 8.4(d) (Misconduct) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary there are eight matters:*
In the first matter, a client hired Mr. Berrett to assist the client in collecting funds from the client's client. In the second matter, a client provided Mr. Berrett with customer files in order to collect debts owed to a financial group. In the third matter, a client hired Mr. Berrett to represent the client in matters relating to the custody and visitation of a child. In the fourth matter, Mr. Berrett represented a client on a personal injury when he was associated with a law firm. In the fifth matter, the client retained Mr. Berrett to represent the client regarding three personal injury matters. In the sixth matter, a client paid Mr. Berrett to represent the client in a divorce case. In the

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seventh matter, a client hired Mr. Berrett to pursue a civil suit. In the eighth matter, a client hired Mr. Berrett via telephone, after receiving an advertising mailer from Mr. Berrett that referred to charges pending against the client.

In one matter Mr. Berrett lacked sufficient experience to properly complete the work he was hired to perform. In six matters Mr. Berret failed to abide by his client's objectives with regard to their matters. In all matters Mr. Berrett failed to pursue the cases in a timely manner or failed to complete any meaningful work on the cases. In all matters Mr. Berrett failed to communicate with his clients by failing to return calls, emails, and text messages and failing to respond to faxes or mailed correspondence. In four of the matters Mr. Berrett failed to reasonably explain matters to his clients so they could make informed decisions about their cases. In four matters Mr. Berrett charged an unreasonable fee when he failed to perform any meaningful work on the matters. In three of the matters Mr. Berrett failed to have a written fee agreement with his clients. In one matter Mr. Berrett did not keep funds the clients paid separate from his own property. In one matter Mr. Berrett withdrew fees that were unearned. In seven matters Mr. Berrett failed to return the clients' files and/or return any unearned fees when requested. In all matters Mr. Berrett failed to appear at the Screening Panel hearing. In five of the matters Mr. Berrett misrepresented the status of the case to his clients. In four of the matters Mr. Berrett failed to pursue the matters, thereby engaging in conduct that was prejudicial to the administration of justice.

*Aggravating factors:*
Prior record of discipline; dishonest or selfish motive; pattern of misconduct; multiple offenses; and substantial experience in the practice of law.

# *Attorney Discipline*

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**RESIGNATION WITH DISCIPLINE PENDING**

On October 10, 2012, the Utah Supreme Court entered an Order Accepting Resignation with Discipline Pending concerning C. Andrew Wariner for violation of Rule 1.4(a) (Communication), 1.4(b) (Communication), 1.15(a) (Safekeeping Property), 1.15(d) (Safekeeping Property), 1.15(e) (Safekeeping Property), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Wariner left the law firm with whom he was practicing and gave his client the option of continuing the representation or staying on with the firm. The client elected to have Mr. Wariner continue to represent him. Mr. Wariner took the client's case and file with him. A few weeks after leaving the firm, the client agreed to a settlement. Mr. Wariner received the settlement funds and disbursed a portion of the funds to the client and to himself and placed the remainder in a trust account. Mr. Wariner later took the remaining funds from the trust account and put them into his operating account for his own use.

Because of work done on the case prior to leaving the firm, the firm claimed an interest in the settlement funds. Several medical providers claimed interests in the settlement funds. The client understood that the outstanding medical bills would be paid out of the settlement. Although the client received some money from the settlement, the client never received an accounting and was still owed some of the funds. The firm and the client asked on multiple occasions for a full accounting of the disbursement of settlement funds. Mr. Wariner did not provide an explanation regarding the disbursement of settlement funds.

The client attempted to contact Mr. Wariner several times but Mr. Wariner did not respond. Mr. Wariner's ex-partner also wrote to Mr. Wariner asking for the balance of funds owed on the client's matter. The partner contacted Mr. Wariner stating that the firm had received notice from medical providers that had not been paid for medical services provided to the client. The partner sent Mr. Wariner two e-mails asking for the funds owed to the firm and requesting that Mr. Wariner pay the medical providers. Finally, after the firm filed suit on behalf of a medical provider, Mr. Wariner paid the lien, however the client never received a full accounting of the settlement funds.

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**SUSPENSION**

On August 10, 2010, the Honorable Denise P. Lindberg entered Findings of Fact, Conclusions of Law, and Order suspending Nathan N. Jardine from the practice of law for three years for violating Rules 1.1, 1.2a, 1.3, 1.4a, 1.4b, 1.5a, 1.6a, 1.15a, 1.15c, 1.15d, 1.16d, 8.4d, and 8.4a of the Rules of Professional Conduct. Mr. Jardine appealed his suspension. On March 9, 2012, the Utah Supreme Court issued an Order reducing Mr. Jardine's three year suspension to an 18 month suspension. On October 2, 2012, the Utah Supreme Court issued a full Opinion in the matter. The Supreme Court modified the District Court's Order by finding that for purpose of his discipline sanction Mr. Jardine violated only Rules 1.2, 1.3, 1.4, 1.5, and 1.15 of the Rules of Professional Conduct.

**SUSPENSION**

On October 23, 2012, the Honorable Vernice Trease entered Findings of Fact, Conclusions of Law, and Stipulated Order of Suspension suspending Daniel V. Irvin from the practice of law for six months for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.5(a) (Fees), 1.8(h)(2) (Conflict of Interest: Current Clients: Specific Rules), 1.15(c) (Safekeeping Property), 8.1(b) (Bar Admission and Disciplinary Matters), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary there are three matters:*
In the first matter, the OPC sent Mr. Irvin a Notice of Informal Complaint ("NOIC"). Mr. Irvin did not submit a response to the NOIC. Mr. Irvin did not provide any relevant facts and documents until the day of the Screening Panel Hearing.

In the second matter, Mr. Irvin was hired to represent a client in two criminal cases. Mr. Irvin was paid for his services. In one case, Mr. Irvin did not appear at any of the scheduled court dates and filed two Motions to Recall Warrant. In the other case, Mr. Irvin did not appear at any of the scheduled court dates, nor did he file any pleadings with the court. During his representation, Mr. Irvin moved his office, but did not notify his client of his new telephone number or address. Mr. Irvin collected an unreasonable fee for the amount of work performed and Mr. Irvin spent the fee before it was earned. Mr. Irvin and his client signed a Release of Liability wherein Mr. Irvin agreed to pay his client to settle the Bar complaint. The OPC sent Mr. Irvin an NOIC. Mr. Irvin did not submit a timely response to the NOIC. Mr. Irvin did not provide any relevant facts and documents until the day of the Screening Panel Hearing.

In the third matter, Mr. Irvin was hired to assist in obtaining custody of the client's grandchildren. There were a number of continuances from the original hearing date. At a subsequent hearing the court ordered the matter to mediation. Mr. Irvin did not provide the client with billing statements nor did Mr. Irvin explain to the client what work had been performed on the case. Mr. Irvin charged the client an additional fee that was not reflected in her billing statement. After Mr. Irvin withdrew from the case, a member of his firm contacted the client for the purpose of asking the client if the client would meet with Mr. Irvin to resolve the Bar complaint. The OPC sent a NOIC to Mr. Irvin. Mr. Irvin did not submit a timely response to the NOIC.

**RECIPROCAL DISCIPLINE**

On October 26, 2012, the Honorable Vernice Trease, Third Judicial District Court, entered an Order of Discipline: Public Reprimand against Philip M. Kleinsmith for violating the following Rules: 1.1 (Competence), 1.3 (Diligence), 1.4 (Communication), 1.5 (Fees), 1.16 (Declining or Terminating Representation), 5.3 (Responsibilities Regarding Nonlawyer


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Assistants), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

Mr. Kleinsmith is a member of the Utah State Bar and is also licensed to practice law in Alaska, Arizona, Colorado, Florida, Hawaii, Idaho, Kansas, Kentucky, Louisiana, Maryland, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Washington, Wisconsin, and Wyoming. The Supreme Court of Arizona issued a Final Judgment and Order reprimanding Mr. Kleinsmith for his conduct in violation of the Arizona Rules of Professional Conduct. An Order was entered in Utah based upon the discipline order in Virginia.

*In summary there are several matters:*
In two separate cases in Arizona, Mr. Kleinsmith filed complaints that were ultimately dismissed for lack of service. In nine separate cases in Arizona, Mr. Kleinsmith certified the cases for arbitration despite the amount in question exceeding the threshold for the amount allowed for arbitration. When asked to explain the Arizona matters Mr. Kleinsmith stated, "The AZ collection matters we had handled before we were employed by the client were almost always subject of mediation by amount. I did not consider this or direct the paralegal accordingly and, therefore, she continued to elect mediation. I now review every Summons and Complaint to verify whether arbitration applies for the AZ county involved."

In a Florida matter, Mr. Kleinsmith included an incorrect address and property description in the notice of sale and certificate of title and failed to name the condominium association as defendant. Mr. Kleinsmith indicated that he was in the process of correcting his errors when the client substituted new counsel.

In a Wisconsin matter, a case was dismissed with prejudice and costs after Mr. Kleinsmith failed to appear for two hearings. Respondent explained his failure to appear by offering: "I did not appear at two hearings because the client was negotiating a settlement." As a result of his failure to appear, the matter was dismissed with prejudice. Mr. Kleinsmith had the dismissal changed to a dismissal without prejudice, but billed the client to file the corrective motion after his failures to appear. The Judge required the client to pay the Defendant for the dismissal without prejudice.

In a Texas matter, Mr. Kleinsmith filed a Motion to Withdraw as Counsel and mailed a copy of the motion to the client simultaneously. No prior notification of the withdrawal was given to the client. Mr. Kleinsmith believed this was sufficient notice because his understanding was that the motion could only be ruled upon if he set it for hearing.

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# *Attorney Discipline*

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## ADMONITION

On January 13, 2014, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.3 (Diligence) and 1.4(a) (Communication) of the Rules of Professional Conduct.

*In summary:*

The attorney represented a Plaintiff who did not meet the threshold requirements for maintaining a personal injury action. The attorney nonetheless filed the Complaint but failed to have the Defendant served. The court held a hearing on an Order to Show Cause. The attorney did not appear at the hearing and the case was dismissed without prejudice. The attorney re-filed the Complaint on behalf of the Plaintiff. Over three years after the re-filing of the Plaintiff's lawsuit, the court issued an Order to Show Cause for failure to prosecute. Both parties failed to appear at the hearing and the court dismissed the case with prejudice. The attorney did not know the case had been dismissed and failed to keep the client informed of the status of the case, which the client believed was still ongoing, twelve years after first hiring the attorney. There was little or no injury to the client.

## PUBLIC REPRIMAND

On December 20, 2013, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against James A. Valdez for violation of Rules 1.15(b) (Safekeeping Property), 1.15(c) (Safekeeping Property), and 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct

*In summary:*

Several Notices of Insufficient Funds (NSF) were generated from the bank where Mr. Valdez had his IOLTA client trust account. The Office of Professional Conduct (OPC) received these NSFs and in various letters asked Mr. Valdez to explain the circumstances surrounding the NSFs. Mr. Valdez received the request letters from the OPC. Mr. Valdez did not respond to any of the letters.

Subsequently, the OPC served Mr. Valdez with a Notice of Informal Complaint (NOIC) for the NSFs, requiring him to respond in writing to the NSFs as OPC Bar complaints. Mr. Valdez received the NOIC from the OPC. Mr. Valdez failed to respond to the OPC's NOIC.

Mr. Valdez did not have proper accounting procedures in place. In this respect, Mr. Valdez tracked client funds mentally and did not have a formal tracking system.

## ADMONITION

On December 5, 2013, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rule 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

*In summary:*

The attorney represented a client in a divorce case. This representation resulted in the client filing a Bar complaint against the attorney. The Office of Professional Conduct sent the attorney a Notice of Informal Complaint requiring the attorney to respond in writing to the Bar complaint. The attorney failed to respond to the Notice of Informal Complaint.

**PUBLIC REPRIMAND**

On December 5, 2013, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Amy L. Butters for violation of Rule 1.1 (Competence) and Rule 1.4(a) (Communication) of the Rules of Professional Conduct

*In summary:*

Ms. Butters represented a client in a bankruptcy proceeding. The client's first bankruptcy filing was dismissed and then subsequently re-filed. At the time the client's bankruptcy was re-filed, the client's checking account had a greater balance than the balance reflected in the filing. Ms. Butters failed to adequately inform the client regarding how to report the balance of their checking account and did not take adequate steps to ensure she knew the balance of the client's account on the day the bankruptcy was re-filed.

The Bankruptcy Trustee wanted payment into the bankruptcy for the total amount of the discrepancy. Ms. Butters's client wanted part of the discrepancy amount to be kept for bills. Ms. Butters wrote a letter to the Trustee offering to pay back the total amount of the discrepancy and requesting that it be paid back in installments. Ms. Butters failed to keep her client reasonably informed regarding her communications with the Bankruptcy Trustee and failed to consult with her client before making an offer of repayment to the Trustee. Ms. Butters did not adequately explain to her client how the money in the checking account would be treated. The client's checking account funds that were taken by the Bankruptcy Trustee may have been able to be used for exempt expenses had the client been reasonably informed.

Ms. Butters' client wanted student loan debt to be discharged as part of the bankruptcy. Ms. Butters advised her client that they could make a motion to have the student loans discharged based on the client's disability and hardship, and that the decision would be up to the judge. Ms. Butters did not have the requisite knowledge to properly advise her client regarding the dischargeability of the student loans. Ms. Butters failed to timely respond to the client's requests for information regarding the dischargeability of the student loan debt.

**PUBLIC REPRIMAND**

On December 5, 2013, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Amy L. Butters for violation of Rule 1.4(a) (Communication), 1.5(a) (Fees), 1.15(d) (Safekeeping Property), 1.16(a) (Declining or Terminating Representation), 1.16(d) (Declining or Terminating Representation), and 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct

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*In summary:*
Ms. Butters was retained to represent a client in a divorce proceeding. The client paid Ms. Butters a retainer. About 2 ½ weeks after she was retained, for five days, Ms. Butters failed to respond to the client's telephone calls and text messages. At the end of the five-day period, the client emailed Ms. Butters and terminated her representation. The client also called Ms. Butters's assistant on the same day to reiterate that the client was terminating the relationship. A week after she was terminated, Ms. Butters prepared and filed an Answer on behalf of the client.

The client requested an accounting of fees from Ms. Butters. Ms. Butters did not provide the client with an accounting and characterized the fee she received as a flat fee. The hours Ms. Butters spent on the client's case prior to the termination of her representation were billed at an hourly rate that did not justify the fee she received. Ms. Butters did not return the unearned fees to the client.

After the client filed a Bar complaint against Ms. Butters, the Office of Professional Conduct sent Ms. Butters a Notice of Informal Complaint requiring her to respond in writing to the Bar complaint. Ms. Butters did not provide a written response to the Notice of Informal Complaint.


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## Discipline Corner

**PUBLIC REPRIMAND**

On January 6, 1997, the Honorable David S. Young, Third District Court Judge, entered a Stipulation and Order Regarding Imposition of Reciprocal Discipline imposing a public reprimand on Karen S. Peterson based on public discipline imposed by the Wyoming Supreme Court on August 28, 1996, for Respondent's violation of Rule 8.2(a), Improper Statements Regarding a Judicial Official. The Court adopted the report and recommendation of the Board of Professional Responsibility (the "Board") of the Wyoming State Bar.

In May 1995, the Respondent filed a pro se lawsuit in the United States District Court for the District of Wyoming. In December 1995, the defendants in the federal district court action filed a Motion for Summary Judgment. On January 10, 1996, a hearing was held in Casper, Wyoming, on the defendants' summary judgment motion. Based upon the record, the Judge ruled from the bench and granted defendants' summary judgment motion. The Board found that, in the course of additional motions practice to supplement the record, the Respondent made false statements and allegations regarding opposing counsel and the trial judge. After investigation by the Board of Professional Responsibility of the Wyoming State Bar, the Respondent admitted that the allegations were made based on hearsay and mistaken perceptions of the trial judge's personal and professional relationship with opposing counsel.

In mitigation, it is noted that at the time of the conduct, the Respondent was a newly admitted lawyer in Wyoming, was not affiliated with a law firm, and was inexperienced in the practice of law.

**ADMONITION**

On or about July 25, 1996, an Attorney was admonished and required to attend Ethics School by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violating Rule 1.1 Competence, Rule 1.2(a) Scope of Representation, Rule 1.3 Diligence, and Rule 1.4(a) Communication, of the Rules of Professional Conduct of the Utah State Bar. On November 25, 1996, the Chair of the Ethics and Discipline Committee of the Utah State Bar upheld the decision after the attorney filed an Objection to Findings of Facts and Conclusions of Law.

The attorney was retained to prepare and file an Answer to a civil Complaint. The attorney failed to file the answer within the prescribed time. Subsequently a default judgment was entered in the amount of $6,501.86 against the client. The default and judgment resulted in the client losing his Peterbilt truck. Thereafter, the client retained the services of another attorney in an attempt to set aside the judgment, incurring additional attorney's fees in the amount of $1,450.00.

Mitigating circumstances were that the attorney was under an unusually heavy workload having taken on the cases of another attorney, and, consequently, was under considerable stress due to the large number of cases he was handling.

**ADMONITION**

On or about December 17, 1996, an Attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violating Rule 8.4(c) Misconduct, Rules of Professional Conduct. The attorney made misstatements to investigators of a state agency.

An Admonition was deemed appropriate by the Chair of the Ethics and Discipline Committee because the Attorney had personal and emotional difficulties at the time of the misconduct, had a cooperative attitude toward the disciplinary proceedings, was inexperienced in the practice of law and was remorseful.

# EXTENDED DEADLINES

## Notice of Election of Bar Commissioners

### Third, Fourth and Fifth Divisions

Pursuant to the Rules of Integration and Management of the Utah State Bar, nominations to the office of Bar Commission are hereby solicited for two members from the Third Division, one member from the Fourth Division, and one member from the Fifth Division, each to serve a three-year term. To be eligible for the office of Commissioner from a division, the nominee's mailing address must be in that division as shown by the records of the Bar.

Applicants must be nominated by a written petition of ten or more members of the Bar in good standing and residing in their respective Division. Nominating petitions may be obtained from the Bar office on or after January 10, and **completed petitions must be received no later than March 3.** Ballots will be mailed on or about April 1 with balloting to be completed and ballots received by the Bar office by 5:00 p.m on April 30. Ballots will be counted on May 1.

In order to reduce out-of-pocket costs and encourage candidates, the Bar will provide the following services at no cost:

1) Space for up to a 200-word campaign message plus a photograph in the April issue of the *Utah Bar Journal.* The space may be used for biographical information, platform or other election promotion. Campaign messages for the April *Bar Journal* publications are due along with completed petitions, two photographs, and a short biographical sketch **no later than March 3.**

2) A set of mailing labels for candidates who wish to send a personalized letter to the lawyers in their division.

3) The Bar will insert a one-page letter from the candidates into the ballot mailer. Candidates would be responsible for delivering to the Bar **no later than March 14** enough copies of letters for all attorneys in their division. (Call Bar office for count in your respective division.)

If you have any questions concerning this procedure, please contact John C. Baldwin at the Bar office, 531-9077.

NOTE: According to the Rules of Integration and Management, residence is interpreted to be the mailing address according to the Bar's records.

# Attorney Discipline

**UTAH STATE BAR ETHICS HOTLINE**

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## SUSPENSION

On March 1, 2013, the Honorable Christine Johnson, Fourth District Court entered an Order of Discipline suspending Jerry D. Reynolds for six months and one day for violation of Rules 1.1 (Competence), 1.2(a) (Scope of Representation), 1.3 (Diligence), 1.4(a) (Communication), 1.5(a) (Fees), 1.16(d) (Declining or Terminating Representation), 3.2 (Expediting Litigation), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary there were two matters.*

In the first matter, a client hired Mr. Reynolds and his firm to represent her in a consumer protection matter. The client paid Mr. Reynolds's firm for the representation. The client had purchased software, which was defective, and the client rescinded the contract with the retailer. The retailer continued to bill the client and turned her over to collections. The client hired Mr. Reynolds to get the retailer to pull its billing back from collections so that her credit could be restored. Mr. Reynolds did nothing in furtherance of his client's objectives. The client tried to reach Mr. Reynolds on numerous occasions, but calls and e-mails were not returned. Mr. Reynolds worked at a firm at the time he accepted the representation of the client. During the representation, Mr. Reynolds terminated his employment at the firm. Mr. Reynolds did not provide notice to the client that he was changing firms. Because he did not provide notice to the client, Mr. Reynolds did not give the client the opportunity to obtain new counsel. The client called the firm and was told that Mr. Reynolds was no longer there and that her case was closed.

In the second matter, a client hired Mr. Reynolds to represent the client with respect to a dispute between family members over trust monies. The family members claimed that the client had disbursed funds inappropriately as trustee for the estate of her mother. Mr. Reynolds was hired to defend the client in the lawsuit filed against her. Mr. Reynolds made misrepresentations to opposing counsel about what the client would pay to settle the case. The client was not sent correspondence or pleadings relative to her case. Mr. Reynolds was supposed to file papers to change venue but failed to complete that process. Mr. Reynolds failed to file an Answer. Mr. Reynolds failed to respond to a Motion for Summary Judgment. Eventually, the case was dismissed on Summary Judgment and a judgment entered against the client. Mr. Reynolds misrepresented to the court his reason for not responding to the Motion Summary Judgment. After the judgment was entered, Mr. Reynolds filed a Motion to Set Aside the Judgment. The court denied the Motion. Mr. Reynolds then filed papers with the court demanding that the court set aside the judgment. The pleadings filed contained

inflammatory and inappropriate language. The court found that the manner in which Mr. Reynolds addressed the court and opposing counsel was "wholly inappropriate."

**PUBLIC REPRIMAND**

On April 8, 2013, the Honorable Michael D. Lyon, Second Judicial District Court entered an Order of Discipline: Public Reprimand against Michael P. Studebaker for violation of Rules 1.1 (Competence), 1.15(d) (Safekeeping Property), 1.15(e) (Safekeeping Property), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Studebaker was retained to represent a client in a civil rights matter. The client signed a Medical Reports and Chiropractor's Lien with a chiropractor. Pursuant to the Chiropractor's Lien, the client authorized Mr. Studebaker to pay the chiropractor out of any settlement funds for the medical services he provided. Mr. Studebaker signed the Chiropractor's Lien. Pursuant to the lien, Mr. Studebaker agreed to abide by the terms of the agreement and withhold from any settlement sums necessary to pay the chiropractor. Mr. Studebaker settled the client's case, but failed to inform the chiropractor that he settled the case and received settlement funds. The chiropractor sent Mr. Studebaker a letter stating his understanding that the case had settled and inquiring about reimbursement. Mr. Studebaker sent a letter to the chiropractor stating that the settlement did not relate to any past care. Mr. Studebaker further stated that under Utah law the settlement was considered "new money," and there was nothing with which to satisfy the lien. The chiropractor sued the client for the outstanding medical bill. A judgment was entered against the client.

**ADMONITION**

On April 13, 2013, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.3 (Diligence), 1.16(a)(2) (Declining or Terminating Representation), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Attorney represented a defendant in a lawsuit. The plaintiff served interrogatories and requests for production of documents on the defendant. The client provided the attorney with responses to the discovery requests. The attorney failed to respond to the discovery requests. The plaintiffs filed a Motion to Compel. The court granted the Motion and ordered that the defendant respond to the discovery requests within ten days. The attorney failed to respond to the discovery requests within ten days. The Court awarded sanctions against the client for failing to comply with the Order. The Court also found the attorney was responsible for the failure to comply with the Order. The attorney was experiencing personal issues during the time he was representing the client. The Panel found that there was little or no injury to the client and that the attorney's mental state was negligent.

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*Mitigating factors:*
The attorney was forthcoming in the response to the OPC and the Panel; and was very remorseful and recognized the missteps.

**PUBLIC REPRIMAND**

On April 2, 2013, the Honorable Judge Vernice Trease, Third Judicial District Court entered an Order of Discipline: Public Reprimand against Rex L. Bray for violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.4(a) (Communication), 1.4(b) (Communication), 1.5(a) (Fees), 1.5(b) (Fees), 1.6 (Confidentiality of Information), 1.7 (Conflict of Interest: General Rule), 1.8(b) (Conflict of Interest: Prohibited Transactions), 1.8(f) (Conflict of Interest: Prohibited Transactions), 1.15(a) (Safekeeping Property), 1.15(b) (Safekeeping Property), 1.16(d) (Declining or Terminating Representation), 4.1(b) (Truthfulness in Statements to Others), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(d) (Misconduct) of the Rules of Professional Conduct.

*In summary, in four matters:*
Mr. Bray failed to represent his client competently and diligently by failing to obtain an extension to respond in a mechanics lien case; by failing to prepare and submit discovery responses in a timely manner; by failing to send a demand letter; by failing to attend his client's arraignment; and by failing to act reasonably and promptly in setting depositions and in providing information to his clients.

Mr. Bray failed to reasonably communicate with his client by abandoning his representation of a client without communication of any kind; by failing to explain to the client why no work was done on the case; by failing to explain what his plan was for completing work for the client; and by failing to communicate with the client regarding the proposed mediation.

Mr. Bray charged a client for work not completed, or completed without meaningful results.

Mr. Bray, in one matter, collected twice the amount of the actual fee charged for the representation. He also misrepresented to the client the amount he would require to represent the family members.

Mr. Bray breached his duty of loyalty to a client by failing to keep information in a case confidential; by representing a client's family member in another matter adverse to the client; and by failing to communicate with and obtain informed consent from all clients regarding the potential conflicts.

Mr. Bray breached his fiduciary duty by having insufficient funds in his trust account, thereby creating an overdraft and by giving the client's money to the client's family member instead of to the client.

Mr. Bray failed to take steps to protect his client's interests when he withdrew from the representation; failed to return any files to the client including any unearned fees and failed to provide notice of his constructive termination of the representation.

Mr. Bray also, in two matters, failed to respond to the Notices of Informal Complaint and failed to attend the Screening Panel Hearings.

*Mitigating factors:*
During the relevant time period to the events contained herein, Mr. Bray's wife suffered a serious injury which eventually led to her death in March of 2011 and Mr. Bray suffered his own medical issues that required hospitalization and serious medical treatment.

**CLARIFICATION**

There are two Bruce Nelsons licensed with the Utah State Bar. In the last edition of the *Bar Journal*, the attorney discipline listed a Suspension for Bruce L. Nelson, not to be confused with Bruce J. Nelson who has not been disciplined.

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# *Attorney Discipline*

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**PUBLIC REPRIMAND**

On July 2, 2013, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Nathan W. Drage for violation of Rules 1.3 (Diligence) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Drage was hired to defend a client who was being sued by a creditor and made his appearance on behalf of the client after the Answer was filed. The Court set a pretrial conference in the matter; at which time, Mr. Drage failed to appear on behalf of his client. At the pretrial conference, the creditor's attorney moved the Court to strike the Answer and enter a default judgment against Mr. Drage's client, and the motion was granted by the Court. A default judgment was signed by the Court. Mr. Drage failed to promptly file an action to set aside the default once he learned the default had been entered. Mr. Drage acted negligently and his client suffered injury because the default judgment was not set aside, forcing the client to file for bankruptcy.

*Mitigating factors:*

No dishonest or selfish motive; acceptance of responsibility; attempt to take corrective action; and remorse.

*Aggravating factors:*

Prior record of discipline; and substantial experience in the practice of law.

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**DISBARMENT**

On June 25, 2013, the Honorable Robert Faust, Third Judicial District Court, entered Findings of Fact, Conclusions of Law, and Order of Disbarment against Victor Lawrence for violation of Rules 3.1 (Meritorious Claims and Contentions), 8.4(b) (Misconduct), 8.4(c) (Misconduct), and 8.4(d) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Lawrence attempted to remove a case to federal court even though there was no basis in law or fact to do so and by filing an assault case against another party when he had no basis in law or fact to do so. Mr. Lawrence intentionally engaged in a conspiracy to assist others to defraud a car dealership and by converting one of the vehicles. In addition, Mr. Lawrence committed a criminal act when he assaulted the owner of the dealership. These criminal acts all reflect adversely on Mr. Lawrence's honesty, trustworthiness, and fitness as a lawyer. Mr. Lawrence's conduct was dishonest and deceitful when he engaged in the conspiracy to commit fraud and when he converted the vehicle. Mr. Lawrence engaged in further dishonest conduct when he made misrepresentations about his earnings and exhibited a lack of candor in his dealings with the courts. The conspiracy Mr. Lawrence was involved in to commit fraud and the fraud itself involved the expenditure of hours and court time and significant judicial resources. The unnecessary removal action and the filing of an assault case when no assault had taken place also caused the expenditure of court time and judicial resources. Furthermore, Mr. Lawrence used his knowledge as a lawyer to pursue litigation when there was no purpose except to delay and harass others and therefore his actions were prejudicial to the administration of justice.

*Aggravating factors:*

Prior record of discipline; dishonest or selfish motive; multiple offenses; refusal to acknowledge the wrongful nature of the misconduct; lack of good effort to make restitution or to rectify the consequences of the misconduct involved; and substantial experience in the practice of law.


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# *Attorney Discipline*

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### PUBLIC REPRIMAND

On February 4, 2015, the Honorable Scott M. Hadley, Second Judicial District Court, entered an Order of Discipline: Public Reprimand against Amy L. Bingham for violating Rule 5.5(a) (Unauthorized Practice of Law: Multijurisdictional Practice of Law) of the Rule of Professional Conduct.

*In summary:*
Ms. Bingham is licensed to practice law in California and is not a Utah attorney. While working as a law clerk for an attorney in Utah and leasing office space from the Utah attorney, Ms. Bingham met with a new client regarding a Utah legal matter without the Utah attorney present. Ms. Bingham informed, advised and counseled the new client regarding a divorce action and subsequently drafted a divorce petition on the client's behalf.

*Mitigating factors:*
Absence of a prior record of discipline; inexperience in the practice of law; interim reform; cooperative attitude toward disciplinary proceedings.

### SUSPENSION STAYED WITH PROBATION

On January 30, 2015, the Honorable Richard D. McKelvie, Third Judicial District Court, entered an Order on Sanctions suspending M. Dirk Eastmond from the practice of law for two years with the suspension term stayed contingent on Mr. Eastmond's compliance with the court's probationary terms during the two years, for Mr. Eastmond's violation of Rule 8.4(b) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Eastmond pled guilty to and was convicted of Attempted Stalking (Domestic Violence), a class A misdemeanor. Mr. Eastmond sent numerous vulgar and threatening text messages and telephone calls to his estranged wife. He continued to send the messages after being told to stop by police. In a separate matter, Mr. Eastmond was arrested and charged with Disorderly Conduct involving domestic violence for a physical altercation with his live-in girlfriend. Mr. Eastmond pled no contest to this charge. The court found these acts reflect adversely on his

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fitness as a lawyer.

*Aggravating factors:*
Prior record of discipline; a pattern of misconduct; vulnerability of victim; substantial experience in the practice of law; illegal conduct, including the use of controlled substances.

*Mitigating factors:*
Absence of a dishonest or selfish motive; personal or emotional problems; good character or reputation; imposition of other penalties or sanctions; remorse; remoteness of prior offenses.

### PUBLIC REPRIMAND

On February 10, 2015, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Thomas M. Burton for violation of Rule 4.4(a) (Respect for Rights of Third Person) and Rule 8.2 (Judicial Officials) of the Rules of Professional Conduct.

*In summary:*
Mr. Burton was hired by an individual in connection with the appeal of a criminal conviction. Mr. Burton filed a Reply Brief on behalf of his client and in the Brief characterized the trial Court's actions as "abusive" and "sinister." Mr. Burton made further statements in his brief about the court and judges with reckless disregard to their truth or falsity. Also in his reply brief, Mr. Burton restated his client's vulgar and pejorative statements regarding the victim and made the argument that those statements were not threatening and that the victim "may have fit any or all of his pejorative descriptions." Mr. Burton made further statements in his brief regarding his client's victim which had no substantial purpose other than to embarrass or burden the victim.

*Aggravating factors:*
Refusal to acknowledge the wrongful nature of the conduct involved; pattern of similar misconduct.

### SUSPENSION

On February 22, 2015, the Honorable W. Brent West, Second Judicial District Court, entered Findings of Fact, Conclusions of Law and Order of Discipline suspending Lisa Hurtado McDonnell


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from the practice of law for six months and one day, with all but sixty days of the suspension stayed, for Ms. McDonnell's violation of Rule 1.15(a) (Safekeeping Property) and Rule 5.5(a) (Unauthorized Practice of Law: Multijurisdictional Practice of Law) of the Rules of Professional Conduct.

*In summary, there are two matters:*
In the first matter, Ms. McDonnell was consulted by an individual who was not licensed to practice law regarding legal representation of a client in an administrative proceeding before the Utah Labor Commission, at which time, Ms. McDonnell's license to practice law was on inactive status with the Utah State Bar. Ms. McDonnell was aware at some point that her name and Bar number were being used by the individual not licensed to practice law in connection with their legal representation of the client in the Labor Commission proceeding. Ms. McDonnell subsequently changed her Utah State Bar membership status to active and participated in representing the client in the Labor Commission proceeding by reviewing a proposed settlement, assisting with the finalization of the settlement and collecting an attorney's fee. Ms. McDonnell did not consult directly with the client at any time during the representation.

*In the second matter,*
Several Notices of Insufficient Funds ("NSF") were generated from the bank where Ms. McDonnell had her IOLTA client trust account. Ms. McDonnell grossly mismanaged her attorney trust account causing her account to be overdrawn on several occasions. Ms. McDonnell's practice was to withdraw some of her earned attorney fees out of her trust account and to comingle her funds with client and third party funds. Ms. McDonnell made transfers in and out of her trust account for business expenses and did not keep accurate or complete records of her account.

*Aggravating factors:*
Pattern of misconduct.

*Mitigating factors:*
Absence of a prior record of discipline.

**SUSPENSION**

On October 8, 2014, the Honorable Paul G. Maughan, Third Judicial District Court, entered an Order of Discipline suspending Harold W. Stone, III, from the practice of law for two years, for Mr. Stone's violation of Rule 8.4(b) (Misconduct) of the Rules of Professional Conduct.

*In Summary:*
Mr. Stone pled guilty to and was convicted of one count of Felony Discharge of a Firearm, a Third Degree Felony, for discharging a firearm into a condominium unit.

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# Salary Survey 2015: Highlights and Analysis

*by Karen C. McCall*

From February 6 through April 3, 2015, the Paralegal Division conducted a salary survey to assess the current state of our profession. This survey encompassed not only salaries but also included benefits, billables, education, CLE opportunities, work tasks, and membership in professional organizations. The survey was open to Division members and non-members alike. The following is a reporting and analysis of some of these results.

As of this writing, we have had a total of 173 responses, more than double the number we received in our 2012 salary survey. Your participation leads to more meaningful data for everyone, and we appreciate it.

Our survey was divided into three parts. The first part focused on the participants, including their education and experience. Over 91% of respondents are employed as paralegals versus 8% as legal assistants. As expected, the overwhelming majority of respondents are employed in Salt Lake County, with just 8% in Utah County and 3.5% in Weber County. Women account for over 97% of respondents, which is up quite a bit from nearly 90% in our 2012 survey.

Nearly one-third of respondents have been employed in the field for over twenty years. As for current employment, roughly one-third have been with the same employer for over ten years, while slightly more have held their current positions for between one and five years, indicating some mobility among Utah paralegals.

Membership in paralegal organizations has remained robust, with 52% of respondents belonging to the Paralegal Division and approximately 25% enjoying membership in the Utah Paralegal Association (formerly known as the Legal Assistants Association of Utah). Roughly 20% are members of the National Association of Legal Assistants (NALA). The vast majority of respondents, over 91%, are not required to have passed a national paralegal certification exam prior to being hired. This number has held steady since our 2012 survey. Twenty-three percent of respondents have achieved a national paralegal certification.

Forty percent of Utah paralegals have earned a bachelor's degree, while 39.5% have a paralegal certificate. As for employers, 60% require their paralegals to have met a minimum education level; of these, 44% require a certificate from an American Bar Association-approved paralegal program, which nearly 79% of Utah paralegals possess. Education is not often directly tied to compensation, however, as over half of respondents indicated that their employers do not consider education levels as a factor in setting compensation.

The second part of our survey addressed firm environment, duties, and responsibilities. Of respondents, nearly 60% work in private law firms, with approximately 20% working in corporations, slightly higher than the 18% working for the public sector. As for practice areas, we found that 87% of respondents practice in the litigation arena, with 44% of paralegals doing defense work and nearly 37% doing plaintiffs' work. Product liability, real estate, and intellectual property also had over twenty responses each.

A clear majority of respondents, 53%, work in organizations that employ no more than five paralegals. As for firm size, the vast majority are either quite small or quite large, with nearly 43% employing between one and ten attorneys and 37% employing over forty attorneys.

*KAREN McCALL, ACP works for Strong & Hanni in the areas of insurance defense and construction defect.*

# Attorney Discipline

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www.utahbar.org/opc/bar-committee-ethics-advisory-opinions/eaoc-rules-of-governance/.

## SUSPENSION

On March 29, 2016, the Honorable Paul D. Lyman, Fifth Judicial District Court, entered an Order of Discipline: Suspension against Bryan T. Adamson, suspending his license to practice law for one year, for his violation of Rules 1.1 (Competence), 1.2(a) (Scope of Representation and Allocation of Authority Between Client and Lawyer), 1.4(b) (Communication), 1.5(a) (Fees), 1.15(d) (Safekeeping Property), 1.15(e) (Safekeeping Property), 1.16(d) (Declining or Terminating Representation), and 7.1 (Communication Concerning a Lawyer's Services) of the Rules of Professional Conduct.

*In summary, there are four matters:*

In the first matter, Mr. Adamson was retained to represent a client in several criminal matters and was paid a flat fee for the representation. Mr. Adamson only entered an appearance in one of the client's criminal cases and performed very limited work on the client's behalf before his representation was terminated less than two weeks after he was hired. The client requested an itemization of Mr. Adamson's bill, along with the return of any unearned fees. Mr. Adamson did not refund any of the unearned fees he received; Mr. Adamson did not deliver any file materials to his client because there was nothing in the client's file to deliver.

In the second matter, Mr. Adamson entered into a contingency agreement to represent a client in an attempt to collect fees owed to the client pursuant to a Decree of Divorce. After the client signed the fee agreement, Mr. Adamson had no further communication with the client. Without informing the client, Mr. Adamson filed a motion for supplemental proceedings in the client's divorce case to collect the debt. Mr. Adamson agreed to dismiss the supplemental proceeding filed in the divorce case after being informed by opposing counsel that the debt had been discharged by the bankruptcy court. Mr. Adamson did not inform his client of his actions. The court subsequently held a hearing on a motion for attorney's fees and entered an award of attorney's fees against Mr. Adamson's client. Mr. Adamson did not inform his client of the motions or court proceedings. Without informing the client, Mr. Adamson filed a motion to reconsider and the court denied the motion, entering an Amended Final Order extending the Rule 11 sanctions to include proceedings regarding the motion to reconsider. The court also granted a protective order to deter further attempts by Mr. Adamson and his client to re-litigate issues that have already been decided. Mr. Adamson's client was sanctioned. Mr. Adamson's client first became aware of Mr. Adamson's actions and the sanctions award entered when a process server served the client with the Order in Supplemental Proceedings.

In the third matter, Mr. Adamson made statements in his advertising that the bankruptcy section of his law firm was "non-profit" when that was not the case.

In the fourth matter, Mr. Adamson was retained to represent a client in a divorce matter. Mr. Adamson's client filed joint taxes with the client's estranged spouse and a tax refund check was issued payable to both spouses. The spouses agreed to divide a portion of their joint tax return. Only Mr. Adamson's client endorsed the tax refund check and the check was deposited into Mr. Adamson's trust account. Mr. Adamson deducted legal fees incurred by his client from the funds and disbursed the remaining funds to his client. Mr. Adamson failed to hold the funds belonging to his client's estranged spouse in trust.

*Aggravating circumstances:*

Prior record of discipline and multiple offenses.

## DISBARMENT

On March 15, 2016, the Honorable James Gardner, Third Judicial District Court, entered Findings of Fact, Conclusions of Law and Order of Disbarment, against James H. Alcala for violating Rules 8.4(b) (Misconduct) and 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Beginning in or about July, 2005, Mr. Alcala agreed with at least one other person to encourage and induce foreign nationals to come to, enter, and to reside in the United States, knowing and in reckless disregard that such coming to, entry and residence was or would be in violation of law. Mr. Alcala knowingly caused others to make under oath and under penalty of perjury, subscribe as true, and present an application containing a fraudulent statement with respect to a material fact on Form I-129s for the purpose of permitting foreign nationals to reside in the United States through the use of the H-2B visa process. The H-2B visas sought were for new workers who resided outside of the United States when in truth, the foreign nationals were, at the time of the filing of the Form I-129, illegally present in the United States and working for the employer petitioning for the H-2B visas. Mr. Alcala was convicted of Conspiracy to Commit Visa Fraud and Alien Smuggling, 18 U.S.C. § 371; and Fraud and Misuse of Visas/Permits/Visa Fraud, 18 U.S.C. § 1546(a), and sentenced to fifty-six months in prison.

*Aggravating circumstances:*
Prior record of discipline; dishonest or selfish motive; substantial experience in the practice of law; and illegal conduct.

**PUBLIC REPRIMAND**
On May 16, 2016, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Paul Lydolph for violating Rules 1.1(Competence) and 1.4(a) (Communication) of the Rules of Professional Conduct.

*In summary:*
Mr. Lydolph failed to timely file an answer or procedurally appropriate motion on behalf of his clients under the Utah Rules of Civil Procedure. As a result, a default judgment was entered against his clients. Mr. Lydolph told his client in an email that his failure to respond to the Motion to Strike was a deliberate strategy to show a pattern of conduct in which the court clearly favored the Petitioners. Mr. Lydolph had not consulted with his client about that strategy prior to his failure to respond.

**DISBARMENT**
On March 23, 2016, the Honorable Andrew H. Stone, Third Judicial District Court, entered an Order of Disbarment against Ryan R. West for violating Rules 1.1 (Competence), 1.2(a) (Scope of Representation and Allocation of Authority Between Client and Lawyer), 1.3 (Diligence), 1.4(a) (Communication), 1.5(a) (Fees), 1.15(a) (Safekeeping Property), 1.15(d) (Safekeeping Property), 1.16(d) (Declining or Terminating Representation), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary, there are five matters:*
In the first, Mr. West repeatedly obtained several loans and mortgages on a piece of real property that he did not have interest in. Mr. West admitted to obtaining the loans and mortgages on the property without the knowledge or consent of the actual owner.

In the second matter, Mr. West was the attorney for and provided limited business consulting services to an individual and the individual's LLC. Mr. West obtained a secured loan from the individual and the LLC; this loan was secured by a first lien deed

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of trust on property of which Mr. West represented to his client he was the sole owner. Mr. West did not own the property and the property was already encumbered by at least four other security instruments. Mr. West defaulted on the loan.

Additionally, Mr. West created a fictitious LLC under the same name as his client's LLC, without the knowledge or consent of his client. Acting on behalf of his LLC, Mr. West executed documents using property owned by his client's LLC as collateral for loans. Mr. West obtained the loans without permission or authorization from his client and retained the proceeds of the loans.

In the third matter, Mr. West received client funds to be held in trust. The client requested disbursements of the funds from Mr. West and Mr. West did not respond. Mr. West eventually provided a check for an amount less than the full amount owed to the client. Mr. West never remitted the remaining funds owed to the client and never provided an accounting of the manner in which the funds were managed by Mr. West as requested by the client.

In the fourth matter, Mr. West filed a complaint in the District Court on behalf of his clients against their mortgage lender. Mr. West received notice that his clients' property would be sold at auction and failed to inform the clients of the sale. The lender moved to have the clients' case dismissed; Mr. West failed to inform his clients. In the meantime, a realtor informed Mr. West of a cash offer to purchase the property. Mr. West did nothing to move the matter forward and the cash offer was cancelled.

Mr. West advised his clients to pursue settlement with the lender instead of a short sale. Mr. West advised his clients of settlement provisions which were inconsistent with the actual settlement with the lender. In reliance upon Mr. West's advice and representations, the clients signed a settlement agreement which required the clients to voluntarily dismiss their case against the lender, but did not release the lender's claims against the clients.

The clients' HOA filed a notice of lien against the property. Mr. West sent a letter to the HOA incorrectly indicating the lender owned the property and was responsible for the lien. The clients continued to receive notices from the HOA as a result of their failure to pay. The clients forwarded the notices to Mr. West requesting that he put a stop to the notices since they believed they no longer owned the property. An attorney at Mr. West's office had the clients sign a quit claim deed transferring the clients' interest in the property to the lender to be sent to the lender and the HOA. The lender filed a repudiation and rejection of the quit claim deed. Mr. West did not inform the clients of the repudiation; another attorney at Mr. West's office informed the clients but stated that it was not of concern.

Mr. West led the clients to believe that he was making efforts to enforce the settlement with the lender and resolve the claims of the HOA. The clients were subsequently sued by the HOA but were not informed of the suit by Mr. West. The HOA filed a motion for summary judgment and Mr. West failed to timely file an opposition to the HOA's motion. Mr. West filed a third party complaint against the lender on behalf of the clients. The lender moved to have the third party complaint dismissed and Mr. West opposed the motion. The Court held a hearing on the motion to dismiss; Mr. West failed to inform his clients of the hearing and failed to appear at the hearing on his clients' behalf.

The lender commenced foreclosure proceedings against the clients and an attorney from Mr. West's office agreed to settle with the lender on behalf of the clients without informing the clients or obtaining their authorization. Mr. West's office settled with the HOA on behalf of the clients without informing the clients or obtaining their authorization. Settlement with the lender was not finalized due to a lack of waiver of the clients' deficiency but Mr. West never notified the clients and ignored the clients' attempts to contact him. As a result of the stalled settlement, the lender continued its foreclosure proceedings and the property was sold at auction.

The clients retained a new attorney to represent them. The attorney contacted Mr. West to request the clients file. Mr. West failed to timely release the clients file to their new attorney. Mr. West failed to provide a full accounting of the payments he received from the clients.

In the fifth matter, a direct withdrawal was presented for payment from Mr. West's IOLTA trust account at a time when the balance in his trust account was insufficient to cover the transaction. The OPC sent a letter requesting that Mr. West provide an explanation and documentation regarding the transaction. Mr. West did not

## *Notice of Petition for Reinstatement to the Utah State Bar by David B. Oliver*

Pursuant to Rule 14-525(d), Rules of Lawyer Discipline and Disability, the Utah State Bar's Office of Professional Conduct hereby publishes notice of the Verified Petition for Reinstatement ("Petition") filed by David B. Oliver, in *In the Matter of the Discipline of David B. Oliver* Third Judicial District Court, Civil No. 070909858. Any individuals wishing to oppose or concur with the Petition are requested to do so within thirty days of the date of this publication by filing notice with the District Court.

respond. The OPC sent a second letter to Mr. West requesting an explanation; Mr. West did not respond.

In each matter, the OPC served Mr. West with a Notice of Informal Complaint (NOIC) requiring his written response within twenty days pursuant to the Rules of Lawyer Discipline and Disability. Mr. West did not timely respond in writing to the NOICs.

*Aggravating factors:*
Dishonest or selfish motive; multiple offenses; obstruction of the disciplinary proceeding by failing to respond.

**ADMONITION**
On May 19, 2016, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rule 3.3(a)(1) (Candor Toward the Tribunal) of the Rules of Professional Conduct.

*In summary:*
At a criminal sentencing hearing, the attorney made inaccurate statements to the court regarding a witness who spoke at the sentencing on behalf of the criminal defendant. The inaccurate statements were made as a result of the attorney confusing the witness with a different individual who had the same first name. Afterward, the attorney informed the court and defense counsel of the error but did not file a pleading to correct the record until after the OPC contacted the attorney regarding the matter.

**PUBLIC REPRIMAND**
On May 19, 2016, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand, against Scott T. Poston, for violating Rule 8.4(b) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Poston purchased a home. Through a survey of Mr. Poston's property, Mr. Poston discovered that a home on an adjacent property had been built over his property line. Mr. Poston and the neighbor attempted to negotiate a selling price for the property but were unable to come to an agreement.

Mr. Poston's neighbor had a personal relationship with a plans examiner in the county where Mr. Poston's home was located. When Mr. Poston was denied a building permit to rebuild part of his home by the county, he contacted his neighbor and the plans examiner and suggested that if the plans examiner could assist him in resolving his difficulties for the building permit, Mr. Poston would reduce the price for sale of the land to his neighbor. Mr. Poston's statements to the county plans examiner were recorded.

Mr. Poston was interviewed by a detective in connection with the statements he made to his neighbor and the plans examiner. Mr. Poston made statements to the detective that were inconsistent with the recording. Mr. Poston entered into a plea in abeyance agreement for attempted bribery to influence official or political actions, a Class A misdemeanor.

**PUBLIC REPRIMAND**
On May 19, 2016, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand, against Martin V. Gravis, for violating Rules 1.3 (Diligence), 1.4(a) (Communication), 1.5(a) (Fees), and 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

*In summary:*
Mr. Gravis was hired to represent a client in a civil stalking matter. Mr. Gravis took a flat fee for the completion of this work. Mr. Gravis did not timely request a hearing in the proceeding and an injunction was entered against his client. Mr. Gravis took no action to attempt to set aside the injunction, but assured his client that he was working on the situation. The client contacted Mr. Gravis every month regarding the matter but, other than the initial consultation and the drafting of a document to be filed with the court (that was not filed), no work was performed on his case. After a period of time, Mr. Gravis returned the client's fee. Mr. Gravis did not timely respond in writing to the OPC's requests for information or the Notice of Informal Complaint.

## *Discipline Process Information Office Update*

From January 2016 through May, Jeannine P. Timothy assisted thirty-three attorneys with their questions about the discipline process. Jeannine is able to provide information to all who find themselves involved with the Office of Professional Conduct (OPC). Feel free to contact Jeannine with all your questions about the discipline process.

DISCIPLINE PROCESS
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# *Attorney Discipline*

**UTAH STATE BAR ETHICS HOTLINE**

Call the Bar's Ethics Hotline at (801) 531-9110 Monday through Friday from 8:00 a.m. to 5:00 p.m. for fast, informal ethics advice. Leave a detailed message describing the problem and within a twenty-four-hour workday period, a lawyer from the Office of Professional Conduct will give you ethical help about small everyday matters and larger complex issues.

**More information about the Bar's Ethics Hotline may be found at:**
www.utahbar.org/opc/office-of-professional-conduct-ethics-hotline/

**Information about the formal Ethics Advisory Opinion process can be found at:**
www.utahbar.org/opc/bar-committee-ethics-advisory-opinions/eaoc-rules-of-governance/.

## ADMONITION

On December 17, 2015, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rule 1.7(a) (Conflict of Interest: Current Clients) of the Rules of Professional Conduct.

*In summary:*
The attorney communicated with, provided legal advice to and represented a client in connection with financial matters. The attorney subsequently referred the client to work with a company as a sales and marketing consultant. At the time the attorney made the referral, the attorney was acting as general counsel for the company to which the attorney referred the client.

The client entered into two consecutive consulting agreements with the company and served as the CEO for the company during that time. During the time the client was acting as CEO, the attorney further represented the client in two separate, unrelated legal matters.

After the company and the client entered into the second consulting agreement, a dispute arose between the client and the company. At the time the dispute arose, the attorney was acting as general counsel to the company and represented the company in the dispute which was directly adverse to another client. The attorney acted negligently and there was little or no injury to the client.

## RECIPROCAL DISCIPLINE

On November 30, 2015, the Honorable Paige Petersen, Third Judicial District Court, entered a Default Judgment and Order of Reciprocal Discipline: Suspension suspending Gregory Vietz from the practice of law for nine months for his violation of Rules 8.4(b) (Misconduct) and 8.4(d) (Misconduct) of the Rules of Professional Conduct.

Mr. Vietz is a member of the Utah State Bar and is also licensed to practice law in Idaho. The Supreme Court of Idaho issued a Disciplinary Order suspending Mr. Vietz for nine months with the nine month suspension stayed and probation with conditions imposed for Mr. Vietz's conduct in violation of Rules 8.4(b) (Conviction of a Criminal Act) and 8.4(d) (Conduct Prejudicial to the Administration of Justice) of the Idaho Rules of Professional Conduct. An Order was entered in Utah based upon the discipline order in Idaho.

*In summary, the disciplinary authority in Idaho made the following factual findings:*
Mr. Vietz was charged in Ada County, Idaho, with two felonies: aggravated assault with a deadly weapon and felony use of a deadly weapon in a commission of a felony; and four misdemeanors: battery, resisting or obstructing officers, discharge of a firearm within city limits and assault on a police dog. Mr. Vietz entered Alford pleas to two misdemeanors: discharge of a firearm within city limits and assault on a police dog. The court entered judgment imposing a sentence of

twenty-eight days incarceration, a fine, public service and placed Mr. Vietz on supervised probation for two years.

**RECIPROCAL DISCIPLINE**

On November 30, 2015, the Honorable Ryan Harris, Third Judicial District Court, entered a Default Judgment and Order of Reciprocal Discipline: Disbarment against Leslieann Haacke, for violation of Rules 1.2(a) (Scope of Representation and Allocation of Authority Between Client and Lawyer), 1.3 (Diligence), 1.4 (Communication), 1.5(a) (Fees), 1.7(a) (Conflict of Interest: Current Clients), 1.8(a) (Conflict of Interest: Current Clients: Specific Rules), 1.15 (Safekeeping Property), 1.16(d) (Declining or Terminating Representation), 8.4(b) (Misconduct), 8.4(c) (Misconduct), and 8.4(d) (Misconduct) of the Rules of Professional Conduct.

Ms. Haacke is a member of the Utah State Bar and is also licensed to practice law in Arizona. The Presiding Disciplinary Judge of the Supreme Court of Arizona issued a Report and Order Imposing Sanctions disbarring Ms. Haacke from the practice of law for Ms. Haacke's violation of the Arizona Rules of Professional Conduct. An Order was entered in Utah based upon the discipline Order in Arizona.

*In summary the disciplinary authority in Arizona found:* Ms. Haacke failed to adequately communicate with clients, failed to abide by the clients' decisions concerning the objectives of representation and failed to consult with clients regarding the means by which their legal objectives were to be pursued. Ms. Haacke failed to act with reasonable diligence and promptness in her representation of her clients. Ms. Haacke delayed getting client issues resolved, thereby engaging in conduct prejudicial to the administration of justice.

Ms. Haacke charged unreasonable fees for the work she performed. Ms. Haacke represented parties with conflicts and entered into a business transaction with a client. Ms. Haacke failed to take steps to the extent reasonably practical to protect her clients' interests at the termination of her legal representation.

Ms. Haacke failed to hold client funds in her trust account until earned, failed to keep accurate records of her trust account and failed to promptly deliver client funds. Ms. Haacke committed theft by failing to safeguard or to hold third party funds in her trust account. Ms. Haacke committed a criminal act (theft A.R.S. §13-1802(A), a class 2 felony) that reflects adversely on her honesty, trustworthiness or fitness as a lawyer in other respects when she disbursed to herself funds that did not belong to her, without authorization.

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Ms. Haacke made false statements to and in representing clients. Ms. Haacke's conduct was knowing and intentional.

*The Arizona disciplinary authority found the following aggravating factors:*
Dishonest or selfish motive.

**PUBLIC REPRIMAND**

On December 10, 2015, Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Jeffery N. Aldous for violating Rules 1.4 (Communication) and 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

*In summary:*
Mr. Aldous was retained by a company and was paid a retainer for the representation. Another attorney working for Mr. Aldous's client the company tried to contact Mr. Aldous to obtain a status on the progress of the work Mr. Aldous was hired to perform. The other attorney initially exchanged some information with Mr. Aldous about the progress of the case, but thereafter was unable to communicate with Mr. Aldous.

The client terminated Mr. Aldous's representation and requested an accounting of the work performed by Mr. Aldous. Mr. Aldous failed to comply with the client's requests for an accounting.

The OPC sent a letter to Mr. Aldous asking him to respond to these allegations and Mr. Aldous did not respond. The OPC emailed Mr. Aldous asking for a reply and Mr. Aldous did not reply. The OPC served Mr. Aldous with a Notice of Informal Complaint ("NOIC") requiring his written response within twenty days pursuant to the Rules of Lawyer Discipline and Disability. Mr. Aldous did not timely respond in writing to the NOIC. Mr. Aldous's conduct was generally negligent and there was injury to the legal system as a result of his failure to cooperate with the OPC's investigation.

*Aggravating factors:*
Ignored numerous requests for information from the OPC

*Mitigating factors:*
Accepted responsibility and family issues.

**PUBLIC REPRIMAND**

On December 1, 2015, the Honorable Michael G. Allphin, Second Judicial District Court, entered an Order of Discipline: Public Reprimand against Matthew T. Johnson for violating Rules 3.4(a) (Fairness to Opposing Party and Counsel) and 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Johnson was a deputy county attorney during the criminal prosecution of a defendant for aggravated assault. During the trial, Mr. Johnson asked a witness to verify a hearsay statement as being the witness' own statement. Mr. Johnson made a statement about the testimony which mischaracterized the witness' written statement. The court determined that a curative instruction to the jury could not adequately remedy the inflammatory nature of the Mr. Johnson's statement and declared a mistrial. Mr. Johnson also failed to turnover evidence that had potential evidentiary value.

*Mitigating circumstances:*
Absence of a prior record of discipline.

**INTERIM SUSPENSION**

On December 28, 2015, the Honorable Ryan M. Harris, Third Judicial District Court, entered an Order of Interim Suspension pursuant to Rule 14-519 of the Rules of Lawyer Discipline and Disability against Jeremy D. Eveland pending resolution of the disciplinary matter against him.

*In summary:*
Mr. Eveland was placed on interim suspension based upon his criminal conviction for communications fraud, a third degree felony.

**PUBLIC REPRIMAND**

On December 10, 2015, Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Kerry F. Willets for violating Rules 1.3 (Diligence), 1.4(b) (Communication) and 1.16(d) (Declining or Terminating Representation) of the Rules of Professional Conduct.

*In summary:*
Mr. Willets was retained for representation in a bankruptcy matter. Mr. Willets failed to include his client's real estate asset

on the necessary Schedules. At the 341 meeting of creditors, the bankruptcy Trustee verbally instructed Mr. Willets to amend the Schedules to include the real property but Mr. Willets failed to amend the Schedules as the Trustee instructed.

After the bankruptcy was closed, when the client attempted to sell the property, the title company noted that the property had not been listed in the bankruptcy and had not been formally disclosed to the Trustee. The client tried to contact Mr. Willets numerous times to discuss the issue with the property and the bankruptcy. When the client was able to inform Mr. Willets about the cloud on the title of the property, Mr. Willets indicated that he would straighten it out. Mr. Willets failed to timely petition to reopen the bankruptcy and failed to timely communicate with his client about the matter.

The client retained new counsel in an effort to have the bankruptcy reopened and requested the file materials from Mr. Willets. Mr. Willets did not timely provide the file to the client. Due to the cloud on the property created by the bankruptcy, the sale of the property was delayed and the first buyers withdrew their bid on the property, forcing the client to make additional mortgage payments until the sale was ultimately closed.

*Aggravating factors:*
Prior record of discipline.

*Mitigating factors:*
Personal and family issues.

**SUSPENSION**

On December 28, 2015, the Honorable Ryan M. Harris, Third Judicial District Court, entered an Order of Discipline: Suspension, against David A. Anderson for violating rules 8.4(b) (Misconduct) and 8.4(d) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Anderson was charged in the Third Judicial District Court with assault against a police officer, interference with an arresting officer, criminal trespass, and disturbing the peace. Mr. Anderson signed a plea in abeyance agreement regarding the charge of assault against a police officer. Pursuant to the agreement, Mr. Anderson's plea was held in abeyance for eighteen months.

During the time Mr. Anderson's plea was being held in abeyance, Mr. Anderson was charged in the United States District Court with attempting to or carrying a weapon onboard an aircraft and two counts of assault/threat to assault a federal official or their family. Mr. Anderson ultimately pled guilty to one count of carrying a concealed weapon on an aircraft and was sentenced to thirty-six months probation. As a result of Mr. Anderson's guilty plea, the Third Judicial District Court found that Mr. Anderson had violated his probation and entered a plea of guilty against him for assault against a police officer.

*Mitigating circumstances:*
Absence of a prior record of discipline and emotional problems/mental disability.

## *Discipline Process Information Office Update*

During its initial year, from January through December 2015, the Discipline Process Information Office helped eighty attorneys who contacted the office for information regarding Bar complaints that had been filed against them. Jeannine P. Timothy is available to address concerns attorneys may have about their individual matters with the Office of Professional Conduct (OPC).

Please contact Jeannine with all of your questions regarding the disciplinary process.

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**DisciplineInfo@UtahBar.org**

# *Attorney Discipline*

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**Information about the formal Ethics Advisory Opinion process can be found at:**
www.utahbar.org/opc/bar-committee-ethics-advisory-opinions/eaoc-rules-of-governance/.

**ADMONITION**

On September 22, 2015, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rule 1.6(a) (Confidentiality of Information) of the Rules of Professional Conduct.

*In summary:*
The attorney was hired to represent a client in a domestic matter and received photographs from the client which purportedly depicted the client's domestic abuse injuries. The photographs were attached to an affidavit which was submitted to the court. The attorney subsequently learned that one of the photographs submitted to the court was not actually a photograph of the client. Before discussing the issue with the client, the attorney contacted a different attorney, who represented the same client in a different matter, and informed that attorney that the client had provided misleading evidence. The attorney did not have the client's consent to disclose the information which was provided to the other attorney.

**RECIPROCAL DISCIPLINE**

On September 21, 2015, the Honorable James Gardner, Third Judicial District Court, entered a Default Judgment and Order of Public Reprimand against Matthew C. Brimley for violating Rule 5.5(a) (Unauthorized Practice of Law; Multijurisdictional Practice of Law) of the Rules of Professional Conduct.

Mr. Brimley is a member of the Utah State Bar. The Supreme Court of Wyoming issued an Order of Public Censure for Mr. Brimley's conduct in violation of the Wyoming Rules of Professional Conduct. An Order was entered in Utah based upon the discipline order in Wyoming.

*In summary:*
Mr. Brimley is not now, nor has he ever been, licensed to practice law in Wyoming. Mr. Brimley filed an entry of appearance and a plea of not guilty on behalf of four defendants charged with motor vehicle violations in a Circuit Court of Wyoming. Mr. Brimley also filed simultaneous motions to continue on behalf of three of these defendants. Mr. Brimley subsequently filed a notice of withdrawal in all four cases but failed to submit proposed orders with the notices. At the time he entered his appearance on behalf of the four defendants, Mr. Brimley had not attempted to be admitted *pro hac vice* in any of those cases. The Supreme Court of Wyoming found the aggravating factor of substantial experience in the practice of law and mitigating factors of absence of prior disciplinary record, absence of dishonest or selfish motive and full and free disclosure to Bar Counsel and a cooperative attitude toward the proceedings.

### RESIGNATION WITH DISCIPLINE PENDING

On September 30, 2015, the Utah Supreme Court entered an Order Accepting Resignation with Discipline Pending concerning Brenda S. Whiteley, for violation of Rules 1.15(a) (Safekeeping Property), 1.15(d) (Safekeeping Property), and 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Ms. Whiteley was retained to represent a minor child for a personal injury claim in connection with an automobile accident. The child's claim was settled by Ms. Whiteley and a conservator was appointed on behalf of the minor child. After medical expenses and Ms. Whiteley's attorney fee had been paid out of the settlement, Ms. Whiteley was to hold the child's net settlement funds in trust until the child reached the age of eighteen. Ms. Whiteley misappropriated a portion of the child's settlement funds and made only a partial payment to her client after the child's eighteenth birthday. When the child's conservator contacted Ms. Whiteley regarding the balance of the money Ms. Whiteley should have been holding in trust, Ms. Whiteley falsely represented to the conservator that the insurance company had authorized monthly payments until the remainder of the settlement had been paid.

### RECIPROCAL DISCIPLINE

On October 6, 2015, the Honorable Keith Kelly, Third Judicial District Court, entered a Default Judgment and Order of Public Reprimand against Edward P. Moriarity for violating Rule 3.1 (Meritorious Claims and Contentions) of the Rules of Professional Conduct.

Mr. Moriarity is a member of the Utah State Bar and is also licensed to practice law in Wyoming, Arizona, and Montana. The Supreme Court of Wyoming issued an Order of Public Censure for Mr. Moriarity's conduct in violation of the Wyoming Rules of Professional Conduct. An Order was entered in Utah based upon the discipline order in Wyoming.

*In summary:*

The events giving rise to the Supreme Court of Wyoming's Order of Public Censure took place in Arizona. Mr. Moriarity represented an Arizona attorney in disbarment proceedings brought against the attorney for numerous ethical violations and also filed a lawsuit in the Superior Court of Maricopa County on behalf of the attorney. The lawsuit filed by Mr. Moriarity on behalf of his client lacked a basis in fact or law.

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## RECIPROCAL DISCIPLINE

On October 7, 2015, the Honorable Paul G. Maughan, Third Judicial District Court, entered an Order of Reciprocal Discipline: Public Reprimand against Nicholas Thomas Haderlie for violating Rules 8.4(b) (Misconduct) and Rule 8.4(d) (Misconduct) of the Rules of Professional Conduct.

Mr. Haderlie is a member of the Utah State Bar and is also licensed to practice law in Wyoming. The Supreme Court of Wyoming issued an Order of Public Censure for Mr. Haderlie's conduct in violation of the Wyoming Rules of Professional Conduct. An order was entered in Utah based upon the discipline order in Wyoming.

*In summary:*

Mr. Haderlie was arrested and charged with violation of Wyoming Statutes sections 31-5-233 (Driving or having control of vehicle while under the influence of intoxicating liquor or controlled substances) and 6-5-204(a) (Interference with a peace officer). Mr. Haderlie ultimately pled guilty to the DWUI charge and to interference with a peace officer, both misdemeanors.

## SUSPENSION

On October 14, 2015, the Honorable Joseph M. Bean, Second Judicial District Court, entered an order suspending Ronald E. Griffin from the practice of law for a period of one year for Mr. Griffin's violation of the court's prior order reinstating Mr. Griffin's license to practice law contingent on his compliance with certain conditions.

*In summary:*

Mr. Griffin failed to satisfy the conditions of his reinstatement by failing to clarify his involvement in a case before the Utah Court of Appeals, by failing to complete forty hours of service with an approved legal services organization and by failing to complete three hours of Continuing Legal Education.


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DISCIPLINE PROCESS INFORMATION OFFICE

**Jeannine P. Timothy**
**(801) 257-5515**
**DisciplineInfo@UtahBar.org**

service program; all to be kicked off at the Annual Meeting.

13. Received the report of the Young Lawyers Section, approving a fund-raising effort for the hosting of an event in conjunction with the National Child Abuse Conference, designating the Section program on the Bicentennial of the Bill of Rights as the official Bar program and recognizing the recent appointments of Section members to national committees of the ABA-YLD.

14. Received and reviewed the monthly report of the Budget and Finance Committee. Approved a new format for future budgets.

At the June 16 meeting, the following actions were taken:

1. Approved the minutes of the May 19 meeting.

2. Received the monthly report of President Kasting and the Executive Committee, with status reports on various pending matters previously highlighted.

3. Received the monthly report of the Executive Director, commending the success of the recent Jack Rabbit Bar meetings at Snowbird, noting the appointment of the MCLE Board, approving a decision to renew the Apprenticeship Program in 1990, noting the nomination of the Tuesday Night Bar Program to receive the ABA's Harrison Tweed Award for outstanding programs which extend legal services to the poor, and noting the filing of a grant application by the Delivery of Legal Services Committee for a legal services to the homeless project.

4. Received the monthly Admissions Report, approving certain reinstatements, approving the results of the May attorneys bar examination, approving applications to set for the July bar examination, granting a petition for hearing for a readmission applicant and approving routine MPRE timing waiver petitions.

5. Received the monthly report of the Office of Bar Counsel, approving seven private reprimands, acting on public discipline matters as reported elsewhere in this issue.

6. Received the report of the Unauthorized Practice of Law Committee and authorized the filing of a declaratory action related to the scope of authority of independent insurance adjusters.

7. Received a status report on pending litigation.

8. Approved final language of the Bar policy on pro bono legal services, to be published in the next issue of the *Journal*.

9. Reviewed the status of the Bar's legislative information program.

10. Received and reviewed a report of recommended changes and additions to published Bar policies. Added several modifications and set final review for July meeting.

11. Received report of Young Lawyers Section, including review of the achievements of the Section for the year.

12. Received the monthly report of the Budget and Finance Committee, reviewed FY88 Audit Report and proposed FY90 Budget. Final action on budget deferred to July meeting.

A full copy of the minutes of these and other meetings of the Board of Bar Commissioners is available for inspection by members of the Bar and the public.

# Discipline Corner

## ADMONITIONS

1. An attorney was admonished for violating Rule 1.4(a) for failing to timely and adequately communicate with his client that he did not intend to represent her; the client believed the attorney was proceeding on her behalf.

2. For failing to adequately communicate the status of the client's bankruptcy matter and for failing to communicate the possible jurisdictional problems caused by the client's moving out of the state, an attorney was admonished for violating Rule 1.4(a). The sanction was mitigated by the attorney's willingness to refund the retainer at the request of the Screening Panel.

3. For failing to inform the clients that the attorney had received a Notice of Denial of Claim and for failing to adequately supervise the attorney's support staff with the result that the Denial was placed in the file without being brought to the attorney's or the clients' attention, an attorney was admonished for violating Rule 1.4(a).

4. For violating Rule 4.2, an attorney was admonished for communicating directly with an opposing party who the attorney knew was represented by counsel by sending a statutory bad check letter pursuant to a default on a promissory note which was part of divorce negotiations. The sanction was mitigated by the fact that the attorney in good faith believed that the promissory note matter was separate from the divorce matter and that the opposing party's divorce counsel would not necessarily have also been counsel on the promissory note default.

5. An attorney was admonished for violating DR 6-101(A)(3) for neglect for failing to timely pursue an uncontested divorce matter by failing to serve the divorce complaint when it became obvious that the opposing party was unwilling to sign the appropriate documents and then permitting the first divorce filing to be dismissed for lack of prosecution.

6. An attorney was admonished for violating Rules 8.4(c) and 1.13(b) for failing to adhere to the language of a medical lien form which required the attorney to disburse monies directly to the doctor and for failing to follow through in disbursing those monies after representing to Bar Counsel that the attorney would do so.

7. For failing to adequately communicate the nature and scope of the attorney-client relationship and the attorney's intent not to file a civil rights action, an attorney was admonished for violating Rule 1.3.

8. For failing to attach witness fees to a subpoena, and for the attorney's inappropriate and unprofessional response to the complaint filed with the Office of Bar Counsel, an attorney was admonished for violating Rules 4.4, 8.4(c) and 8.4(d).

## PRIVATE REPRIMANDS

1. For violating Rule 1.4(d), an attorney was privately reprimanded for failing to return the client's files for approximately one month, when the attorney was aware that the client had arranged a meeting with subsequent counsel; the client's matter was ongoing.

2. For completely failing to communicate with his client for a period of approximately four months after being retained in an estate matter, an attorney was privately reprimanded for violating Rule 1.4(a). The sanction was aggravated by the fact that the attorney obtained certain original deeds and other title documents from the client, which documents have mysteriously disappeared from the attorney's office and which the attorney has been unable to locate.

3. An attorney was privately reprimanded for violating Rule 1.3 for neglect of a legal matter by failing to appear at a sentencing hearing that had been reset to accommodate the client and for violating Rule 1.4(a) for failing to adequately communicate with the client by failing to contact the client for approximately one month after the sentencing hearing to explain the attorney's absence and the status of the case.

4. An attorney was privately reprimanded for violating Rule 1.3 for neglect of a legal matter by failing to timely set a hearing to finalize the client's uncontested divorce and for violating Rule 8.4(c) for conduct involving dishonesty by promising to complete the matter by a date certain or refund a portion of the retainer and subsequently failing to perform such work or to tender the promised refund.

5. For violating DR6-101(A)(3) for ne-

glect of a legal matter, an attorney was privately reprimanded for failing to respond to the client's numerous telephone calls and written requests for case status reports, and for failing to comply with the client's requests that the attorney forward copies of all correspondence.

6. For failing to respond to the client's written and telephonic requests for status reports and for copies of all correspondence for approximately nine months, for failing to inform the client of the date of a pre-trial hearing, and for failing to inform the client that the attorney could not attend the pre-trial hearing and would be sending an associate, an attorney was privately reprimanded for violating DR 6-101(A)(3).

**PUBLIC REPRIMANDS**

1. On May 1, 1989, Robert J. DeBry was publicly reprimanded by the Utah Supreme Court, based on Mr. DeBry's consent to such discipline, for violating DR 5-103(B) by advancing monies to certain clients for purposes other than actual litigation costs, i.e., living expenses. Although Mr. DeBry defended his conduct by asserting that he could advance such monies as a humanitarian gesture, he ceased to make such advances when informed by the Ethics and Discipline Committee of the Utah State Bar that his interpretation of the rule was incorrect.

# Ethics Opinion 91 Attorney's Retaining Liens

The Board of Bar Commissioners at their meeting on May 19, 1989, adopted the following formal ethics opinion respecting attorney's retaining liens on client files.

**ETHICS ADVISORY OPINION COMMITTEE**
**Request No. 91**

**Issue**

Is it ethically proper for an attorney to retain a client's file and other papers and documents belonging to the client, because the client has refused to pay the attorney's fees?

**Opinion**

The Utah Rules of Professional Conduct permit attorneys to exercise a common law retaining a lien to papers and documents belonging to the client, because the client has not paid the attorney's fees, when either the attorney has been wrongfully discharged by the client or has withdrawn from the representation for good cause. Attorneys are cautioned, however, that withdrawal must be accomplished in a manner that is consistent with the other requirements of Rule 1.14.

**Analysis**

Utah Rule of Professional Conduct 1.14(d) provides that an attorney withdrawing from representation may retain papers relating to the client to the extent permitted by other law. Because several Utah cases do recognize a common law attorneys' retaining lien, use of the lien cannot be regarded as per se improper under Rule 1.14.

In the specific case for which this opinion is requested, the firm has a regular practice of invoking a common law retaining lien to secure unpaid attorneys' fees and unreimbursed expenses, when the attorney either has been wrongfully discharged by the client or has withdrawn for good cause. In April 1986, the attorneys undertook to represent clients in a real estate matter; suit was filed in May 1986. In July 1987, the attorneys withdrew from the representation, allegedly because the clients unreasonably failed to follow their advice, failed to pay agreed-upon fees, and failed to reimburse costs and expenses as agreed. Both at the time of the withdrawal and in November 1987, the clients demanded return of their file and documents. The attorneys denied the request until the clients paid their bill. The lawsuit is pending. The clients complained to the Bar about the attorneys' refusal to release their file and about another matter. On January 15, 1988, Bar Counsel instructed the attorneys that they should release the clients' file immediately because the lawsuit was pending. The attorneys have requested this advisory opinion from the Bar about the propriety of their policy of invoking the retaining lien.

Under the Utah Code of Professional Responsibility, Bar Counsel has taken the position that even in cases of proper withdrawal or wrongful discharge, the attorney is required to return the client's file and papers within a reasonable time, no matter what other circumstances exist. DR 2-110(A)(2) provides that in all cases of withdrawal, the lawyer must take "reasonable steps to avoid foreseeable prejudice to the rights of his client, including...delivering to the client all papers and property to which the client is entitled..." In addition, DR 7-101(A)(3) prohibits the lawyer from intentionally prejudicing or damaging the client and DR 9-102(B)(4) requires the lawyer to promptly deliver to the client any "properties in the possession of the lawyer which the client is entitled to receive."

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# *Attorney Discipline*

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## PUBLIC REPRIMAND

On May 25, 2015, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Gregory V. Stewart for violating Rules 5.5(a) (Unauthorized Practice of Law; Multijurisdictional Practice of Law) and 8.1(b) (Bar Admission and Disciplinary Matters) of the Rule of Professional Conduct.

*In summary:*

The Supreme Court of the State of Utah suspended Mr. Stewart from the practice of law in the State of Utah based upon his failure to comply with the mandatory continuing legal education requirements. During the time he was suspended from the practice of law, Mr. Stewart appeared and represented a client at a pretrial conference and subsequent jury trial in the Fourth Judicial District Court.

The Office of Professional Conduct served Mr. Stewart with a Notice of Informal Complaint requiring his written response within twenty days pursuant to the Rules of Lawyer Discipline and Disability. Mr. Stewart did not timely respond in writing to the Notice of Informal Complaint.

*Mitigating factors:*

Absence of a prior record of discipline; absence of dishonest or selfish motive; prompt effort to rectify the misconduct.

## INTERIM SUSPENSION

On July 22, 2015, the Honorable James Gardner, Third Judicial District Court, entered an Order of Interim Suspension pursuant to Rule 14-519 of the Rules of Lawyer Discipline and Disability against James H. Alcala pending resolution of the disciplinary matter against him.

*In summary:*

Mr. Alcala was placed on interim suspension based upon his criminal convictions for conspiracy to commit fraud and alien smuggling and fraud and misuse of visas/permits/visa fraud.

## PUBLIC REPRIMAND

On May 8, 2015, the Honorable Keith Kelly, Third Judicial District Court, entered Findings of Fact, Conclusions of Law and Order of Reprimand against Sean Young for violating Rules 1.1 (Competence), 1.3 (Diligence), 1.4(a) Communication, and 3.3(a) (Candor Toward the Tribunal) of the Rules of Professional Conduct.

*In summary:*

Mr. Young was retained to represent a family in connection with their Application for Cancellation of Removal and Adjustment of Status ("Application"). An individual hearing for Mr. Young's clients was held before the Immigration Court and at that time,

Have you received a letter from the Office of Professional Conduct (OPC)? Do you have questions about the disciplinary process? For all your questions, contact Jeannine P. Timothy at the Discipline Process Information Office. Since January, fifty-two attorneys have called Jeannine with questions about the complaints filed against them. Jeannine has provided information about the process and given updates on the progress of each attorney's individual matter with the OPC. Call Jeannine at 801-257-5515 or email her at DisciplineInfo@UtahBar.org.

**Jeannine P. Timothy**
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Mr. Young indicated that he did not have the required file materials to proceed and requested additional time from the Court to complete his clients' Application. The Court granted a continuance and scheduled a subsequent individual hearing for Mr. Young's clients.

Following the first individual hearing, Mr. Young failed to timely pursue his clients' Application. During that time, Mr. Young failed to inform and consult with his clients and failed to communicate to his clients the deadlines they needed to meet in order to submit a timely Application prior to the second individual hearing. Although Mr. Young took steps for the submission of the required payment to the U.S. Citizenship and Immigration Services for his clients' biometrics, he failed to provide his clients with any written notice about the need for them to submit their biometrics.

At least six months prior to the second individual hearing, Mr. Young's clients had provided to Mr. Young all of the documentation he had requested from them in order to complete their Application. Mr. Young failed to timely file his clients' Application. Mr. Young knew that because his clients had already obtained a continuance, his failure to timely prepare, file and serve his clients' Application prior to the second individual hearing could result in the deportation of his clients. At the second individual hearing held before the Immigration Court, Mr. Young falsely represented to the court that he had previously filed the Application and served it on the attorneys for the United States.

*Aggravating factors:*
Multiple offenses; vulnerability of victims; and substantial experience in the practice of law.

*Mitigating factors:*
Absence of a prior record of discipline; absence of a dishonest or selfish motive; good faith effort to rectify the consequences of the misconduct involved; good character or reputation; and remorse.

**SUSPENSION**

On June 1, 2015, the Honorable Todd M. Shaughnessy, Third Judicial District Court, entered Findings of Fact and Conclusions of Law suspending Abraham C. Bates from the practice of law for a period of five months, effective July 1, 2015. The OPC has filed an appeal of the court's Findings of Fact and Conclusions of Law, which is currently pending before the Utah Supreme Court.

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# Commission Highlights

During its regular meeting on December 6, 1996, held in Ogden, Utah, the Board of Bar Commissioners received the following reports and took the actions indicated.

1. The Board approved the minutes of the November 1, 1996 Commission meeting.
2. John Baldwin confirmed that copies of the Equal Access to Justice report were distributed to 22 various entities and associations.
3. The Board voted to approve printing 1,000 copies of a small pamphlet with a smaller version of the public service ads.
4. The Board voted to engage John T. Nielsen as the Bar's legislative representative for the upcoming legislative session.
5. The Board approved a $55,000 capital request for computer software upgrades.
6. Norm Younker, President of Utah Trial Lawyers appeared to discuss issues related to legislation that is currently on the hill that will impact lawyers.
7. The Board voted to appoint a representative to serve on the Judicial Council and to appoint a different representative to serve on the Judicial Conduct Commission at the same time.
8. The Board voted to appoint David O. Nuffer to the Judicial Conduct Commission.
9. Budget & Finance Committee Chair Ray O. Westergard reviewed the October financial reports.
10. The Board voted to approve Ethics Opinion No. 96-10.
11. The Board voted to approve the changes to the Rules of Procedure for the Ethics Advisory Opinion Committee.
12. Bar Commission Liaisons Charles R. Brown, Ray O. Westergard and Scott Daniels reported on their various committee and section liaison assignments.
13. Katherine Fox reported that a bar exam applicant who has filed a Petition with the Utah Supreme Court wants to transfer in Multistate scores and the Supreme Court has asked us to analyze the current rule and make a recommendation.
14. The Board voted to adopt the proposal of the Litigation section to sponsor the January publication of the *Voir Dire* and the summer issue so that there are 12 issues and the section helps with the financing.
15. General Counsel Katherine Fox reviewed current lawsuits against the Bar and UPL case summaries.
16. Chief Disciplinary Counsel Stephen Cochell distributed a case flow report and reviewed the November statistical report.
17. ABA Delegate James B. Lee distributed handouts on the ABA's mid-winter meeting.
18. Steven Lee Payton reported on the Minority Bar association activities.
19. Young Lawyers Division President Dan Andersen reported that next year's New Admittee Social would be held in the form of a luncheon during a mandatory NLCLE seminar. Andersen reported briefly on the ongoing Young Lawyer programs including Tuesday Night Bar and the Law & Library.
20. Legal Assistants Division Representative Sanda Kirkham distributed a draft of membership requirements and indicated that character and ethical requirements are being considered.

A full text of minutes of this and other meetings of the Bar Commission is available for inspection at the office of the Executive Director.

## *Discipline Corner*

### DISBARMENT

On February 21, 1997, the Honorable Timothy R. Hanson, Third Judicial District Court, approved a Discipline By Consent and Settlement Agreement and entered an Order imposing disbarment for a period of five years upon Lewis R. Hansen, beginning August 1, 1996.

In July 1996, the Respondent abandoned his law practice without making reasonable arrangements to properly withdraw from his cases and without making reasonably practicable arrangements to ensure that his clients' interests were protected. Additionally, the Respondent commingled client funds, which should have been held in trust, with his own funds, and misappropriated client funds for his own use. By these actions, the Respondent violated the following Rules of Professional Conduct: Rule 1.3 (Diligence), Rule 1.4 (Communication), Rule 1.5 (Fees), Rules 1.15 (Safekeeping Property), Rule 1.16 (Declining or Terminating Representation), and Rule 8.4 (Misconduct).

In mitigation, it is noted that the Respondent had no prior record of discipline and demonstrated remorse. In aggravation, it is noted that Respondent had a dishonest or selfish motive, there was a pattern of misconduct, the Respondent committed multiple offenses, many of the Respondent's clients were vulnerable, Respondent had substantial experience in the practice of law, and the Respondent engaged in illegal conduct.

### PUBLIC REPRIMAND

On February 14, 1997 the Honorable J. Dennis Frederick, Third District Court Judge, entered a Discipline by Consent and Judgment of Reprimand upon attorney David K. Smith for violating Rules 1.3 (Diligence) and 1.4 (Communication) of the Rules of Professional Conduct of the Utah State Bar. Smith failed to act with reasonable diligence and keep his client reasonably informed about the status of her divorce action.

### ADMONITION

On March 10, 1997, an attorney was admonished and required to attend The State Bar Ethics School by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violating Rule of Professional Conduct 1.5(a), (Fees). The attorney billed his client for time the attorney spent in responding to Bar complaints made by the opposing party and by the attorney's client. This conduct constituted an improper billing. The attorney had a duty to cooperate with the Utah State Bar pursuant to Rule 8.1(b) of the Rules of Professional Conduct. Time spent in responding to the Office of Attorney Discipline should not have been billed to the attorney's client.

# *Attorney Discipline*

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**INTERIM SUSPENSION**

On September 17, 2015, the Honorable Bruce Lubeck, Third Judicial District Court, entered an Order of Interim Suspension pursuant to Rule 14-519 of the Rules of Lawyer Discipline and Disability against J. Wesley Robinson pending resolution of the disciplinary matter against him.

*In summary:*

Mr. Robinson was placed on interim suspension based upon his criminal convictions for operation of a clandestine laboratory, possession of a controlled substance with intent to distribute and possession of a firearm by a restricted person.

**SUSPENSION**

On June 15, 2015, the Honorable Fred D. Howard, Fourth Judicial District Court, entered Findings of Fact, Conclusions of Law and Order of Suspension, suspending Stacey Austin Johnson from the practice of law for two years for Mr. Johnson's violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.4(a) (Communication), 8.4(c) (Misconduct), and 8.4(d) (Misconduct) of the Rules of Professional Conduct.

*In summary, there are two matters:*

In the first matter, Mr. Johnson was retained to represent a husband and wife in their personal injury claims. After filing a complaint against two defendants, Mr. Johnson failed to initiate an attorneys planning meeting or submit a proposed Case Management Order until ordered to do so. Mr. Johnson failed to timely serve Initial Disclosures; failed to designate witnesses and failed to timely answer discovery requests. Mr. Johnson also failed to timely respond to both defendants' summary judgment motions filed after the admissions were deemed admitted for failure to timely respond to admissions requests. His late response to one of the summary judgment motions was found inadequate and both motions for summary judgment were granted. Mr. Johnson essentially filed three motions for reconsideration that did not comply with court rules for multiple reasons and were denied.

Mr. Johnson moved numerous times while the case was pending

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and did not timely notify his clients, opposing counsel or the Court about all of his address changes. Mr. Johnson did not keep his clients informed about their case. After learning of the summary judgments from the court, the client confronted Mr. Johnson and he led the client to believe it would be simple to reinstate the case and failed to clearly communicate that the case was in peril.

Mr. Johnson filed an appeal. The Utah Court of Appeals upheld the summary judgments noting that during the appellate process, Mr. Johnson failed to comply with court procedural rules, including failing to serve papers and failing to meet deadlines for the reply brief. Mr. Johnson did not timely inform his clients that the appeal had been dismissed; the clients learned of the denial from another attorney.

*In the second matter:*
Mr. Johnson was retained to pursue litigation against a police department on behalf of a husband and wife for their claim of excessive force. Mr. Johnson did not timely communicate with his clients about the status of the case and the work he was performing. Mr. Johnson informed his clients when he believed a four year statute of limitations would run on the case, but did little work to file a complaint for the case until shortly before that time. Shortly before the statute date, Mr. Johnson informed his clients that they needed to pay the filing fee to file a complaint. Two days prior to the statute date for his clients' case, Mr. Johnson informed the clients that he would no longer represent them but that he would give them a complaint to file pro se. When the clients did not meet Mr. Johnson at the courthouse to review, sign and file the complaint pro se late on the evening prior to the statute date, Mr. Johnson filed the unsigned complaint by placing it into the overnight drop box for the Court. Mr. Johnson did not include the required filing fee with the Complaint. Mr. Johnson called his clients and left a message for them to go to the court the next morning to sign the pro se verified complaint. The clients did not wish to proceed with the case pro se and they did not complete the filing of the complaint.

*Aggravating factors:*
Prior record of discipline; dishonest or selfish motive; pattern of misconduct; multiple offenses; vulnerability of victim; substantial experience in the practice of law; and lack of good faith effort to rectify the consequences of his misconduct.

**ADMONITION**

On July 31, 2015, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rule 1.3 (Diligence) of the Rules of Professional Conduct.

*In summary:*
An attorney, while acting as general counsel to a corporation, filed an Answer to a complaint on behalf of the owner of the corporation who had been named personally as a defendant in a lawsuit. After the Answer was filed on behalf of the individual, the attorney stopped serving as general counsel to the corporation. But the attorney did not withdraw as counsel for the individual the attorney was representing. Requests for Admissions were then served on the individual and the attorney did not respond to the Requests for Admissions on behalf of the individual defendant. Based on the failure to respond to the Requests for Admission, a Motion for Summary Judgment was filed and served on the attorney. The attorney did not oppose the Motion

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for Summary Judgment. The court granted the Motion and entered a judgment against the individual defendant.

**DISBARMENT**

On August 26, 2015, the Honorable Noel S. Hyde, Second Judicial District Court, entered an Order disbarring Alvin R. Lundgren from the practice of law for Mr. Lundgren's violation of Rules 1.15(a) (Safekeeping Property) and 1.15(d) (Safekeeping Property) of the Rules of Professional Conduct.

*In summary:*

Mr. Lundgren was hired to pursue a worker's compensation claim. Mr. Lundgren settled the claim and retained a portion of the settlement proceeds to pay his client's outstanding medical bills. Mr. Lundgren did not remit payment to his client's medical provider and misappropriated his client's money from his client trust account.

After being notified by the medical provider that their bill had not been paid, the client made efforts to contact Mr. Lundgren by telephone, leaving messages and receiving no response. The client sent Mr. Lundgren a letter and requested an accounting of the settlement funds. Mr. Lundgren did not respond to the client's letter or provide an accounting of the settlement funds. Mr. Lundgren eventually paid the money owed to the medical provider.

Mr. Lundgren took unearned money from his client trust account to cover personal and business expenses. Mr. Lundgren transferred unearned money from his client trust account to his operating account. Mr. Lundgren transferred unearned money and wrote checks on unearned money from his client trust account to himself. Mr. Lundgren transferred money from his client trust account to his wife's checking account. No client authorized Mr. Lundgren to take their money from the trust account before it was earned. Based on these actions, Mr. Lundgren misappropriated client funds belonging to more than just one client.

Mr. Lundgren was not able to provide an accounting of the unearned money that he took from his client trust account. Mr. Lundgren was not able to verify that all unearned money that was taken was returned to his trust account.

**DISBARMENT**

On July 2, 2015, the Honorable Fred D. Howard, Fourth Judicial District Court, entered Findings of Fact, Conclusions of Law and Order of Disbarment disbarring Donald D. Gilbert from the practice of law. Mr. Gilbert has filed an appeal of the Court's Findings of Fact, Conclusions of Law and Order of Disbarment, which is currently pending before the Utah Supreme Court.


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# *Attorney Discipline*

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**Information about the formal Ethics Advisory Opinion process can be found at:**
www.utahbar.org/opc/bar-committee-ethics-advisory-opinions/eaoc-rules-of-governance/.

**INTERIM SUSPENSION**

On February 23, 2016, the Honorable Joseph M. Bean, Second Judicial District Court, entered Findings of Fact, Conclusions of Law and Order of Interim Suspension pursuant to Rule 14-519 of the Rules of Lawyer Discipline and Disability against Stuwert M. Johnson pending resolution of the disciplinary matter against him.

*In summary:*
Mr. Johnson was placed on interim suspension based upon his criminal convictions for issuing a bad check, a Class A misdemeanor; and, several prior misdemeanor convictions for driving under the influence of alcohol, which led to Mr. Johnson's guilty plea on April 2, 2015, to two third degree felony charges of driving under the influence of alcohol.

**DISBARMENT**

On January 28, 2016, the Honorable Su Chon, Third Judicial District Court, entered a Findings of Fact, Conclusions of Law and Order of Disbarment, against Larry K. Yazzie for violating Rules 1.3 (Diligence), 1.4 and 1.4(a) (Communication), 1.5(a) (Fees), 1.15(d) (Safekeeping Property), 1.16(d) (Declining or Terminating Representation), 5.5(a) (Unauthorized Practice of Law), and 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

*In summary, there are two matters:*
In the first matter, Mr. Yazzie was hired to represent a client and two children on a contingency basis for their personal injury claims. Mr. Yazzie did not have a written agreement for the representation. The clients' automobile accident occurred in Colorado. Mr. Yazzie represented the clients from his offices on the Navajo Nation in Arizona. Mr. Yazzie was not licensed to practice law in Arizona or Colorado. During several periods of time when Mr. Yazzie was representing the clients and actively negotiating the minor children's claims with the insurance company, Mr. Yazzie's license to practice law on the Navajo Nation had been revoked.

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Mr. Yazzie reached a settlement with the insurance company for one client's claim and accepted a settlement offer for the claims of the minor children. Mr. Yazzie did not complete the resolution of the minor children's claims. When Mr. Yazzie received the client's settlement check for the first client, he negotiated the check and deposited the funds into his personal bank account, not his trust account. Mr. Yazzie failed to pay the client's medical bills; Mr. Yazzie failed to remit the settlement proceeds to the client and failed to provide any written accounting of the settlement funds to the client. Mr. Yazzie converted the entirety of the client's settlement funds for his own purposes.

The client terminated Mr. Yazzie's representation and hired a new attorney. The new attorney sent letters to Mr. Yazzie requesting the client's settlement funds and each clients' file materials. The attorney's correspondence warned Mr. Yazzie that the statute of limitations for the minor children's claims would soon expire. Mr. Yazzie received the attorney's correspondence but did not communicate with the new attorney and failed to provide the clients' files.

In the second matter, Mr. Yazzie was hired to defend a client in a criminal matter when the client's lead attorney on the case was appointed to become a prosecutor and had to withdraw from the representation. During the time that Mr. Yazzie was the sole attorney representing the client, Mr. Yazzie did not have any communication with his client, who was incarcerated. The client's parents tried to communicate with Mr. Yazzie on the client's behalf but Mr. Yazzie did not respond to their attempts at communication.

Mr. Yazzie filed a Notice of Withdrawal from the client's representation and failed to notify the client in advance that he was withdrawing from the case. At the time Mr. Yazzie withdrew from the case, there was a pending trial date scheduled for the client's criminal charges. Mr. Yazzie failed to perform work on behalf of the client to earn the fee he collected for the representation.

In each matter, the OPC served Mr. Yazzie with a Notice of Informal Complaint (NOIC) requiring his written response within twenty days pursuant to the Rules of Lawyer Discipline and Disability. Mr. Yazzie did not timely respond in writing to either NOIC.

### ADMONITION

On February 2, 2016, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rule 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

*In summary:*
The attorney failed to respond to the OPC's requests for information in connection with an informal Bar complaint filed against the attorney by the attorney's client. The attorney failed to respond to the OPC's requests because the attorney believed that in responding, the attorney would have to reveal confidential attorney–client communications. Under the ethical rule regarding confidential information, the attorney's concerns for necessity of revealing protected information was not a proper basis for his failure to respond. The attorney further believed that by responding to the OPC the attorney would have been adverse to the client, creating a conflict of interest, despite there being procedural mechanisms available to the attorney which would have allowed the attorney to avoid any conflict of interest. The attorney's failure to respond harmed the OPC's ability to investigate the informal Bar complaint and harmed the Screening Panel's ability to fully review the case, although the attorney's appearance at a Screening Panel hearing before the Ethics and Discipline Committee and his responses to the Panel's questions significantly lessened the injury.

### PUBLIC REPRIMAND

On March 2, 2016, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Mary D. Brown for violating Rules 1.2(a) (Scope of Representation and Allocation of Authority Between Client and Lawyer), 3.3(a) (Candor Toward the Tribunal), and 8.4(d) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Ms. Brown represented a wife in connection with a divorce proceeding. A foreclosure sale was noticed and scheduled for real property which was owned by Ms. Brown's client and the client's estranged husband. Ms. Brown discussed the possibility of a Chapter 13 bankruptcy action with opposing counsel for her client's estranged husband. Ms. Brown then filed a Chapter 13 bankruptcy on behalf of her client's estranged husband, which listed Ms. Brown as the husband's attorney. Ms. Brown paid the filing fee for the bankruptcy petition from her own bank account. The petition for bankruptcy and supporting documents filed by Ms. Brown on behalf of her client's estranged husband appeared to have been signed electronically by both Ms. Brown and the husband. The petition contained language indicating that Ms. Brown had explained bankruptcy options to the debtor. After Ms. Brown filed the bankruptcy action, she contacted the law firm pursuing the foreclosure action to inform the firm of the bankruptcy filing and the foreclosure sale was subsequently cancelled by the firm.

Ms. Brown did not have authorization from her client's estranged husband to file the bankruptcy action on his behalf. Ms. Brown had not discussed filing for bankruptcy with her client's estranged husband directly or explained bankruptcy options to him when she filed the petition for bankruptcy. Immediately after the bankruptcy action was filed, Ms. Brown was informed by opposing counsel that her client's husband did not consent to the bankruptcy action.

Ms. Brown filed a Notice of Voluntary Dismissal of Bankruptcy Petition. When the matter came to the attention of the bankruptcy court, Ms. Brown entered into a stipulation and consent to sanctions, which included a one-year suspension of Ms. Brown's electronic filing privileges in the bankruptcy court and required her to self report her conduct to the OPC.

### SUSPENSION STAYED WITH PROBATION

On February 17, 2016, the Honorable Ryan M. Harris, Third Judicial District Court, entered an Order of Discipline suspending R. Scott Rawlings from the practice of law for six months and one day with the suspension term stayed pending Mr. Rawlings completion of six months probation for his violation of Rules 1.3, 1.4(a), 1.16(d), 8.1(b), and 8.4(c) of the Rules of Professional Conduct.

*In summary:*
Mr. Rawlings was retained to represent a client for a personal injury claim and filed a complaint on behalf of his client. The client's case was subsequently dismissed by the Court without prejudice based on Mr. Rawlings' failure to serve the complaint within 120 days as required. The client attempted to contact Mr. Rawlings by telephone regarding the status of the case on numerous occasions but was unable to contact Mr. Rawlings and did not receive any response from Mr. Rawlings. The client wrote a letter to Mr. Rawlings and expressed concerned regarding the statute of limitations. Mr. Rawlings responded to the client by letter and misstated that the statute of limitations for his claim had not expired and that the action was still ongoing.

After the client was further unable to contact Mr. Rawlings regarding the case, the client hired a new attorney. The client's new attorney sent a letter to Mr. Rawlings requesting a complete copy of the client's file. Mr. Rawlings did not provide a copy of the file.

Mr. Rawlings offered evidence that issues with his office computer system and telephone messaging system contributed significantly to the misstatements regarding the status of the case and the communication problems with his client, making his conduct negligent.

The OPC served Mr. Rawlings with a Notice of Informal Complaint (NOIC) requiring his written response within twenty days pursuant to the Rules of Lawyer Discipline and Disability. Mr. Rawlings did not timely respond to the NOIC.

*Aggravating circumstances:*
Prior record of discipline.

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### ADMONITION

On March 2, 2016, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rule 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary,*
The attorney lied to a police officer who was investigating an incident involving the attorney displaying the attorney's prosecutor's badge to another driver.

### RESIGNATION WITH DISCIPLINE PENDING

On March 9, 2016, the Utah Supreme Court entered an Order Accepting Resignation with Discipline Pending concerning Ann L. Wasserman, for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.15(a) (Safekeeping Property), 1.15(d) (Safekeeping Property), and 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

*In summary, there are two matters:*
In the first matter, Ms. Wasserman was retained by a client for representation in a child welfare matter in juvenile court and a paternity matter. Ms. Wasserman filed a motion to continue a pretrial hearing in the child welfare matter. Ms. Wasserman failed to serve her client with the motion to continue the pretrial hearing. No order was entered continuing the hearing. The court held the pretrial hearing but Ms. Wasserman assumed the hearing had been continued and did not appear at the hearing on behalf of her client.

After a trial date was scheduled in the child welfare matter, the client requested a meeting with Ms. Wasserman prior to the trial date. Even though Ms. Wasserman claims she spoke and met with the client several times in preparation for the trial, Mr. Wasserman failed to meet with the client as the client requested. Ms. Wasserman also failed to timely respond to some of the client's communications requesting status updates. Ms. Wasserman failed to timely file her witness and exhibit lists as ordered by the court. Some of the client's evidence was precluded at trial based on Ms. Wasserman's failure to comply with procedural rules. Ms. Wasserman was further precluded from introducing direct testimony from a doctor on behalf of her client.

Ms. Wasserman failed to keep contemporaneous records of the time she worked on the client's cases. Ms. Wasserman failed to provide an accounting of the fees she collected from the client.

In the second matter, Ms. Wasserman was hired to represent a client in a child custody matter. Ms. Wasserman filed a Verified Petition for Custody on behalf of her client but failed to provide a final copy of the Petition to the client for approval prior to filing the petition with the court. The client made several requests to Ms. Wasserman for a copy of the petition but did not receive a copy. When the client obtained a copy of the petition directly from the court, the clerk told the client about an upcoming pretrial hearing. The client informed Ms. Wasserman of the pretrial hearing. Ms. Wasserman was late to the pretrial hearing and appeared unprepared.

The client terminated the representation and requested that Ms. Wasserman file a notice of her withdrawal with the court. The client also requested an accounting and refund of unearned fees. Ms. Wasserman did not file a notice of withdrawal. Ms. Wasserman failed to maintain the client's unearned fees in a trust account.

In each matter, the OPC served Ms. Wasserman with a Notice of Informal Complaint (NOIC) requiring her written response within 20 days pursuant to the Rules of Lawyer Discipline and Disability. Ms. Wasserman did not timely respond in writing to either NOIC.

## *Discipline Process Information Office Update*

Now in its second year running, the Discipline Process Information Office has already assisted twenty attorneys this year who have called for help about the discipline process. Jeannine P. Timothy is happy to assist by providing information to those who find themselves involved with the Office of Professional Conduct (OPC). If she does not readily know the answer to your questions, then Jeannine will search to get it for you.

Please contact Jeannine with all of your questions regarding the discipline process.

DISCIPLINE PROCESS
INFORMATION OFFICE

**Jeannine P. Timothy**
**(801) 257-5515**
**DisciplineInfo@UtahBar.org**

## Discipline Corner

### ADMONITIONS

On May 5, 1994, an attorney was Admonished for violating Rules 1.3, DILIGENCE, and 3.2, EXPEDITING LITIGATION. A domestic relations case was settled in March, 1993. It was the duty of the Respondent to prepare the proposed Findings of Fact, Conclusions of Law or Decree of Divorce. However, the Respondent never prepared the documents. Consequently, the client retained new counsel who completed the work in August, 1993.

An attorney was Admonished pursuant to a Discipline by Consent based upon a conviction of two class B misdemeanors. The attorney also agreed to perform 200 hours of pro bono legal services. The offenses were unrelated to the practice of law and did not involve a client or the Respondent's status as an attorney or in any other way reflect upon the attorney's fitness to practice law.

On June 24, 1994, an attorney was Admonished, based upon the recommendation of a Screening Panel of the Ethics and Discipline Committee, for violating Rules 1.8(a) and 8.4(d) (CONFLICT OF INTEREST) of the Rules of Professional Conduct. The panel found that the lawyer borrowed a portion of the settlement proceeds from his client in a personal injury case, without advising the client of his right to have a disinterested attorney review the transaction, and without obtaining the client's written consent to that transaction. Thereafter, the lawyer has failed to repay that loan to the client. The client then obtained judgment against the lawyer for the amount of the loan, which the lawyer failed to satisfy. In mitigation, the panel found that the lawyer had vigorously represented the client and members of the client's family in other, unrelated actions, performing a significant amount of work in excess of the amount for which the lawyer billed those clients.

An attorney was Admonished by a Screening Panel for lack of diligence in violation of Rule 1.3 (DILIGENCE) of the Rules of Professional Conduct for failing to exercise reasonable diligence in the representation of a client in two civil cases and one criminal matter. In one case the attorney failed to file a motion to dismiss, in another the attorney failed to file an Answer, and in the criminal case the attorney failed to pursue a habeas corpus petition as requested by the client. However, the attorney rectified all of the problems without further cost to the clients.

A Screening Panel of the Ethics and Discipline Committee voted to Admonish an attorney for violating Rule 1.3 (DILIGENCE) and Rule 1.4 (COMMUNICATION). The attorney was consulted by the client in January 1991, regarding a tort action on a contingency fee basis. Thereafter, the attorney failed to provide any meaningful legal services or notify the client that the attorney had decided not to accept the case. The attorney also failed to return the client's phone calls.

### PUBLIC REPRIMAND

On May 18, 1994, the Utah Supreme Court approved the recommendation of the Hearing Panel of the Ethics and Discipline Committee that Donn E. Cassity be publicly reprimanded, placed on probation for six months, and that he make restitution to his clients in the amount of $20,000.00 for violating Rule 8.4(c) (MISCONDUCT), of the Rules of Professional Conduct. The substance of the misconduct was that Mr. Cassity unilaterally abrogated a fee agreement after his clients' case had been settled and during which time he had custody of the funds from the settlement. The initial agreement was that Mr. Cassity and the clients would share equally in the proceeds. However, Mr. Cassity, having previously forgiven a sizeable fee, elected to apply the entire amount recovered on behalf of his clients toward his fee previously forgiven.

### DISBARMENTS

On May 24, 1994, The Third District Court entered an Order disbarring Gerald R. Hansen. Mr. Hansen was disbarred for multiple violations of Rules 1.3, 1.4(a), 1.5(a), 8.1(b), 8.4(c) and 8.4(d). The Court found that Mr. Hansen repeatedly accepted fees from clients and then performed no significant legal work. He also misrepresented the status of cases to the client to avoid complaints. The Court also ordered Hansen to pay restitution.

On or about June 22, 1994, the Third District Court entered an Order, effective May 11, 1994, disbarring Dale R. Kent. Mr. Kent was disbarred for violations of RULE 1.13(a), 8.4(a), 8.4(b) (two counts), and 8.4(c). The Court found that Mr. Kent had misappropriated client funds (approximately $160,000) to his own use over an extended period of time. Mr. Kent also pled guilty to one count of Bank Fraud and one count of Filing a False Tax Return. The Court also ordered Kent to pay the Bar's costs incurred in prosecuting this matter.

## Clerk's Office of the U.S. Court of Appeals to Move

The Office of the Clerk, United States Court of Appeals for the Tenth Circuit, will move to new quarters June 27, 1994. It is moving from offices in the Byron Rogers United States Courthouse, 1929 Stout Street, to facilities in the former main branch of the downtown United States Post Office.

The new address for the clerk's office will be:

United States Court of Appeals for the Tenth Circuit
Office of the Clerk
Byron White United States Courthouse
1823 Stout Street
Denver, CO 80257

Mail sent to the clerk's office should be addressed to the new location beginning June 27. The telephone number for the clerk's office will remain the same — 303/844-3157.

## Jewelry Found

Found at the Admissions Ceremony held at the Federal Court House on May 17, 1994 a piece of jewelry. Call Kathleen at 524-5211 and identify.

## Commission Highlights

During a special meeting of June 29, 1990, the Board of Bar Commissioners received the following reports and took the actions indicated:

President Chamberlain expressed his appreciation to the Commission for their support and service to the Bar during his term of office. He also expressed his confidence in Judge Pamela Greenwood in accepting her position as President of the Bar acknowledging the fact that she is the first woman to be in this position.

President Chamberlain was then presented a plaque on behalf of the Bar Commission acknowledging his leadership and service as President.

James Z. Davis was unanimously voted in as President-Elect of the Utah State Bar. It was also announced by Judge Greenwood that the Executive Committee would consist of herself as President, President-Elect Davis and Commissioner Randy Dryer.

The following ex-officio members of the Bar Commission were appointed: Norman S. Johnson, ABA Delegate; Reed L. Martineau, State Delegate to the ABA; Dean H. Reese Hansen, BYU; Dean Lee Teitelbaum, U of U; and Richard A. Van Wagoner, Young Lawyers Section President.

The full text of the minutes of these and other meetings of the Bar Commission are available for inspection at the office of the Executive Director.

## Utah Tort Law—Annual Supplement

A concise supplement to Zillman's Utah Tort Law is available from the University of Utah College of Law. The Supplement contains new state and federal court decisions and the work of the 1990 Utah Legislature relevant to tort law in Utah. The Supplement is current to June 15, 1990.

EXISTING OWNERS of Utah Tort Law may receive a free copy of the Supplement by picking one up from Room 218 Law School or by sending a STAMPED, ADDRESSED ENVELOPE to Ms. Elizabeth Kirschen, College of Law, University of Utah, Salt Lake City, UT 84112.

NEW SUBSCRIBERS may receive a Supplement with the purchase of Utah Tort Law for $32.50 from Ms. Kirschen. Please make check payable to College of Law. For more information, call (801) 581-5880.

# Discipline Corner

### ADMONITIONS

1. An attorney was admonished for violating Rule 1.7(b) by agreeing to represent a client when the lawyer knew that he could not pursue action against all possible defendants due to his friendship with one of the possible defendants.

2. An attorney was admonished for violating Rule 1.13(b) by dispersing $70.26 to his clients when that sum had been ordered to be placed in trust for another party.

### PRIVATE REPRIMANDS

1. For violating Rule 1.4(a) and Rule 1.4(b), an attorney was privately reprimanded for failing to adequately communicate with his client over a period of several months by failing to return telephone calls and written correspondence and failing to return the client's file upon request.

2. For violating Rule 1.7(a) and Rule 1.7(b), an attorney was privately reprimanded for agreeing to represent a client against one of the attorney's former clients whom the attorney had represented for several years. Before agreeing to represent the client, the attorney had previously become familiar with the issues by speaking with the former client regarding the action.

### PUBLIC REPRIMANDS

1. On May 25, 1990, Gerald R. Hansen was publicly reprimanded for violating Canon 6, DR 6-101(A)(3) and Rule 1.3. In 1987, Mr. Hansen agreed to represent his client regarding an ongoing custody dispute. In 1989, the opposing party initiated an action with the court requesting the return of custody and Mr. Hansen failed to timely file a response resulting in his client's loss of custody. Mr. Hansen also failed to communicate the status of the case to his clients after reasonable requests to do so.

2. On May 25, 1990, Joseph F. Fox was publicly reprimanded for violating Rule 1.3, Rule 1.4(a) and Rule 8.4(c) by failing to appear at a court hearing resulting in a denial of his client's petition for bankruptcy and representing to his client that he would again file the bankruptcy petition and failing to do so. During the disciplinary process, Mr. Fox also represented to the Screening Panel that he would re-file his client's petition for bankruptcy and thereafter failed to do so.

### SUSPENSIONS

On May 21, 1990, Ray S. Stoddard was suspended for a period of six months for a violation of the terms of his probation pursuant to a prior disciplinary order by failing to timely remit the required restitution and failing to comply with the monitoring requirements of the probation.

2. On May 18, 1990, A. Paul Schwenke was suspended for a period of 30 days for failing to remit restitution as required by a prior disciplinary order. Mr. Schwenke's reinstatement is conditioned upon his payment of the restitution to the client and costs to the Office of Bar Counsel.

# *Attorney Discipline*

**UTAH STATE BAR ETHICS HOTLINE**

Call the Bar's Ethics Hotline at (801) 531-9110 Monday through Friday from 8:00 a.m. to 5:00 p.m. for fast, informal ethics advice. Leave a detailed message describing the problem and within a twenty-four-hour workday period, a lawyer from the Office of Professional Conduct will give you ethical help about small everyday matters and larger complex issues.

801-531-9110

More information about the Bar's Ethics Hotline may be found at www.utahbar.org/opc/office-of-professional-conduct-ethics-hotline/. Information about the formal Ethics Advisory Opinion process can be found at www.utahbar.org/opc/bar-committee-ethics-advisory-opinions/eaoc-rules-of-governance/.

**PUBLIC REPRIMAND**

On April 28, 2015, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Kyle Hoskins for violating Rules 1.3 (Diligence), 1.4(a) (Communication), 1.15(d) (Safekeeping Property), 1.16(d) (Declining or Terminating Representation) and 8.1(b) (Bar Admission and Disciplinary Matters) of the Rule of Professional Conduct.

*In summary:*

Mr. Hoskins was retained by a client to prepare a purchase agreement. The client paid Mr. Hoskins a retainer. About four weeks after Mr. Hoskins was retained, the client emailed Mr. Hoskins regarding the status of the purchase agreement and Mr. Hoskins did not respond. After not hearing back from Mr. Hoskins for another two weeks, the client contacted Mr. Hoskins and requested that Mr. Hoskins stop working on the purchase agreement. Mr. Hoskins responded by text message and agreed to call the client the next day.

Mr. Hoskins instructed the client to prepare a letter for him to review. The client prepared the letter and emailed it to Mr. Hoskins the same day. When the client contacted Mr. Hoskins to confirm receipt of the letter, it took Mr. Hoskins several days to respond. The next day, the client told Mr. Hoskins to stop all work and requested a refund of the unused portion of the retainer. Mr. Hoskins indicated he would provide a final bill and refund to the client, but failed to provide an accounting or refund. Mr. Hoskins never provided the purchase agreement to the client.

The Office of Professional Conduct served Mr. Hoskins with a Notice of Informal Complaint requiring his written response to the informal Bar complaint within twenty days pursuant to the Rules of Lawyer Discipline and Disability. Mr. Hoskins did not timely respond in writing to the Notice of Informal Complaint.

*Mitigating factors:*

Absence of a prior record of discipline; personal and health problems.

**SUSPENSION**

On March 12, 2015, the Honorable Elizabeth Hruby-Mills, Third Judicial District Court, entered Findings of Fact, Conclusions of Law and Order of Discipline: Suspension, suspending Daniel R. Reed from the practice of law for one year for Mr. Reed's violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.16(d) (Declining or Terminating Representation, and 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

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*In summary, there are two matters:*
In both matters, Mr. Reed was retained to represent a client in a potential lawsuit against a company that had filed for bankruptcy, its principals and a bank. Both clients paid Mr. Reed an initial retainer.

Mr. Reed later requested a second payment from the clients for the representation and the clients made the payment. A settlement offer was rejected by the clients. In the months after the settlement offer was rejected, the clients made efforts to contact Mr. Reed, but were unable to. Mr. Reed did not inform the clients that his contact information had changed. Mr. Reed did not pursue litigation on behalf of the clients and failed to provide notice to the clients that he was terminating the legal representation. Mr. Reed did not refund the unearned fees he collected from the clients upon termination of his representation.

In both cases, the Office of Professional Conduct served Mr. Reed with a Notice of Informal Complaint requiring his written response to the informal Bar complaint within twenty days pursuant to the Rules of Lawyer Discipline and Disability. Mr. Reed did not timely respond in writing to the Notice of Informal Complaint in either matter.

*Aggravating factors:*
Multiple offenses; failure to make restitution.

## INTERIM SUSPENSION

On April 20, 2015, the Honorable James Gardner, Third Judicial District Court, entered an Order of Interim Suspension pursuant to Rule 14-519 of the Rules of Lawyer Discipline and Disability granting the OPC's Motion for Interim Suspension against Matthew G. Nielsen pending resolution of the disciplinary matter against him.

*In summary:*
Mr. Nielsen was placed on interim suspension based upon his criminal convictions for the following offenses: three counts of Assault; one count Attempted Failure to Stop at the Command of Law Enforcement; two counts Child Abuse Involving Physical Injury; four counts Obtaining a Prescription Under False Pretenses; two counts of Retail Theft (Shoplifting); one count Disorderly Conduct (Domestic Violence Related); one count Attempted Possession of a Controlled Substance Schedule I or II; one count Possession of a Controlled Substance Schedule I or II; one count Reckless Driving; and one count Attempted Burglary.

## PUBLIC REPRIMAND

On April 23, 2015, the Honorable Barry Lawrence, Third Judicial District Court, entered an Order of Discipline: Public Reprimand against Todd D. Wakefield for violating Rules 3.1 (Meritorious Claims and Contentions), 4.4(a) (Respect for Rights of Third Persons), and 8.4(d) (Misconduct) of the Rules of Professional Conduct.

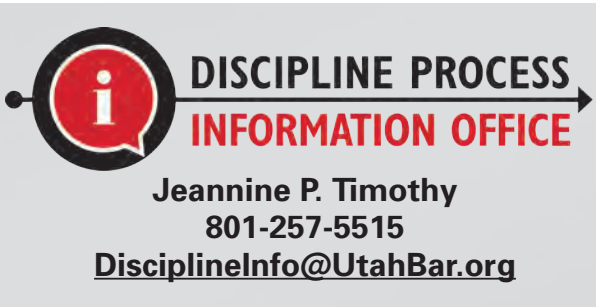
*In summary:*
Mr. Wakefield represented several defendants in a malicious prosecution lawsuit. Mr. Wakefield filed a motion to compel arbitration that was without basis in fact and lacked evidentiary support. The court entered an order of sanctions for violation of Rule 11 against Mr. Wakefield and his client.

Mr. Wakefield subsequently sent a letter to opposing counsel in the litigation stating that certain audio tapes had been made of the parties' conversations. In his letter to opposing counsel, Mr. Wakefield asserted that if the opposing party would pay a settlement, dismiss all claims against his clients and waive collection of the Rule 11 sanctions awarded; Mr. Wakefield's clients would sign a general release, forgo any filings with the Utah State Bar regarding disciplinary complaints and turn over the audio tapes and other items.

## PUBLIC REPRIMAND

On April 30, 2015, the Honorable Fred D. Howard, Fourth Judicial District Court, entered an Order of Discipline: Public Reprimand against Ronald K. Fielding, for Mr. Fielding's violation of Rule 8.1(b) (Bar Admission and Disciplinary

Have you received a letter from the Office of Professional Conduct (OPC)? Do you have questions about the disciplinary process? For all your questions, contact Jeannine P. Timothy at the Discipline Process Information Office. Since January, thirty-four attorneys have called Jeannine with questions about the complaints filed against them. Jeannine has provided information about the process and given updates on the progress of each attorney's individual matter with the OPC. Call Jeannine at 801-257-5515 or email her at DisciplineInfo@UtahBar.org.




Matters) of the Rules of Professional Conduct.

*In summary:*
The Office of Professional Conduct served Mr. Fielding with a Notice of Informal Complaint requiring a written response within twenty days pursuant to the Rules of Lawyer Discipline and Disability. Mr. Fielding did not timely respond in writing to the Notice of Informal Complaint.

**RECIPROCAL DISCIPLINE ADMONITION**
On May 15, 2015, the Honorable Richard McKelvie, Third Judicial District Court, entered an Order of Reciprocal Discipline: Private Admonition, against an attorney for the attorney's violation of Rule 1.15(a) (Safekeeping Property) of the Rules of Professional Conduct.

The attorney is a member of the Utah State Bar and is also licensed to practice law in another state. The attorney discipline committee of the supreme court in the other jurisdiction issued an Order of Admonition, Probation and Costs against the attorney for violation of the Rules of Professional Conduct in that state. An Order was entered in Utah based upon the discipline order in the other jurisdiction.

*In summary:*
The attorney failed to properly perform three account reconciliations. As such, the attorney was not aware when the attorney's trust account became deficient, which led to commingling of funds.

**DISBARMENT**
On April 7, 2015, the Honorable Andrew H. Stone, Third Judicial District Court, entered an Order of Discipline: Disbarment against Stephen T. Hard for violation of Rule 8.4(b) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Hard was convicted of one count of Conspiracy and eight counts of Wire Fraud, Aiding and Abetting. The conviction was in connection with a fraudulent high yield investment scheme promising extremely high returns at little or no risk to principal.

SCOTT DANIELS

Former Judge • Past-President, Utah State Bar
Member, Supreme Court Advisory Committee on Professionalism

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# Attorney Discipline

**UTAH STATE BAR ETHICS HOTLINE**

Call the Bar's Ethics Hotline at 801-531-9110 Monday through Friday from 8:00 a.m. to 5:00 p.m. for fast, informal ethics advice. Leave a detailed message describing the problem and within a twenty-four-hour workday period, a lawyer from the Office of Professional Conduct will give you ethical help about small everyday matters and larger complex issues.

**More information about the Bar's Ethics Hotline may be found at:**
www.utahbar.org/opc/office-of-professional-conduct-ethics-hotline/

**Information about the formal Ethics Advisory Opinion process can be found at:**
www.utahbar.org/opc/bar-committee-ethics-advisory-opinions/eaoc-rules-of-governance/.

## SUSPENSION

On September 15, 2016, the Honorable Paige Petersen, Third Judicial District Court, entered an Order of Suspension, suspending Benjamin Horton from the practice of law for three years for Mr. Horton's violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.5(a) (Fees), 1.8(h)(1) (Conflict of Interest: Current Clients: Specific Rules), 5.3(a) (Responsibilities Regarding Nonlawyer Assistants), 5.4 (Professional Independence of a Lawyer), 7.1 (Communications Concerning a Lawyer's Services), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(c) (Misconduct), of the Rules of Professional Conduct.

*In summary, there are three matters:*

In the first matter, Mr. Horton's firm was hired by two Wisconsin homeowners to obtain a modification of their home mortgage loan. Mr. Horton operated his law firm in conjunction with nonlawyer companies and shared the clients' fees and account with other companies managed by a nonlawyer. Mr. Horton did not deposit the fees paid by the clients into his client trust account. Mr. Horton failed to adequately supervise the nonlawyer employees and agents at his firm to ensure the actions and conduct of these nonlawyers was compatible with Mr. Horton's professional obligations to his clients.

Mr. Horton failed to respond to his clients' requests for information and failed to keep his clients informed regarding the status of their application for loan modification. The clients' mortgage lender was unable to process the clients' application for a loan modification because Mr. Horton failed to respond to the lender's requests for information. Mr. Horton failed to provide any meaningful legal services to the clients in exchange for the fees paid.

The OPC served Mr. Horton with a Notice of Informal Complaint (NOIC) requiring his written response within twenty days pursuant to the Rules of Lawyer Discipline and Disability. Mr. Horton did not timely respond in writing to the NOIC.

In the second matter, Mr. Horton's firm sent a letter to a Tennessee homeowner which guaranteed that a mortgage loan modification could be secured for the homeowner conditioned upon several requirements. Mr. Horton and the homeowner entered into an engagement agreement to obtain a home mortgage loan modification, which contained a liability waiver. Mr. Horton failed to take adequate steps to ensure the client obtained independent representation in connection with the engagement agreement and failed to advise the client to seek independent legal review of the liability waiver included in his engagement agreement.

Mr. Horton operated his law firm in conjunction with nonlawyer companies and shared the clients' fees and account with other companies managed by a nonlawyer. Mr. Horton did not deposit the fees paid by the clients into his client trust account. Mr. Horton failed to adequately supervise the nonlawyer employees and agents at his firm to ensure the actions and conduct of these nonlawyers was compatible with Mr. Horton's professional obligations to his client. Mr. Horton allowed his

other companies and nonlawyer employees to make misrepresentations to the client and to provide legal services to the client. Mr. Horton's firm failed to provide any meaningful legal services to the client in exchange for the fees paid and the client was in a far worse position as a result of Mr. Horton's representation.

The OPC served Mr. Horton with a NOIC requiring his written response within twenty days pursuant to the Rules of Lawyer Discipline and Disability. Mr. Horton did not timely respond in writing to the NOIC.

In the third matter, Mr. Horton's firm was hired by a homeowner in California to obtain a home mortgage loan modification. Mr. Horton's firm sent information to the client which guaranteed that a mortgage loan modification could be secured for the client conditioned upon several requirements.

Mr. Horton operated his law firm in conjunction with nonlawyer companies and shared the client's fees and account with other companies managed by a nonlawyer. Mr. Horton failed to adequately supervise the nonlawyer employees and agents at his firm to ensure the actions and conduct of these nonlawyers was compatible with Mr. Horton's professional obligations to his client. Mr. Horton allowed his other companies and nonlawyer employees to make misrepresentations to the client and to provide legal services to the client. Mr. Horton's firm failed to provide any meaningful legal services to the client in exchange for the fees paid. Mr. Horton failed to respond to his client's requests for information and failed to keep his client informed regarding the status of their application for loan modification. As a result of Mr. Horton's representation, the client was no longer eligible for a mortgage loan modification.

**SUSPENSION**

On October 4, 2016, the Honorable Katie-Bernards Goodman, Third Judicial District Court, entered an Order of Suspension, suspending M. David Eckersley from the practice of law for two years based on Mr. Eckersley's violation Rules 1.3 (Diligence), 1.4(a) (Communication), and 8.4(c) (Misconduct), of the Rules of Professional Conduct.

*In summary:*

Mr. Eckersley was hired for representation in a medical malpractice claim. Mr. Eckersley failed to file the requisite notices and pleadings on behalf of his client prior to the expiration of the statute of limitations for the client's claim. Mr. Eckersley concealed and misrepresented the status of the client's case to his firm. He indicated that the case was active and progressing, when it was not.

After the expiration of the statute of limitations for the client's medical malpractice claim, Mr. Eckersley sent a Notice of Intent

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to the doctor involved and filed a Request for Pre-Litigation Panel Review. Mr. Eckersley failed to interview an expert witness on behalf of his client, who had previously offered to testify on the client's behalf. Mr. Eckersley did not inform his client that a pre-litigation hearing was held for his case and did not inform the client of the determination of the pre-litigation panel. Mr. Eckersley failed to provide information to his client and provided false information to his client regarding the work he was performing on the case.

**DISBARMENT**

On July 2, 2015, the Honorable Fred D. Howard, Fourth Judicial District Court, entered Findings of Fact, Conclusions of Law and Order of Disbarment disbarring Donald D. Gilbert from the practice of law for his violation of Rules 1.7 (Conflict of Interest: Current Clients), Rule 1.15(e) (Safekeeping Property), 3.4(c) (Fairness to Opposing Party and Counsel), 8.4(d) (Misconduct) of the Rules of Professional Conduct. On July 20, 2016, the Utah Supreme Court issued a decision affirming the district court's order.

*In summary:*

Mr. Gilbert was retained to represent two chapter dbas (Chapters) of a non-profit. The Chapters questioned whether the acting State officials (State Board) of the non-profit were complying with Articles of Incorporation and other requirements of the non-profit corporation. Lawyers for the State Board sent a letter to several individual members acting as officers for the Chapters, removing them as officers of the Chapters after they incorporated a new non-profit association (Association). The letter asserted that all Chapter assets belonged to the non-profit and demanded they relinquish all such assets. Mr. Gilbert filed a petition in district court (Chapter lawsuit) against the State Board on behalf of the Chapters, the non-profit and two of the individual members to remove the State Board.

The State Board then filed a lawsuit (Board lawsuit) against the Association and other individually named board members of the Chapters (individual defendants) seeking the removal of the individual defendants from the Chapter and the non-profit and to regain control of donations and other property claimed by the State Board. Initially, Mr. Gilbert only represented the Chapters and later simultaneously represented both the Chapters and the individual defendants.

An Order (the Order) was issued in the Board lawsuit stating that the individual defendants did not have authority to act under the name of the non-profit or the Chapters. The Order enjoined the individual defendants from using money in specified Chapter bank accounts (Chapter accounts). At a hearing in the Chapter case (Chapter hearing), the court relied on the Order as evidence that Mr. Gilbert's clients were not members of the non-profit and therefore lacked standing to bring their lawsuit and granted summary judgment for the non-profit.

After the Chapter hearing, Mr. Gilbert received three separate checks (Chapter checks) paid to him from the Chapter accounts for his attorney's fees in the two lawsuits. Thereafter, Mr. Gilbert received further notice of the non-profit's claim to the funds in the Chapter accounts when the State Board served on him a motion for judgment against the individual defendants for funds spent from the Chapter accounts since the entry of the Order. Although Mr. Gilbert filed a motion to set aside the Order in response to the motion for judgment, he did not notify opposing counsel or the court that he received the three Chapter checks.

Later the State Board filed a Motion to Disgorge Funds specifically requesting the court order Mr. Gilbert to return the funds he received from the first three Chapter checks. After receiving the disgorgement motion, Mr. Gilbert received a fourth Chapter check for attorney's fees written against funds from the Chapter accounts (fourth Chapter check). The day after receiving the fourth Chapter check, Mr. Gilbert filed an opposition to the disgorgement motion which made no mention of the fourth Chapter check.

***Did You Know…*** You can earn Continuing Legal Education credit if an article you author is published in the *Utah Bar Journal?* Article submission guidelines are listed above. For CLE requirements see Rule 14-409 of the Rules of the Utah State Board of Continuing Legal Education.

The court ordered the return to the State Board of all funds paid out from the Chapter accounts from the date of the Order to present. The court also ordered Mr. Gilbert to disgorge the $30,000 in legal fees he received based on the four Chapter checks. Mr. Gilbert's motion to set aside the Order was denied.

Mr. Gilbert failed to hold any money he received from the Chapter accounts in his attorney trust account or pay the money to the State Board pursuant to the Order. Mr. Gilbert spent the money. Prior to each acceptance of the Chapter checks, Mr. Gilbert did not notify opposing counsel or the court of his intention to accept and use the Chapter checks based on his position that the Order was invalid or otherwise did not apply to the funds. Mr. Gilbert failed to comply with the Order or subsequent court orders. Mr. Gilbert did not return the $30,000 he received from the Chapter accounts to the non-profit or take any legal action to appeal or otherwise stay the court's disgorgement order.

A concurrent conflict of interest existed between the Chapters and the individual defendants. Once Mr. Gilbert accepted and cashed the checks paid to him from the Chapter accounts, his interest in getting paid and avoiding disgorgement of the legal fees he received created a concurrent conflict of interest with the interest of his clients and their need to comply with the Order. Even if the conflicts were waivable, Mr. Gilbert failed to consult with his clients about their concurrent conflicts and his conflict of interest and obtain written waivers giving their informed consent to each conflict.

After Mr. Gilbert filed a Notice of Withdrawal of his representation of his clients, the State Board filed a second disgorgement motion and served a copy on Mr. Gilbert. The State Board received a judgment against Mr. Gilbert for $30,000.00 plus interest for the money he received from the Chapter accounts. Mr. Gilbert did not repay the money owed to the non-profit nor did he take any legal action against the second disgorgement judgment until after a Bar complaint was filed against him.

*Aggravating factors:*
Selfish motive; multiple offenses; refusal to acknowledge the wrongful nature of the misconduct and lack of remorse; substantial experience in the practice of law; and lack of good faith effort to rectify the consequences of the misconduct.

*Mitigating factors:*
Absence of a prior record of discipline.

**INTERIM SUSPENSION**

On December 1, 2016, the Honorable Randall Skanchy, Third Judicial District Court, entered an Order of Interim Suspension, pursuant to Rule 14-519 of the Rules of Lawyer Discipline and Disability, against Andrew A. Stewart, pending resolution of the disciplinary matter against him.

*In summary:*
Mr. Stewart was placed on interim suspension based upon his criminal convictions for five counts of Falsify/Forge/Alter a Prescription of a Controlled Substance, a Class A Misdemeanor.

## *Discipline Process Information Office Update*

Most complaints filed with the Office of Professional Conduct are without merit. If you find yourself the subject of a Bar complaint, contact Jeannine P. Timothy with your questions about the discipline process. Jeannine is happy to answer your questions and clarify the process.

DISCIPLINE PROCESS
INFORMATION OFFICE

**Jeannine P. Timothy**
**(801) 257-5515**
**DisciplineInfo@UtahBar.org**

# *Attorney Discipline*

**UTAH STATE BAR ETHICS HOTLINE**

Call the Bar's Ethics Hotline at 801-531-9110 Monday through Friday from 8:00 a.m. to 5:00 p.m. for fast, informal ethics advice. Leave a detailed message describing the problem and within a twenty-four-hour workday period, a lawyer from the Office of Professional Conduct will give you ethical help about small everyday matters and larger complex issues.

**More information about the Bar's Ethics Hotline may be found at:**
www.utahbar.org/opc/office-of-professional-conduct-ethics-hotline/

**Information about the formal Ethics Advisory Opinion process can be found at:**
www.utahbar.org/opc/bar-committee-ethics-advisory-opinions/eaoc-rules-of-governance/.

**PUBLIC REPRIMAND**

On June 8, 2016, Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against John A. Quinn for violating Rules 8.1(a) (Bar Admission and Disciplinary Matters), 8.4(a) (Misconduct), and 8.4(c) (Misconduct) of the Rules of Professional Conduct.

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However, following the direction of *In re Discipline of Brussow*, 2012 UT 53, the Screening Panel concluded that Mr. Quinn's violation of Rule 8.4(a) (Misconduct) did not factor into its determination of an appropriate sanction.

*In summary:*
Mr. Quinn was hired to defend a client in a DUI case. Mr. Quinn and the client discussed filing a motion to suppress evidence. Although Mr. Quinn discussed the potential for moving to suppress evidence with the prosecutor at a hearing, Mr. Quinn never actually filed the motion to suppress.

In his response to the Notice of Informal Complaint (NOIC) sent to Mr. Quinn by the Office of Professional Conduct (OPC), Mr. Quinn submitted documents that he purported to be the motion to suppress he prepared and filed with the court on behalf of his client. Mr. Quinn's response to the NOIC categorically denied that a motion to suppress was never filed. The motion to suppress submitted by Mr. Quinn to the OPC was not actually filed in his client's case and appeared to have been prepared for a client in another case. Mr. Quinn did not provide the Screening Panel with a clear explanation for his submission of these materials.

*Aggravating factors:*
Submission of false statements and evidence during the disciplinary proceeding.

*Mitigating factors:*
Absence of a prior record of discipline and acknowledgement of his misconduct.

Ultimately the Screening Panel concluded that there was not sufficient evidence or grounds to adjust the discipline based on aggravating and mitigating factors.

**ADMONITION**

On August 24, 2016, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rule 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

*In summary:*
The Office of Professional Conduct served the attorney with a Notice of Informal Complaint (NOIC) requiring the attorney's written response within twenty days pursuant to the Rules of Lawyer Discipline and Disability. The attorney did not timely respond in writing to the NOIC.

*Aggravating factors:*
Prior history of discipline for the same type of behavior.

*Mitigating circumstances:*
Significant family related health issues.

**SUSPENSION**

On June 28, 2016, the Honorable Todd Shaughnessy, Third Judicial District Court, entered an Order of Discipline: Suspension against Michael Moss, suspending his license to practice law for a period of eighteen months, for his violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.5(a) (Fees), and 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

*In summary:*
Mr. Moss was hired to represent a client after a default certificate had been entered against the client. Mr. Moss filed a counterclaim against the opposing party and a motion to set aside the default judgment. However, Mr. Moss knowingly failed to appear at a hearing on the motions. As a result of Mr. Moss's failure to appear at the hearing on behalf of his client, the court denied Mr. Moss's motion to set aside the default judgment, dismissed the client's counterclaim and granted the plaintiff's motion to strike the client's answer. Mr. Moss did not forward any documents to his client and the client was unaware of the hearing or the court's orders. The client made numerous attempts to contact Mr. Moss over several months. Although Mr. Moss knew his client was attempting to contact him, Mr. Moss failed to respond. The fee charged by Mr. Moss for the work was unreasonable. The client had to hire new counsel to resolve the case.

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The Office of Professional Conduct (OPC) requested information from Mr. Moss in connection with his client's informal complaint. The OPC never received a response from Mr. Moss and Mr. Moss failed to appear at the Screening Panel hearing.

*Aggravating circumstances:*
Multiple offenses; obstruction of the disciplinary proceeding by failing to respond; refusal to acknowledge the wrongful nature of the misconduct; substantial experience in the practice of law; and lack of good faith effort to make restitution.

**SUSPENSION**

On April 14, 2014, the Honorable Judge Gary D. Stott, Fifth Judicial District Court, entered an Order of Sanction Disbarment against Mr. John L. Ciardi for violation of Rule 3.5(d) (Impartiality and Decorum of the Tribunal) and 8.4(d) (Misconduct) of the Rules of Professional Conduct. Notice of the disbarment was published in the July/August 2014 edition of the *Utah Bar Journal*. Mr. Ciardi appealed the order to the Utah Supreme Court.

On August 19, 2016, the Utah Supreme Court issued an opinion in the matter. The court affirmed the trial court's holdings with respect to the rule violations but vacated the Order of Disbarment and substituted an Order of Suspension for two years.

**DISBARMENT**

On June 20, 2016, the Honorable Robert Faust, Third Judicial District Court, entered an Order of Disbarment against Spencer M. Couch for his violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.5(a) (Fees), and 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

*In summary, there are two matters:*
In the first matter, Mr. Couch was hired to prepare estate documents on behalf of a client. The client paid Mr. Couch a retainer. Mr. Couch made an appointment with the client to review the estate documents, but cancelled the appointment and assured the client that he would reschedule. After not hearing back to reschedule the appointment as indicated by Mr. Couch, the client tried to contact Mr. Couch by telephone and in person at Mr. Couch's office address, but was unable to contact Mr. Couch. The client did not receive documentation of any work performed by Mr. Couch. The trial court found that Mr. Couch misappropriated his client's funds.

In the second matter, Mr. Couch was hired to file for bankruptcy on behalf of two clients. After Mr. Couch filed the bankruptcy, the clients tried to contact Mr. Couch by telephone and in person at Mr. Couch's office address, but received no response to those contacts. The clients hired another attorney to resolve the case for them.

In both matters, the Office of Professional Conduct (OPC) served Mr. Couch with a Notice of Informal Complaint (NOIC) requiring his written response within twenty days pursuant to the Rules of Lawyer Discipline and Disability. Mr. Couch did not timely respond in writing to either of the OPC's NOIC.

*Aggravating circumstances:*
Dishonest or selfish motive; pattern of misconduct; multiple offenses; obstruction of the disciplinary proceedings by intentionally failing to comply with rules of the disciplinary authority; and lack of good faith effort to make restitution or to rectify the consequences of the misconduct involved.

## *Discipline Process Information Office Update*

From January 2016 through September, Jeannine P. Timothy assisted sixty attorneys with their questions about the discipline process. Jeannine is able to provide helpful information to attorneys who find themselves involved with the Office of Professional Conduct (OPC). Feel free to contact Jeannine with all your questions about the discipline process.

**Jeannine P. Timothy**
**(801) 257-5515**
**DisciplineInfo@UtahBar.org**

# Claim of the Month

**ALLEGED ERROR OR OMISSION**

Plaintiff alleges failure to institute a workers' compensation claim within the statutory time period.

**RESUME OF CLAIM**

The claimant was injured in an automobile accident which occurred while he was acting within the scope of his employment. The claimant's employer referred his private family attorney to the claimant, his employee, to initiate a claim against the other driver. The Insured referred the case to another attorney to file suit since a settlement could not be reached prior thereto. The claimant was not happy with the representation and went to a third attorney who filed suit against the Insured for failure to initiate a workmen's compensation claim against the employer within the statutory time limitation.

**HOW CLAIM MIGHT HAVE BEEN AVOIDED**

The Insured should have realized when the case was referred by his longtime client, the employer, that a potential conflict of interest might arise between the employer and employee which would compromise the rights of his new client, the employee.

Although the Insured was retained to initiate a suit against the other driver only, he should have known that the employee may have a right to sue his employer for workmen's compensation. To avoid this potential conflict, the Insured could have either disclosed to the employee his right to sue for workmen's compensation and assert he would only initiate suit against the other driver or, better yet, he should have declined the representation altogether.

# DISCIPLINE CORNER

**ADMONITION**

1. An attorney was admonished for violating Rule 1.3 by failing to adequately communicate with his client regarding a procedural problem involving the filing of an objection to the recommendations of the Domestic Relations Commissioner and the subsequent dismissal of an appeal.

**PRIVATE REPRIMAND**

1. For violating DR 1-102(A)(6) by engaging in conduct adversely reflecting on the attorney's fitness to practice law, an attorney was privately reprimanded for repeating rumors regarding the alleged illicit activity of a judge and a clerk; the sanction was mitigated by the attorney's acknowledgment of the misconduct and apology to the people involved and the fact that it was an isolated incident.

# Law Day

The Young Lawyers Section of the Utah State Bar is hosting its Fifth Annual Law Day activity which will take place on April 22, 28 and 29, 1989. Law Day provides the general public an opportunity to access lawyers for advice and counsel. On those days, lawyers will be present at shopping malls throughout the state, working in booths, screening the legal problems of interested individuals, suggesting that they obtain legal counsel if the problem warrants, offering a fun legal quiz to test the knowledge of participants, and providing legal brochures and handouts with general information about the law and legal services in Utah. The Young Lawyers Section will also provide buttons and activities for kids such as coloring projects, etc.

The Young Lawyers Section needs volunteers to occupy the booths at the malls. Two attorneys are needed at each booth to work for two-hour intervals. The booths will be open from 10:00 a.m. to 5:00 p.m. The legal questions will be fairly simple. You will be provided with information as to the type of advice you are not allowed to give. Of course, you are not to solicit clients through this program. We would appreciate your willingness to help in this community effort.

The following individuals are organizing the programs in your given area. You may contact them by telephone to sign up for a given time and to obtain general information.

**LOGAN**

April 29, C.V. Mall, Greg Skabeland, 752-9437.

**OGDEN**

April 22, Ogden Mall, Ted Godfrey, Farr, Kaufman, 205 26th Street, #34, Ogden, Utah 84401, 394-5526.

**PROVO**

April 29, University Mall, Waine Riches, Legal Services, 455 N. University, #100, Provo, Utah 84601, 374-6766, 1-800-662-1563.

**SALT LAKE CITY**

April 28, ZCMI Mall, Paul Newman, Ray, Quinney, 79 S. Main, #400, Salt Lake City, Utah 84111, 532-1500.

**SALT LAKE CITY**

April 29, Valley Fair, Kevin Anderson, Allen, Nelson, 215 S. State, #700, Salt Lake City, Utah 84111, 531-8400.

**ST. GEORGE**

April 29, Phoenix Plaza, Mike Shaw, Jones, Waldo, 170 S. Main, #1500, St. George, Utah 84770, 628-1627.

If you have any further questions, please contact Richard Hamp, Chairperson for Law Day, at Salt Lake City Prosecutors, 535-7767, or Larry R. Laycock, Public Relations Chairman, at Snow, Christensen & Martineau, 521-9000.

# Law Day Luncheon to be Held May 1, 1989

This year's theme for Law Day is "Access to the Law." The Law Day Luncheon culminates program activities of the Committee on Law Related Education and Law Day including the statewide mock trial competition, Judge for a Day Program, Bob Miller Memorial Law Day Run and the Law Day Fair and Art Show. Students and lawyers who have made significant contributions to the Law Related Education program will be recognized. Awards will be given to junior and senior high schools with outstanding law-related education programs. A brief presentation will be made by student finalists in the mock trial competition and the Young Lawyers Section will present the Liberty Bell Award to an outstanding non-lawyer who has contributed to legal education in Utah.

The luncheon will be held at noon on Monday, May 1, 1989, at the Utah Law and Justice Center in Salt Lake City, Utah. Please make reservations with Paige Holtry, 531-9077, prior to Friday, April 28, 1989.

9. The Board voted to approve the list of applicants to sit for the July Bar Exam.
10. Darla Murphy, Admissions Administrator, distributed a letter from Thomas T. Billings, Character and Fitness Committee Chair, requesting the Commission to approve the Committee's recommendations that if an applicant who passes the Bar Exam prior to completion of the Character and Fitness review and subsequently fails to receive Committee approval, the applicant's passing score should be valid for a period of two years. During which time, the applicant may reapply with the Character and Fitness Committee and may later receive approval for admittance to the Bar. After reviewing the recommendations made by the Character and Fitness Committee, the Commission voted to ask the Committee to draft the rules incorporating the specific recommendations.
11. Bar Counsel Steve Trost reported that Nayer Honarvar has been hired as a staff attorney for the Office of Bar Counsel.
12. Mr. Trost reported that 501C-6 incorporation papers have been prepared and that an informational tax return should be filed each year. The Board voted to file the necessary documents. President Greenwood and John Baldwin signed the incorporation papers.
13. Mr. Trost indicated that the Office of Bar Counsel will require seven appointees to screening panels by July 1, 1991.
14. The Commission reviewed the current Litigation Report. After discussing the matter of paralegals practicing law, the Commission voted to appoint a subcommittee of the Unauthorized Practice of Law Committee.
15. The Board voted to return the interest from the segregated section account to the Bar to cover administrative costs and to review the decision the next fiscal year.
16. The Board voted to have Mr. Baldwin and Financial Administrator Arnold Birrell evaluate the cash available at the end of FY-91 after payment of all fiscal year debts and then vote at an appropriate time regarding applying any surplus to the mortgage.
17. The Board discussed the possibility of consolidating the Utah State Bar and the Utah Law and Justice Center into one entity. The Board voted to research drafting a long-term agreement where the Utah Law and Justice Center would pay a $1/year lease to the Utah State Bar, unless such action would cause adverse tax or other legal impediments. Commissioner Howard also included that the Executive Committee of the Utah State Bar and the Board of Trustees of the Utah Law and Justice Center should review the agreement before taking such action.
18. The Board voted to accept Mr. Baldwin's recommendations on staff salary adjustments.
19. The Board voted to approve the final draft of the proposed FY-92 budget.

During the Reorganizational Meeting of July 3, 1991, the Board of Bar Commissioners received the following reports and took the actions indicated.

1. The Commission discussed the most recent Supreme Court Task Force report to be presented at the Annual Meeting.
2. President Greenwood reported on the Supreme Court Minute Entry regarding the Commission's Petition for support of certain programs and services.
3. Randy Dryer was elected President-Elect by consensus.
4. President Greenwood presented plaques to those Commissioners whose terms had expired and thanked them for their years of service to the Bar.
5. President Greenwood expressed her thanks to the Commission as a whole for their service and for her association with each individual. The Commission commended and thanked President Greenwood for completing a successful year and doing such a wonderful job as President.

A full text of the minutes of these and other meetings of the Bar Commission are available for inspection at the office of the Executive Director.

# Discipline Corner

### ADMONITIONS

1. An attorney was admonished for violating Rules 1.3 (Diligence) and 1.4(a) (Communication). The attorney accepted a retainer fee on May 7, 1990, and subsequently failed to respond to numerous requests for information from the client. In October 1990, the client called the court and discovered that the case against him had been dismissed on July 2, 1990.

2. An attorney was admonished for violating Rule 3.5(a) (Decorum). The attorney recorded a telephone conversation between himself and a judge without the judge's knowledge or consent. The discipline was mitigated in that the attorney acknowledged the misconduct and apologized to the judge prior to the issuance of discipline.

### PUBLIC REPRIMAND

On June 21, 1991, Samuel J. Conklin was publicly reprimanded for violating Canon 6, DR6-101(a)(3) (Competency); Canon 7, DR7-101(a)(2) (neglect); Rule 1.3 (Diligence), and Rule 1.4(a) (Communication). Mr. Conklin was also ordered to pay restitution in the amount of $1,500. In August of 1986, Mr. Conklin agreed to represent his client in a matter regarding an industrial accident. Mr. Conklin and his client entered into a written fee agreement in August of 1986. Mr. Conklin thereafter failed to perform any legal services on his client's behalf. In addition, Mr. Conklin failed to contact his client with regard to the status of the action and failed to respond to his client's repeated requests for information. The sanction was aggravated by Mr. Conklin's failure to respond to repeated inquiries from the Office of Bar Counsel. The Hearing Panel found the sanction should be mitigated by Mr. Conklin's willingness to provide restitution and that his practice was affected by difficulties in his private life.

# STATE BAR NEWS

## Commission Highlights

During its regularly scheduled meeting of May 30, 1997, which was held in Logan, Utah, the Board of Bar Commissioners received the following reports and took the actions indicated.

1. The Board approved the minutes of the April 30, 1997 meeting as amended.
2. Steve Kaufman reported that the George Q. Cannon play would be staged in Ogden for two days in September and that most of the original cast may be participating. The Board voted to authorize $2,000 for the Bar to purchase tickets for school children to see the Ogden production.
3. The Board voted to nominate James C. Jenkins as President-Elect.
4. Charlotte Miller reported on the Access to Justice Task Force.
5. Dan Andersen reported on Young Lawyer Division activities including the recent "Call a Lawyer Program." The Board voted to approve contributing $1,800 to assist in covering part of the telephone expense for the program.
6. Bea Peck reported on the Women Lawyers Annual Meeting.
7. Dane Nolan reported on current activities of the Minority Bar Association.
8. Sanda Kirkham of the Legal Assistants Division reported on current division activities.
9. James C. Jenkins reported on the May 19th Judicial Council meeting.
10. John C. Baldwin reviewed the highlights of the 1997-98 budget, briefly explained projected revenue and expenditure line items and answered questions. The Board voted to adopt the proposed 1997-98 budget.
11. The Board voted to approve the Bar to make the additional $10 per attorney contribution to the Client Security Fund.
12. Baldwin reported that 12 accounting firms were solicited for bids to perform the Bar's 1996-97 audit and Deloitte & Touche was selected.
13. Baldwin referred to a report from the Judicial Conduct Commission which outlined the results of the Conduct Commission's Confidentiality Task Force.
14. Steve Cochell reported that a settlement in principle has been reached in the Spafford matter and the Bar should recoup $15,000 for the Client Security Fund.
15. General Counsel Katherine A. Fox reviewed Bar litigation, admission issues, and summarized unauthorized practice of law cases.
16. The Board approved Ethics Advisory Opinion Nos. 97-06 and 97-07.

A full text of minutes of this and other meetings of the Bar Commission is available for inspection at the office of the Executive Director.

## *Discipline Corner*

### DISBARMENT

On May 28, 1997, the Honorable Boyd Bunnell, Fourth Judicial District Judge, approved a Discipline by Consent Agreement and entered a Judgment of Disbarment disbarring Stott Harston from the practice of law effective January 15, 1996, the date Harston was placed on interim suspension.

During a period of approximately one year, Harston violated Rule 1.2(a) (Scope of Representation); Rule 1.3 (Diligence); Rule 1.4 (Communication); Rule 1.5(a) (Excessive Fees); Rule 1.15 (Safekeeping Property); Rule 3.4(c) (Fairness to Opposing Party and Counsel); Rule 8.1 (Failure to Cooperate in Disciplinary Proceedings) and Rules 8.4(c) and 8.4(d) (Misconduct). Harston was ordered to pay restitution to eleven (11) clients in an amount exceeding $16,000.

The factors in aggravation of the offense included (1) Prior Disciplinary Record including a private reprimand on January 10, 1991 for violations of Rules 1.6 (Confidentiality of Information); Rule 1.9 (Conflict of Interest: Former Client); Rule 1.10 (Imputed Disqualification); Rule 4.2 (Communication with Person Represented by Counsel); and Rule 8.1 (Bar Admission and Disciplinary Matters); (2) Harston engaged in a pattern of misconduct and multiple offenses; (3) Failure to cooperate in discovery and making false statements to the Office of Attorney Discipline during the disciplinary proceedings; (4) Vulnerability of Clients; (5) Harston's failure to make timely, good faith efforts to pay restitution or to rectify the consequences of the misconduct involved.

The factors in mitigation included: (1) Harston suffers from a substance abuse problem that causally contributed to his misconduct; (2) Harston expressed remorse for his misconduct; and (3) Hanson made some attempt to pay restitution after OAD served the disciplinary complaint. The OAD acknowledged and recognized that Harston's consent to discipline is a substantial step toward his rehabilitation. As a precondition of readmission, Harston is required to attend the Utah Ethics School. Pursuant to Rule 25, Rules of Lawyer Discipline and Disability, Harston may not be readmitted to the Bar unless he demonstrates a meaningful and sustained period of successful rehabilitation, has abstained from use of controlled substances for a minimum period of six months, and demonstrates that he is likely to continue to abstain from unlawful abuse of controlled substances.

### ADMONITION

On June 6, 1997, an Attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violating Rule 1.1 (Competence) and Rule 1.3 (Diligence), Utah Rules of Professional Conduct.

The Complainants alleged that the attorney was neither diligent nor competent in the attorney's representation of the clients in a Chapter 11 bankruptcy action by not attending a hearing in the action and for being tardy in depositing a client check into an escrow. The attorney stipulated that his failure to timely deposit client funds in escrow resulted in harm to the clients for which he was professionally responsible.

The Complainants also filed a civil action for professional negligence against the attorney. The lawsuit was dismissed by way of a directed verdict at trial after the presentation of the plaintiffs/complainant's evidence. The trial court found that there was no causation and no damages.

The attorney agreed to stipulate to an admonition for his violation of Rule 1.1 and 1.3 and agreed to refund $1,500 of legal fees to the Complainants as part of the discipline by consent.

**ADMONITION**

On May 19, 1997, an Attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violations of: Rule 1.2(a) (Scope of Representation), Rule 1.3 (Diligence), Rule 1.4(a) and (b) (Communication), Utah Rules of Professional Conduct.

The attorney had been retained by a client to represent her in a domestic relations order to show cause hearing, and the attorney told his client that he would attend the May 8, 1995 hearing and represent her at the hearing.

The attorney failed to appear at the hearing on May 8, 1995 because he forgot the hearing. As a separate matter, the attorney told his client's former husband's attorney that the client would assume certain bills, although the client never gave the attorney authority to make that agreement with her former husband's attorney.

**ADMONITION**

On June 19, 1997, an Attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violating Rules 1.2(a) (Scope of Representation) and Rule 1.3 (Diligence), Utah Rules of Professional Conduct.

In March 1995, the Complainant entered into a contingency fee agreement with the Attorney. In August 1995, after reviewing the case, the Attorney terminated and declined the representation. The Attorney subsequently agreed to represent the Complainant in the same matter, on an hourly basis. The Complainant never paid the Attorney the retainer requested, although the Attorney repeatedly asked for payment and informed the Complainant that he would not represent her if she did not pay. The Attorney also notified the Complainant of the date the statute of limitations would run.

Just before the statute of limitations ran, the Attorney filed a complaint in federal district court and entered an appearance on Complainant's behalf. However, the Attorney did not have the complaint served on the defendant, resulting in notices being sent to the Attorney that the complaint would be dismissed. The complaint was, in fact, dismissed for lack of prosecution without withdrawal from representation by the Attorney, resulting in loss the client's cause of action.

The Attorney agreed to stipulate to an admonition for his violation of Rules 1.2(a) and 1.3 as part of the discipline by consent.

# Notice of Creation of Mentoring Committee and Request for Volunteers

The Bar Commission has instituted a Pilot Mentoring Project which provides hands-on experience for a limited number of local law students through a panel of Utah lawyers. The laws schools at the University of Utah and Brigham Young University have selected a limited number of qualified students who have been matched with volunteer mentors comprised of lawyers who represent a variety of practices and many years of experience. The project has provided law students with actual experience as observers and participants with practicing mentor attorneys several days per month over a two or three-month period during the last year.

The Bar Commission has created a Mentoring Committee to oversee the Mentoring Program and expand the project into a longer-range program with a broader scope. The Committee will expand the list of lawyer volunteers who serve as mentors, which would allow more law students to be exposed to the practice of law and ease their transition from law school.

Members of the Bar who are interested in serving on the committee or acting as mentors should send a letter of interest c/o John C. Baldwin, Executive Director, Utah State Bar, 645 South 200 East, Salt Lake City, UT 84111 by August 31, 1997.


# ATTORNEY ASSISTANT DISCIPLINARY COUNSEL

# UTAH STATE BAR

To investigate and prosecute attorney disciplinary actions in administrative proceedings and the district courts on behalf of the Utah State Bar. Trial/litigation experience preferred, excellent computer and administrative skills required. $45,000 - $50,000 range with excellent benefits. An equal opportunity employer. Submit resume to Chief Disciplinary Counsel, Utah State Bar, 645 South 200 East, Salt Lake City, Utah, 84111.

## Discipline Corner

### DISBARMENT

On March 13, 1996, the Hon, Michael Lyon, Second District Court Judge, entered an Order Disbarring F. Kim Walpole ("Walpole") from the practice of law in the State of Utah, effective January 12, 1996.

Commencing in September 1990, Walpole began a continuing pattern of misconduct that spanned almost five (5) years in which he misappropriated or commingled client funds with his personal money. The Court found that during that time period, Walpole commingled, misappropriated or diverted a total of $113,000.00 on 49 occasions from his clients or his law firm.

Following a Sanctions Hearing on February 26 & 27, 1996, the Court issued a written decision which states, in pertinent part, "Because of the seriousness of the injuries caused by this type of misconduct, disbarment, in the absence of strong mitigating circumstances, is the appropriate sanction for misappropriation of client funds. The misuse of client funds is one of the most serious offenses a lawyer can commit. Respondent's misappropriations of his client's money were not only grievance breaches of professional ethics and the loyalty he owed to his clients; they were in violation of basic honesty and morality and the type of conduct that erodes holds the public confidence in the legal profession. Only the most extenuating or mitigating circumstances would allow a less serious sanction to be imposed." Walpole's period of disbarment will become effective the date of the Court's entry of the Court's Order of Interim Suspension, January 12, 1996. The Bar was also awarded it's costs.

Pursuant to Rule 12(g), Rules of Lawyer Discipline and Disability, the Respondent has the right to appeal an order of public discipline pursuant to the Utah Rules of Appellate procedure.

### DISCIPLINARY SUSPENSION

On February 21, 1996, the Honorable Gordon Low entered a Judgment and Order of Discipline placing Jean R. Babilis ("Babilis") on suspension from the practice of law for the period of three years effective May 1, 1996.

The disciplinary action arose out of Babilis' representation of John Kerns and Carol Kerns for the probate of the Estate of Jane Gayle Kerns, John Kerns' stepmother. The facts of this complex disciplinary action are set out in detail in Judge Low's forty-six page Findings of Fact and Order.

A contested trial on the merits was conducted before the Court from September 13-15, 1995 and September 19-20, 1995. On January 5, 1996, the Court entered Findings of Fact concluding that;

(1) Babilis violated Rule 1.5 by advising his clients to enter into, and in fact entering into with his clients, a contingency fee agreement in an uncontested probate matter which resulted in charging and collecting an excessive fee.

(2) Babilis was guilty of misconduct in having violated Rule 1.4(b) in that he failed to provide sufficient information to the clients regarding fee arrangements to enable the clients to make an informed decision regarding contingent fee representation versus representation pursuant to an hourly fee arrangement.

(3) Babilis was guilty of misconduct by violating Rule 1.13 relative to the safekeeping of property by taking funds from the Kerns Estate trust account without authorization of the Court nor consent of the personal representative or his client in using the funds for his own personal benefit.

(4) Babilis was guilty of misconduct in that he violated Rule 8.4(c) in that he converted Estate trust funds by diverting funds received by him on behalf of the Kerns Estate and failing to account for said funds, that he converted estate funds by charging, or attempting to charge, inflated or non-existent expenses to the Estate, and that he inflated or charged non-existent costs to the client in a contingency fee case.

(5) Babilis was guilty of misrepresenting and charging time as his own time which was actually time expended by his paralegal rather than by himself in violation of Rule 7.1(a).

(6) Babilis was guilty of misconduct in having violated Rule 3.3 by making false material representations to the Second District Court regarding inventory of the Estate's assets and available assets upon distribution to the heirs and by asserting to the Court that he did not keep time records when, in fact, the same were kept.

(7) Babilis was guilty of misconduct by having violated Rule 8.4(a) and (b), by committing or attempting to commit acts of conversion by a fiduciary in which acts reflected on Mr. Babilis' honesty, trustworthiness, and fitness as a lawyer. That misconduct included taking and converting trust funds, charging excessive fees, and charging non-existent costs and expenses to the Kerns Estate and making representations to the Kerns Estate that he performed services which he did not perform.

A Sanctions Hearing was conducted on February 13, 1996. On February 21, 1996, the Court entered its Judgment and Order of Discipline entering an Order of Suspension for a period of three years effective May 1, 1996. Pursuant to Rule 26(a), Rules of Lawyer Discipline and Disability, Babilis was ordered not to accept any new retainers or employment as a lawyer in any new case or legal matter but may, with the consent of the client after full disclosure, wind up or complete any matters pending on the date of entry of the Court's Order. Babilis was further ordered to provide notice to Courts and counsel regarding his suspension, deliver client files to clients, refund unearned fees to clients, and maintain records of his compliance with the Court's Order in accordance with Rule 26(b), Rules of Lawyer Discipline and Disability. The Court further ordered that:

(1) During his period of suspension, Babilis is not to engage in the practice of law or allow his name or his firm's name to be used in association with anyone else's practice of law;

(2) Judgment be entered in favor of the Utah State Bar for costs in the sum of $4,358.89; and

(3) As a condition of reinstatement, Babilis shall complete at least twenty hours of professional responsibility training (ethics) with a curriculum to be approved by the Utah State Bar and the First District Court.

A copy of the Court's Findings of Fact and Order, as well as the Judgment and Order of Discipline are available through the Office of Attorney Discipline.

Pursuant to Rule 12(g), Rules of Lawyer Discipline and Disability, the parties have the right to appeal an order of public discipline pursuant to the Utah Rules of Appellate Procedure. On March 13, 1996, the Bar filed a Notice of Appeal regarding the Court's decision to impose a period of suspension, instead of disbarment and issues regarding restitution. On March 20, 1996, Babilis filed a Notice of Cross-Appeal

as to the Court's Findings of Fact and Order on the merits and the judgement imposing a sanction of three years suspension.

**SUSPENSION FOR DISABILITY**

On February 22, 1996, Judge Anne M. Stirba placed Mark Urry Price on indefinite suspension from the practice of law due to an ongoing mental disability. Mr. Price had been placed on Interim Suspension by Judge Stirba on February 1, 1995 pursuant to a conviction for Mail Fraud.

The Court ordered that Mark U. Price be suspended from the practice of law due to his current mental disability and would remain on disability suspension until further order of the Court. The Court also required Mr. Price to immediately cease and desist from the practice of law, comply with Rule 26 of the Rules of Lawyer Discipline and Disability regarding notice to counsel and clients, not maintain a presence or occupy an office where the practice of law is conducted, and take all actions necessary to cause the removal from offices maintained or used by him of any indicia of his practice of law as an attorney, counselor at law, or activities as a legal assistant, paralegal, law clerk or similar title and, in all other respects, refrain from acting in such a capacity.

Rule 26(c) provides that Mr. Price has the burden of proving, by clear and convincing evidence, that any and all mental disabilities have been removed prior to termination of the disability suspension. The Court ordered that the disciplinary proceedings shall be dismissed during the period of disability suspension but may be continued at such time as the Court grants a petition for Mr. Price's transfer back to active status.

**RESIGNATION PENDING DISCIPLINE**

On February 28, 1996, the Utah Supreme Court approved the Petition for Resignation with Discipline Pending submitted by Royal Hunt. In submitting this Petition Mr. Hunt ("Hunt") admitted to violating Rule 1.1, COMPETENCE, Rule 1.3, DILIGENCE, Rule, 1.4(a), COMMUNICATION, Rule 1.5(a)(c), FEES, 1.13(b), SAFEKEEPING OF PROPERTY, and Rule 8.4(d) MISCONDUCT, of the Rules of Professional Conduct of the Utah State Bar.

*continued on p 28*

# Utah State Bar Ethics Advisory Opinion Committee

**Opinion No. 95-05**
(Approved January 26, 1996)

*Issue.* What is the relationship between Rule of Professional Conduct 4.2 and a 1994 U.S. Department of Justice regulation purporting to authorize certain *ex parte* contacts with persons known to be represented by counsel?

*Issue No. 1:* The Regulation precludes *ex parte* contacts by Department of Justice lawyers with individuals who are targets of federal investigations only when the person is a "represented party," *i.e.*, a person who has been arrested or charged or is a defendant in a civil enforcement proceeding and is represented by counsel for the matter. Does the class of such "represented parties" coincide with the definition of "party" in Rule 4.2 of the Utah Rules of Professional Conduct?

*Opinion:* No. The word "party" in Rule 4.2 of the Utah Rules of Professional Conduct means a "party to a matter" for which legal representation has been obtained, not the more limited "party to a legal proceeding." Subject to the exceptions stated in the rule, Rule 4.2 intends to restrict unauthorized *ex parte* contracts with any person who is represented by counsel concerning the matter in question, whether or not the person is a party to a formal legal proceeding. Therefore, Rule 4.2 restrictions are intended to apply to "represented persons," with whom the Regulation would permit certain *ex parte* contacts.

*Issue No. 2:* Assuming that the Regulation does not constitute a "law" for purposes of Rule 4.2, under what conditions may a government lawyer make *ex parte* contact with persons known to be represented by counsel?

*Opinion:* Under certain specific factual circumstances, a government lawyer may make *ex parte* contacts with persons represented by counsel.

**Opinion No. 95-02A**[1]
(Approved January 26, 1996)

*Issue:* May a law partner of a part-time justice court judge represent criminal defendants in the judicial district in which the justice of the peace sits?[2]

*Opinion:* A lawyer may represent criminal defendants in the same judicial district in which a law partner sits as a justice court judge. The lawyer may not appear before that partner, however.

# Public Service Announcement

Experience the National Association of Pre-Trial Services Association Conference this year in a whole new way. Salt Lake County Criminal Justice Services is your host for the 24th annual NAPSA Conference. Come to Snowbird Resort October 5th through the 9th, 1996 and see what Utah has to offer. The first class resort lodging, fall in the Wasatch Range of the Rockies, and the charm of Salt Lake City and Park City will almost make you forget you're at work. Snowbird Resort offers many activities for your whole family or just to strengthen your professional associations, including; hiking, mountain biking, a full European spa, a golf tournament, mountain-top star gazing, and much, much, more. For more information about workshops and speakers, or any other questions, call Dennis Hunter at Criminal Justice Services in Salt Lake City at (801) 538-2149.

# ATTENTION

**Decision Release Procedures in Utah Courts of Appeals**

Except in emergencies or during weeks when there is a State holiday, the Utah Court of Appeals releases its opinions and memorandum decisions on Thursdays at 10:00 a.m. After 2:00 p.m. each Wednesday, a list is made public of those cases in which a decision will be issued the following day. The list is posted at the court counter and on the bulletin board outside the courtroom. A recorded listing of the cases is also available by calling 578-3923. At 10:00 a.m. on Thursdays, decisions in the listed cases will be deemed issued and will be available for release to the parties, counsel of record, the press, and the general public.

If you have questions regarding the foregoing procedures, please call Marilyn Branch, Clerk of the Court, at 578-3900.

## Discipline Corner

### DISBARMENT

On February 11, 1998, the Honorable Guy R. Burningham, Fourth Judicial District Court, entered a Judgment of Disbarment, disbarring Richard C. Coxson from the practice of law for violation of Rules 1.1 (Competence), 1.2(a) (Scope of Representation), 1.3 (Diligence), 1.4(a) and (b) (Communication), 1.5(a) (Fees), 1.15 (Safekeeping Property), 1.16 (Declining or Terminating Representation), 5.5(a) (Unauthorized Practice of Law), 8.4(a), (b), (c) and (d) (Misconduct) of the Rules of Professional Conduct. Coxson was also ordered to pay restitution. The Order was based on a Discipline By Consent entered into by Coxson and the Office of Professional Conduct.

Coxson misappropriated client funds in five matters totaling approximately $105,275 for his own use and benefit.

Additionally in March of 1993, a former client retained Coxson to represent him in an adversary proceeding in a Utah bankruptcy action in which the Trustee sought to recover money from the client as a fraudulent transfer by the debtor. Coxson failed to provide competent representation to the client in both matters. Coxson failed to abide by the client's decisions about the objectives of the collection matter when he failed to obtain local counsel to represent the client in the Hawaii bankruptcy proceeding filed by the debtors. He did not notify the client of this fact, and the judgment owed to the client was subsequently discharged by that bankruptcy proceeding. Coxson similarly failed to abide by the client's decisions about the objectives of his representation in the Utah bankruptcy proceeding. In this matter, Coxson failed to notify the client that he would not be present at a hearing on a Motion for Partial Summary Judgment, which was subsequently granted when Coxson failed to appear on the client's behalf. Although Coxson had attempted to withdraw as the client's counsel before the hearing at the client's repeated requests and demands, having already secured other counsel, the order granting his withdrawal had not been granted as of the date of the hearing.

While still domiciled in Nevada, a client contacted Coxson in Utah in August of 1994, and Coxson advised her that she could remove her daughter from Nevada and establish residency in Utah. The client retained Coxson to file a Motion for Separate Maintenance, to be followed by the filing of a divorce action after she had established residency. The client paid Coxson a $1,000 retainer fee. Coxson failed to competently represent the client in the Nevada divorce action. Although Coxson explained to the client that he could not appear in a Nevada court because he was not licensed to practice in Nevada, Coxson failed to abide by the client's decisions concerning the objectives of her representation when he neither appeared with her, as he had initially promised, nor arranged for local counsel to appear with her at a hearing in Nevada on her husband's action against her for unlawfully removing their child from that state. The client subsequently had to retain a Nevada attorney to represent her in the Nevada proceeding. Coxson submits that he tried unsuccessfully to retain counsel in Nevada before the hearing. Coxson assisted the client in retaining Nevada counsel after the hearing. Coxson provided no beneficial legal services to the client, yet failed to return her $1,000 retainer fee. Coxson engaged in the unauthorized practice of law when he promised the client he would appear with her at the hearing in Nevada, and then prepared and directed her to submit at the hearing a motion and memorandum requesting abatement of any jurisdictional determination. The court rejected the motion because Coxson was not licensed to practice law in Nevada.

In May 1996, clients retained Coxson to represent them in a disputed property matter. Coxson failed to competently represent the clients and failed to act with reasonable diligence and promptness in representing them. Coxson failed to keep the clients reasonably informed about the status of their matter, did not promptly comply with their reasonable requests for information, and did not explain their matter to the extent reasonably necessary for the clients to make informed decisions regarding their representation. Coxson failed to promptly surrender the clients' file to the attorney who subsequently represented them. Coxson engaged in conduct prejudicial to the administration of justice when he failed to attend at least one court hearing on their behalf. Coxson has agreed to pay the clients $6,200.00, plus 7.45 percent in interest.

In August 1996, a client retained Coxson to represent her in a child custody and support matter. Coxson failed to competently represent her, and failed to abide by her decisions concerning the objectives of the representation when he failed to respond to interrogatories. Coxson failed to act with reasonable diligence and promptness in representing the client, failed to keep her reasonably informed about the status of her matter, and did not explain the matter to the extent reasonably necessary to enable her to make informed decisions regarding her representation. Additionally, Coxson failed to promptly surrender the client's file to her upon her request after she terminated his representation. Coxson engaged in conduct prejudicial to the administration of justice when he failed to respond to interrogatories propounded to his client, resulting in the Court ordering a default judgment to be taken against his client.

### DISBARMENT/RECIPROCAL DISCIPLINE

On February 13, 1998, the Honorable G. Rand Beacham, Fifth Judicial District Court, entered a Judgment of Disbarment, disbarring Donald R. Sherer from the practice of law pursuant to Rule 22 of the Rules of Law Discipline and Disability. The Judgment of Disbarment was based on a Stipulation for Entry of Reciprocal Discipline entered into by Sherer and the Office of Professional Conduct.

On March 30, 1993, the Honorable Ellen R. Peck, Judge of the State Bar Court of the State Bar of California signed a Decision Recommending Disbarment and Related Orders. The court noted the following reason for Sherer's disbarment:

> After a noticed hearing at which DONALD RALPH SHERER (hereinafter "Respondent") failed to appear, this Court concluded that Respondent wil[l]fully failed to comply with the provisions of rule 955, California Rules of Court, as ordered by the California Supreme Court and wil[l]fully committed other acts of professional misconduct against four

clients and the State Bar. In light of his prior misconduct and the present record, this Court recommends that Respondent be disbarred from the practice of law for the protection of the public.

In four cases, Sherer was retained by clients and failed to respond to the client's reasonable requests for information, failed to file a lawsuit, failed to provide an accounting of services as requested by the client, and failed to return the files after his withdrawal from the cases. In one case, Sherer threatened a client that if he did not withdraw his complaint with the State Bar of California, he would file a lawsuit against the client for false and malicious complaints.

Additionally, Sherer failed to maintain his correct membership address with the State Bar of California. As a result, he did not participate with the State Bar of California's investigations and their disciplinary proceeding.

**RESIGNATION PENDING DISCIPLINE/RECIPROCAL DISCIPLINE**

On February 12, 1998, the Honorable Michael D. Zimmerman, Chief Justice, Utah Supreme Court, entered an Order Accepting Resignation Pending Discipline, enjoining and prohibiting Robert F. Feland from practicing law in the State of Utah.

On June 16, 1986, Feland was disbarred from the practice of law in the State of Arizona by the Supreme Court of Arizona. Feland's Resignation Pending Discipline evolved from a reciprocal discipline investigation conducted by the Office of Professional Conduct pursuant to Rule 22 of the Rules of Lawyer Discipline and Disability.

**SUSPENSION**

On February 8, 1998, the Honorable G. Rand Beacham, Fifth Judicial District Court, entered an Order of Suspension, suspending John A. Giffen from the practice of law for six months for violation of Rule 3.1 (Meritorious Claims and Contentions) of the Rules of Professional Conduct. The suspension was stayed and the Order places Giffen's practice involving adoptions on supervised probation for one year. Giffen was also ordered to attend the Ethics School of the Utah State Bar and the Annual Family Law Seminar of the Utah State Bar. The Order was based on a Stipulation for Discipline By Consent entered into by Giffen and the Office of Professional Conduct.

During his representation of prospective adoptive parents in an adoption matter, Giffen violated the Rules of Professional Conduct. Not married or living together, both birth parents lived in California. Giffen and a California attorney arranged for the birth mother to come to Salt Lake City when she was pregnant with another child that was to be adopted after the birth. The birth mother miscarried in Salt Lake City. Thereafter, while the birth mother was in Utah, arrangements were made to adopt the other child of the birth mother ("the child"), at the birth mother's suggestion. The birth mother placed the child with the adoptive parents where the child stayed for some time. The birth father did not consent to the adoption of the child and retained an attorney in Salt Lake City to represent him to take the child away from the adoptive parents and to return the child to him. Judge James L. Shumate granted the natural father's request to have the child returned to him and ordered Rule 11 sanctions against Giffen. Giffen appealed Judge Shumate's rulings. The Utah Court of Appeals upheld Judge Shumate's rulings.

Giffen violated Rule 3.1 of the Rules of Professional Conduct in that he did not make a reasonable inquiry into existing law, made allegations in the amended petition that were not well grounded in fact, failed to obtain a preplacement adoptive study, failed to comply with the Interstate Compact on the Placement of Children, knew or should have known that the birth mother's consent was flawed, knew that the birth father would not consent to the adoption, and failed to make a reasonable inquiry as to whether the natural father's parental rights were terminable.

**ADMONITION**

On February 2, 1998, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violating Rule 1.9(a) (Conflict of Interest: Former Client) and 8.4(a) (Misconduct) of the Rules of Professional Conduct. The attorney was also ordered to attend the Utah State Bar Ethics School.

In September 1996, the attorney was employed by a client to represent him in a water purchase agreement. The client was the seller. Thereafter, the client discharged the attorney. After the attorney was discharged by his client, the other parties to the agreement contacted the attorney. At their request, the attorney wrote a "demand letter" on their behalf to his former client.


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# Claim of the Month

**ALLEGED ERROR OR OMISSION**

Plaintiff alleges failure to institute a workers' compensation claim within the statutory time period.

**RESUME OF CLAIM**

The claimant was injured in an automobile accident which occurred while he was acting within the scope of his employment. The claimant's employer referred his private family attorney to the claimant, his employee, to initiate a claim against the other driver. The Insured referred the case to another attorney to file suit since a settlement could not be reached prior thereto. The claimant was not happy with the representation and went to a third attorney who filed suit against the Insured for failure to initiate a workmen's compensation claim against the employer within the statutory time limitation.

**HOW CLAIM MIGHT HAVE BEEN AVOIDED**

The Insured should have realized when the case was referred by his longtime client, the employer, that a potential conflict of interest might arise between the employer and employee which would compromise the rights of his new client, the employee.

Although the Insured was retained to initiate a suit against the other driver only, he should have known that the employee may have a right to sue his employer for workmen's compensation. To avoid this potential conflict, the Insured could have either disclosed to the employee his right to sue for workmen's compensation and assert he would only initiate suit against the other driver or, better yet, he should have declined the representation altogether.

# DISCIPLINE CORNER

**ADMONITION**

1. An attorney was admonished for violating Rule 1.3 by failing to adequately communicate with his client regarding a procedural problem involving the filing of an objection to the recommendations of the Domestic Relations Commissioner and the subsequent dismissal of an appeal.

**PRIVATE REPRIMAND**

1. For violating DR 1-102(A)(6) by engaging in conduct adversely reflecting on the attorney's fitness to practice law, an attorney was privately reprimanded for repeating rumors regarding the alleged illicit activity of a judge and a clerk; the sanction was mitigated by the attorney's acknowledgment of the misconduct and apology to the people involved and the fact that it was an isolated incident.

# Law Day

The Young Lawyers Section of the Utah State Bar is hosting its Fifth Annual Law Day activity which will take place on April 22, 28 and 29, 1989. Law Day provides the general public an opportunity to access lawyers for advice and counsel. On those days, lawyers will be present at shopping malls throughout the state, working in booths, screening the legal problems of interested individuals, suggesting that they obtain legal counsel if the problem warrants, offering a fun legal quiz to test the knowledge of participants, and providing legal brochures and handouts with general information about the law and legal services in Utah. The Young Lawyers Section will also provide buttons and activities for kids such as coloring projects, etc.

The Young Lawyers Section needs volunteers to occupy the booths at the malls. Two attorneys are needed at each booth to work for two-hour intervals. The booths will be open from 10:00 a.m. to 5:00 p.m. The legal questions will be fairly simple. You will be provided with information as to the type of advice you are not allowed to give. Of course, you are not to solicit clients through this program. We would appreciate your willingness to help in this community effort.

The following individuals are organizing the programs in your given area. You may contact them by telephone to sign up for a given time and to obtain general information.

**LOGAN**

April 29, C.V. Mall, Greg Skabeland, 752-9437.

**OGDEN**

April 22, Ogden Mall, Ted Godfrey, Farr, Kaufman, 205 26th Street, #34, Ogden, Utah 84401, 394-5526.

**PROVO**

April 29, University Mall, Waine Riches, Legal Services, 455 N. University, #100, Provo, Utah 84601, 374-6766, 1-800-662-1563.

**SALT LAKE CITY**

April 28, ZCMI Mall, Paul Newman, Ray, Quinney, 79 S. Main, #400, Salt Lake City, Utah 84111, 532-1500.

**SALT LAKE CITY**

April 29, Valley Fair, Kevin Anderson, Allen, Nelson, 215 S. State, #700, Salt Lake City, Utah 84111, 531-8400.

**ST. GEORGE**

April 29, Phoenix Plaza, Mike Shaw, Jones, Waldo, 170 S. Main, #1500, St. George, Utah 84770, 628-1627.

If you have any further questions, please contact Richard Hamp, Chairperson for Law Day, at Salt Lake City Prosecutors, 535-7767, or Larry R. Laycock, Public Relations Chairman, at Snow, Christensen & Martineau, 521-9000.

# Law Day Luncheon to be Held May 1, 1989

This year's theme for Law Day is "Access to the Law." The Law Day Luncheon culminates program activities of the Committee on Law Related Education and Law Day including the statewide mock trial competition, Judge for a Day Program, Bob Miller Memorial Law Day Run and the Law Day Fair and Art Show. Students and lawyers who have made significant contributions to the Law Related Education program will be recognized. Awards will be given to junior and senior high schools with outstanding law-related education programs. A brief presentation will be made by student finalists in the mock trial competition and the Young Lawyers Section will present the Liberty Bell Award to an outstanding non-lawyer who has contributed to legal education in Utah.

The luncheon will be held at noon on Monday, May 1, 1989, at the Utah Law and Justice Center in Salt Lake City, Utah. Please make reservations with Paige Holtry, 531-9077, prior to Friday, April 28, 1989.

# *Discipline Corner*

**DISBARMENT**

On February 19, 1999, the Utah Supreme Court issued an opinion reversing the Third District Court's suspension of Byron L. Stubbs, and stated that disbarment was the appropriate sanction for Stubbs's misconduct.

The Utah State Bar appealed a Third District Court order suspending Stubbs from the practice of law for three years. On July 26, 1996, Stubbs pled guilty to one count of communications fraud, a class A misdemeanor. The guilty plea was based on Stubbs's participation in a scheme to defraud the State through the preparation of a letter on behalf of his client, Tool Design, Engineering and Manufacturing (Tool Design). The letter Stubbs prepared contained false representations regarding the status of environmental remediation efforts on a piece of property Tool Design owned. Stubbs knew the statements contained in the letter were false and he knew his client intended to send the letter to the State to facilitate the scheme to defraud. Additionally, during the Bar's investigation, Stubbs lied to the Bar and to the trial court.

The District Court concluded that Stubbs made false statements of material fact when he aided his client in committing a fraudulent act against the State, made false statements of fact to representatives of the engineering company in charge of the remediation efforts, and failed to rectify the consequences of his client's criminal act. Although the District Court held that disbarment was the presumptively appropriate sanction for Stubbs's misconduct, it concluded that the mitigating circumstances outweighed the aggravating circumstances and justified a reduction in the level of discipline.

The Supreme Court found that "the factors relied upon by the trial court in this case do not, in fact, mitigate against disbarment." Specifically, the Court rejected Stubbs's inexperience in the practice of criminal and environmental law as a mitigating factor and stated that "[g]reater experience . . . would not have taught Stubbs anything more about honesty than he should know after thirty-five years of practice." The Court also rejected Stubbs's remorse at trial and evidence of his good character as mitigating factors. Finally, the Court rejected the District Court's conclusion that Stubbs's conduct represented an isolated incident, rather than a pattern of misconduct.

Although the Court recognized Stubbs's lack of disciplinary history, the absence of a selfish motive, and the imposition of other penalties as mitigating factors, they were not sufficiently significant to reduce the presumptive discipline of disbarment.

To see a full copy of this decision visit the State Court's website at http://courtlink.utcourts.gov/opinions/index.htm.

**RESIGNATION WITH DISCIPLINE PENDING**

On January 18, 1999, the Honorable Richard C. Howe, Chief Justice, Utah Supreme Court, executed an Order Accepting Resignation Pending Discipline in the matter of Pamela D. Parkinson. In the Petition for Resignation with Discipline Pending, Parkinson admitted that she violated Rules 1.8 (Conflict of Interest), 1.15 (Safekeeping Property), 4.1 (Truthfulness in Statements to Others), and 8.4 (Misconduct) of the Rules of Professional Conduct.

During representation of a client and her minor daughter in an action against certain persons and entities for alleged child abuse of the minor daughter and representation of the client in several business ventures, Parkinson entered into various inappropriate agreements with the client. Parkinson at one point convinced the client to sign over custody of her minor child to Parkinson and then refused to allow the client to see her daughter. Parkinson additionally entered into business agreements with the client. In one agreement Parkinson took $25,000 from the client to invest in a business venture in Idaho. Parkinson and the client were to be partners in the venture. Parkinson was to place the money in her trust account. When the client later demanded a refund of the $25,000, Parkinson refused. Parkinson has failed to refund the client's $25,000.

**SUSPENSION**

On January 22, 1999, the Honorable Michael G. Allphin, Second Judicial District Court, signed an Order of Discipline suspending Blaine P. McBride from the practice of law for violation of Rules 1.2(a) (Scope of Representation), 1.3 (Diligence), 1.4(a) (Communication), 1.15(a) (Safekeeping Property), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct. The suspension was stayed and McBride was placed on two years supervised probation. McBride was also ordered to attend the Utah State Bar Ethics School and was ordered to pay restitution to two clients. The Order of Discipline was based on a stipulation between McBride and the Office of Professional Conduct ("OPC").

McBride moved his office and failed to notify the Bar and several clients of his new telephone number and address, and was dilatory in responding to requests for information from clients and the OPC. Combined with his clients' inability to reach

McBride regarding their matters. McBride failed to diligently represent several clients, failed to perform, and failed to return unused portions of the clients' retainers when they obtained new counsel or fired him.

There were extenuating mitigating factors which warranted a suspension held in abeyance in this matter.

**PUBLIC REPRIMAND**

On January 20, 1999, the Honorable J. Dennis Frederick, Third Judicial District Court, entered an Order of Reprimand of James I. Watts for violating Rule 1.7 (Conflict of Interest) of the Rules of Professional Conduct. The order was based on a stipulation between Watts and the Office of Professional Conduct.

The Bar received a complaint from an estranged husband in a divorce action in which Watts was representing the complainant's wife. The complaint alleged that during Watts's representation of the complainant's wife, Watts engaged in sexual relations with the client. Prior to the representation Watts and the client had not been personally or physically involved.

At some time during the representation and while the client was in Watt's office, he asked the female client out on a social date. During the representation, the female client and Watts spent the weekend together and had sexual relations. Thereafter, Watts and the female client continued to see each other socially. After the relationship became sexual, Watts withdrew as counsel for the female client.

Watts acknowledged and admitted the wrongful nature of the relationship with the client and fully cooperated with the Office of Professional Conduct. Watts's absence of a prior record, remorse for his actions, and cooperation with the OPC were considered as mitigating factors.

**ADMONITION**

On February 2, 1999, an attorney was admonished by the Chair of the Ethics and Discipline Committee for violating Rules 1.1 (Competence), 1.2 (Scope of Representation), 1.3 (Diligence), 1.4 (Communication), 8.1 (Bar Admission and Disciplinary Matters), and 8.4(a) and (d) (Misconduct) of the Rules of Professional Conduct.

The OPC received a complaint from clients of the attorney alleging that the attorney represented them in several legal matters including a zoning/nuisance matter concerning horses near their house, a house purchase and improvement matter, and other matters. The complainants alleged that the attorney had taken a retainer in the horse matter and had failed to competently and diligently represent them or communicate with them concerning the representation.

In his representation of the clients, the attorney failed to:

- provide competent representation and did not have the requisite legal knowledge, skill, thoroughness, and preparation reasonably necessary in representing them;
- consult with them as to the means his representation should be pursued;
- act with reasonable diligence and promptness in representing them;
- keep them reasonably informed about the status of the representation and failed to explain the representation to the extent reasonably necessary to enable the clients to make informed decisions regarding the representation.

The attorney also failed to timely respond to requests from the Bar concerning the complaint, and failed to timely produce documents requested by the Bar, in violation of Rule 8.1 (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

On November 19, 1998 a Screening Panel of the Ethics and Discipline Committee heard the matter and determined that an admonition was appropriate discipline for a violation of Rules 1.1, 1.2, 1.3, 1.4, 8.1 and 8.4(a) and (d) of the Rules of Professional Conduct.

## *Mailing of Licensing Forms*

The licensing forms for 1999-2000 will be mailed during the last week of May and the first week of June. Fees are due July 1, 1999, however fees received or postmarked on or before August 2, 1999 will be processed without penalty.

It is the responsibility of each attorney to provide the Bar with current address information. This information must be submitted in writing. Failing to notify the Bar of an address change does not relieve an attorney from paying licensing fees, late fees, or possible suspension for non-payment of fees. You may check the Bar's web site to see what information is on file. The site is updated weekly and is located at www.utahbar.org.

**If you need to update your address please submit the information to Arnold Birrell, Utah State Bar, 645 South 200 East, Salt Lake City, Utah 84111-3834. You may also fax the information to (801) 531-0660.**

# Highlights From June Bar Commission Meeting

The meeting of June 17 was President Martineau's last full-agenda meeting as Bar President. He was enthusiastically commended by the Commissioners for his leadership and service as President during this historic year. In actions taken, the Bar Commission:

a. Approved Minutes of the May 18 meeting.

b. Received a report from the Executive Director, including Bar Commision election results, 1988 Annual Meeting plans and management matters.

c. Approved joint appropriation with the Law and Justice Center, Inc., to pave Colfax Avenue and to solicit financial contribution from neighbors on Colfax.

d. Received Discipline Report, acted on discipline matters and approved the call for applicants for the position of Bar Counsel.

e. Received the Admissions Report and acted on various petitions for waiver of Multistate Professional Responsibility Exam requirements as to the sequence of the exams. Reinstated a member who had been suspended for nonpayment of dues. Approved student and attorney applicants for the July Bar Exam. Approved the results of the May Attorney Bar Examination.

f. Received a report on the recent meeting of the Jack Rabbit Bar in Jackson, Wyoming. This is a regional association of bar associations and members from 13 states. It was noted that Bert L. Dart is the Chancellor of the Jack Rabbit Bar for 1988-89, that Barbara R. Bassett will serve as its Secretary-Treasurer and that Utah will host the 1989 meeting in June 1989 at the Homestead.

g. Received a report on the ABA Board of Governors meeting in Denver where Utah State Bar programs and the development of the Utah Law and Justice Center were praised by ABA President MacCrate and the Governors assembled.

h. Reviewed the status of litigation involving the Wisconsin State Bar in which other unified state bars have been asked to join in an amicus brief in the appeal of the *Levine* case.

i. Reviewed and endorsed final report of the Child Support Task Force and recommended approval of the guidelines by the Judicial Council.

j. Reviewed the status of litigation pending against the Bar.

k. Received a presentation and report on proposed research activities to be undertaken in the Law and Justice Center in cooperation with social scientists at the University of Utah and elsewhere.

l. Received a report on the impact of proposed tax initiatives presented by Taxpayers for Utah representative Pat Shea.

m. Received the monthly financial report, noting the continuance of effective controls on expenditures by management.

n. Discussed concepts of Bar structure and membership representation on the Commission, with further consideration to follow.

# Utah Joins In 7th Circuit Amicus Brief

On February 19, 1988, Federal District Judge Barbara B. Crabb of the United States District Court for the Western District of Wisconsin issued a decision holding that the Wisconsin State Bar's assessment of mandatory dues violated an attorney's first amendment right of association. The Wisconsin Bar is an integrated bar, though bar admissions and discipline functions are performed by boards separate and apart from the Bar Association. Judge Crabb also found the concept of an integrated bar unconstitutional as opposed to earlier court decisions which only narrowed or restricted bar associations specific ideological and political expressive activities.

Judge Crabb's decision is currently on appeal to the 7th Circuit Court of Appeals. Because of the sweeping implications of Judge Crabb's decision, a number of states have joined together in filing an amicus brief. As of July 11, 1988, those states include North Dakota, Kentucky, Oregon, Nebraska and Washington. Due to the time constraints in filing the amicus brief, the Board of Bar Commissioners in a special meeting on July 8, 1988, unanimously voted to join in the amicus brief. Arguments in the area are scheduled for September 1988.

Those bar members wishing to review the amicus brief and/or review Judge Crabb's decision and the appeal briefs may do so by coming by the Law and Justice Center at 645 South 200 East, Salt Lake City, Utah. Bar members may also contact Kent Kasting, President; Stephen Hutchinson, Executive Director or Christine Burdick, Bar Counsel at 531-9077 for more information.

# DISCIPLINE CORNER

**Admonitions:**

1. An attorney was admonished for violating DR 6-101(A)(3) for neglecting a legal matter entrusted to him by failing to timely and appropriately communicate with a prison inmate regarding the filing of his answer to a divorce complaint.

2. For failing to adequately communicate with his client regarding the settlement decisions being made by the attorney, an attorney was admonished for violating DR 6-101(A)(3).

3. An attorney was admonished for violating Rule 1.4 of the new Rules of Professional Conduct for failing to keep his client reasonably informed concerning the status of his case and explaining the case to the client in a manner reasonably necessary to enable the client to make informed decisions regarding the representation.

4. An attorney was admonished for failing to respond to repeated requests from an out of state colleague for information about the attorney's prior client; said conduct violates DR 1-102 (A)(6).

5. An attorney was adomonished for violating Rule 4.2 of the new Rules of Professional Conduct for contacting the opposing party concerning a foreclosure sale knowing the party was represented by counsel.

6. For violating DR 6-101(A)(3) and attorney was admonished for failing to have in place appropriate office procedures to

*(continued on page 20)*

(continued from page 19)
prevent the attorney's missing significant deadlines in the client's case.

7. A prosecutor was admonished for calling himself as a witness in a criminal case where that testimony was essential testimony in proving the element of intent or knowledge. Such conduct violates DR 5-102(A).

8. An attorney was admonished for entering into a business transaction with a client without disclosing in writing all the material facts and potential conflicts in such a transaction.

9. An attorney was admonished for failing to detect a conflict of interest between himself and other attorneys with whom he office shared which violated DR 4-101(A); Utah Formal Ethics Opinion No. 34 prohibits an attorney from undertaking representation of a client if another attorney office sharing with that attorney is or would be precluded from representing that client due to a conflict of interest.

**Suspensions**

1. Neils E. Mortensen has been suspended from the practice of law in the State of Utah effective May 16, 1988, for a period of six months, said suspension to run concurrently with the suspension Mr. Mortensen is currently serving and which concludes in 1990. Mr. Mortensen was found to have violated DR 6-101(A)(3) (neglect); DR 7-101(A)(2) and (3) (prejudicing/damaging a client); DR1-102(A)(6) (conduct adversely reflecting on fitness to practice law); DR 2-110(A)(2) (improper withdrawal from employment). This suspension was ordered based on separate circumstances with clients wherein Mr. Mortensen undertook representation and subsequently failed to communicate with his clients or render any legal services on their behalf, in addition, Mr. Mortensen was found to have undertaken representation of a client while on suspension as ordered by the Supreme Court in 1985.

2. Charles M. Brown, Jr. has been placed on indefinite disability suspension from the practice of law.

**The Continuing Saga of Ethics Opinion No. 90:**

As many bar members are aware, the Board of Bar Commissioners is undertaking once again a review of the previously issued and then withdrawn Ethics Opinion No. 90 dealing with surreptitious tape recordings by attorneys. At present, no formal ethics opinion addresses the question of surreptitious tape recording of communications by attorneys. The Board of Bar Commissioners at the January 22, 1988, Bar Commission meeting concluded that it is not unethical for an attorney to surreptitiously tape record a communication with any other person. The Board is aware that divergent views exist among the membership on this issue and has voted to reconsider the issue. Prior to taking any formal action, the Board of Bar Commissioners, through the Office of Bar Counsel, invites comments by interested Bar members on which, if any, of the following three alternatives ought to be adopted as a formal ethics opinion.

**Alternative No. 1:**

Surreptitious tape recording by attorneys of communications with clients witnesses or other attorneys is unethical.

**Alternative No. 2:**

Such surreptitious tape recording by attorneys is not unethical.

**Alternative No. 3:**

Surreptitious tape recording by attorneys of communications with other attorneys and the attorney's own clients is unethical; surreptitious tape recording by attorney of communication with third party witnesses and other similarly situated individuals is not unethical so long as the attorney discloses the fact that she/he is an attorney and who the attorney represents.

Additional proposals departing from the above alternatives are also welcome and invited. Comments and/or proposals should be sent to the Office of Bar Counsel, 645 South 200 East, Salt Lake City, Utah 84111-3834 no later than September 16, 1988.

# The "Tuesday Night Bar" Needs Your Help

In order to provide legal assistance and referrals to the large segment of the public which does not have legal service readily available, the Utah State Bar has initiated a program patterned after those in other states.

On a once each week basis, individuals may make an appointment to meet with an attorney or a law student under the supervision of an attorney for consultation, legal "first aid" and referral. Appointments will be scheduled at the Law and Justice Center from 4:30 p.m. to 7:00 p.m. every Tuesday.

The Bar is creating a large panel of volunteer attorneys who will participate in the program. We're hopeful that enough lawyers will volunteer so that participation would only be required four times annually.

An orientation will be held to acquaint you with the program and facilities. If you are willing to dedicate some time to this program, please contact Julee Smilley at 531-9077.

# LEXIS Fall Promotion

The Utah State Bar is proud to announce a special fall promotion to introduce the many benefits of the LEXIS service to your firm. If you join our LEXIS Membership Group program by October 31, 1988 and attend a LEXIS training seminar by November 30, 1988, you receive:

* Half-priced training
  (a savings of $37.50 per person trained)
* An additional hour of free time on the LEXIS service
  (must be used within two weeks of attending a LEXIS seminar)
* FREE use of the LEXIS service during December
  (public domain files only)

The Utah State Bar LEXIS Membership Group program is a formidable tool to keep your firm competitive in the legal industry. For more information, please contact Paige Holtry, 531-9077.

# Notice Regarding Bar Mailing List

Utah State Bar policies regarding the membership list provide that the list of official/

# Model Law Firm Partnership Agreements Available On Diskettes

A law firm partnership agreement can be prepared in minutes with a word processing diskette produced by the ABA's Economics of Law Practice Section (ABA/ELPS). The diskette is based on the best-selling monograph "Model Partnership Agreement of the Small Law Firm." The model agreement, geared specifically for small firms, contains provisions for profit distribution based on a formula keyed to business origination and work production. Also included are sections on organization and administration, withdrawal, retirement, expulsion, disability or death of a partner; and capital and drawing accounts. The diskette can be purchased separately or with the accompanying monograph. To order, contact ABA Order Fulfillment, Dept. 511, 750 N. Lake Shore Drive, Chicago, Illinois 60611; or for further information call (312) 988-5555.

# Claim of the Month

### ALLEGED ERROR OR OMISSION

The Insured attorney failed to bring a third-party action against the state on a theory of negligent design of a roadway upon which his client had been severely injured in an automobile collision. The Insured did not implead the state because of his good faith belief that the roadway was not negligently designed, that the accident was caused entirely by a drunk driver and, consequently, there was no predicate for bringing such an action. The Insured, however, failed to obtain an investigator's report to corroborate his belief and failed to advise client in writing that he did not intend to pursue the state.

### RESUME OF CLAIM

The Insured represented the victim of an automobile crash. Client had pulled his car over to the side of state roadway and was standing behind his automobile when a speeding drunk driver struck the parked car in the rear, crushing the victim's legs between the cars.

The drunk driver was underinsured and otherwise assetless. The Insured obtained policy limits as well as monies from state uninsured motorist fund for his client. The proceeds did not adequately compensate the victim for his injuries. Client subsequently retained another attorney who sued the Insured for failure to proceed against the state in a timely fashion.

Since the Insured's failure to obtain an independent investigation and to advise his client in writing of the limitations of his representation was below the acceptable standard of care, and since the client's injuries were extremely severe and the E&O carrier did not wish to risk an adverse jury verdict, the carrier paid the policy limits.

### HOW CLAIM MIGHT HAVE BEEN AVOIDED

When the Insured agreed to represent the client he should have *made clear in writing the exact nature and scope of his representation*: whether he would pursue only the driver or include third-party defendants as well. If he did not intend to pursue third-party actions, he should have clearly so stated and advised client to seek another attorney for that purpose.

If Insured promised to pursue all possible parties, he should have obtained an independent investigator's assessment of the state's potential liability in this case. He should also have filed a timely Notice of Claim, as is generally required by municipalities, even while awaiting the outcome of the investigation, in order to protect his client's rights.

# DISCIPLINE CORNER

### ADMONITIONS

1. An attorney was admonished for violating Rule 7.5 for using a letterhead which implied or stated that the individuals were in a partnership when in fact no partnership existed.

2. An attorney was admonished for representing individuals on appeal in matters where the attorney had acted as administrative law judge without proper consent from all parties in violation of Rule 1.12(a).

3. For neglecting a probate matter for over a year, an attorney was admonished for violating DR6-101(A)(3).

4. An attorney was admonished for violating DR1-102(A)(5) for engaging in conduct prejudicial to the administration of justice by participating in circumstances that created the appearance that the attorney and/or his client was attempting to improperly influence the testimony of a key witness.

5. For failing to adequately communicate with a client by repeatedly failing to respond to telephone calls and to answer the client's questions an attorney was admonished for violating Rule 1.4.

### PRIVATE REPRIMANDS

1. An attorney was privately reprimanded for violating DR6-101-(A)(3) for neglecting a legal matter by failing to file a divorce complaint for a period of seven months after being retained and then failing to timely serve the complaint once it had been filed.

2. For failing to file a divorce complaint for seven months and then failing to file the divorce complaint for an additional two months after the client paid filing fees and for failing to timely serve the client's spouse with the divorce complaint, an attorney was privately reprimanded for violating DR6-101(A)(3).

### DISBARMENTS

Robert Ryberg was ordered disbarred from the practice of law in the State of Utah by the Utah Supreme Court effective October 3, 1988, for violating the following disciplinary rules: DR1-102(A)(4) (engaging in conduct involving fraud, dishonesty, deceit or misrepresentation); DR2-106(A) (charging or collecting illegal or clearly excessive fee); DR6-101(A)(2) (handling a matter without preparation adequate in the circumstances); DR6-101(A)(3) (neglecting a legal matter entrusted to him); DR1-102(A)(3) (engaging in illegal conduct involving moral turpitude); DR9-102(B)(3) (failing to maintain complete records of all funds, securities, and other properties of a client coming into the possession of a lawyer and rendering appropriate accounts to his clients regarding them and by receiving money from a client in the course of professional business and failing to pay or deliver the same to the person entitled to it within a reasonable time); Rule 2, Section 4(1) conviction of a felony involving moral turpitude.

### ETHICS OPINION NO. 90

After receiving many thoughtful comments from members of the Bar, the Board of Bar Commissioners at its Commission Meeting on September 23, 1988, voted to adopt Ethics Opinion No. 90 as follows: Surreptitious tape recordings by attorneys of conversations is not unethical.

The Board of Bar Commissioners appreciated the input by the members of the Bar in this matter.

# Discipline Corner

## ADMONITIONS

1. An attorney was admonished for failing to clarify the scope of his attorney/client relationship at the outset of representation in violation of DR 6-101(A)(3) and Rule 1.4. The Panel suggested that in the future the attorney clarify the scope of his representation in writing at the outset.

2. An attorney was admonished for failing to provide a timely accounting for money received on behalf of a client in violation of Rule 1.14(d). The attorney was also admonished for violating Rule 1.13 (b) for neglect and lack of response to the client's numerous requests for status reports. The neglect, however, was mitigated by the attorney's prompt and complete response to the discipline process.

## PRIVATE REPRIMAND

1. An attorney was privately reprimanded for neglecting a collection matter during a two-year time period in violation of DR 6-101(A)(3) and Rule 1.3, and for violating Rule 1.4(a) for failing to return the client's numerous phone calls or updating the client on the status of the case. The sanction was aggravated by the attorney's nonresponsiveness to the disciplinary process, though, the attorney's lack of prior disciplinary misconduct was a factor in mitigation.

2. An attorney was privately reprimanded for violating the following rules: (a) Rule 1.3 for failing to file a complaint and serve three temporary restraining orders with reasonable diligence; (b) Rule 1.13(b) by failing to refund the unused portion of his retainer; (c) Rule 1.14 for failing to return the client's file after the attorney had been dismissed; and (d) Rule 8.1(b) for the attorney's nonresponsiveness to the Office of Bar Counsel's requests for information constituting a failure to respond to a lawful demand for information from a disciplinary authority. The sanction was aggravated due to the attorney's substantial experience in the practice of law and two prior private reprimands concerning past misconduct similar to the instant action.

3. An attorney was privately reprimanded for failing to clearly state and establish a fee agreement with his client, in violation of Rule 1.5(b), and for violating Rule 1.14(b)(6) for improperly withdrawing from a pending matter without prior approval from the court.

4. An attorney was privately reprimanded for violating Rule 1.3 for neglecting to prepare a guardianship order granted by the Court for over a year. The sanction was mitigated by the attorney's filing of the Order after being requested to do so by the disciplinary panel.

5. An attorney was privately reprimanded for violating Rule 1.3 because the attorney had failed to adequately review and respond to a bankruptcy notice resulting in the client being unnecessarily deprived of their work vehicle for a period of time. The sanction was aggravated by the resulting inconvenience to the client but was mitigated by the attorney's admission of the wrongdoing.

## PUBLIC REPRIMAND

1. On September 11, 1989, David K. Smith was publicly reprimanded for violating Rule VIII(h) of the Procedures of Discipline of the Utah State Bar by engaging in a pattern of misconduct involving neglect. Within the past two and a half years, Mr. Smith had been admonished once and privately reprimanded three times for neglecting legal matters entrusted to him. The sanction was aggravated by Mr. Smith's substantial experience in the practice of law.

## SUSPENSIONS

1. On September 11, 1989, Gerald Hansen was suspended from the practice of law for six months with four months stayed pending successful completion of two 30-day suspensions to be served within one year following the date of suspension and contingent upon successful completion of a one-year period of probation. Mr. Hansen violated Rule 1.4(a), DR 6-101(A)(3), Rule 1.3, and Rule 8.4(c) by failing to respond to his clients' requests for status reports, refusing to return his clients' phone calls, failing to file an action within the statutory period, and generally engaging in a pattern of neglect and misconduct. The sanction was mitigated by Mr. Hansen's admissions of his wrongdoing and his willingness to be supervised by another attorney.

2. On September 14, 1989, James N. Barber was suspended from the practice of law for six months with the suspension stayed pending his successful completion of 24 months of probation and his payment of restitution to the involved parties. Mr. Barber violated DR 1-102(A)(4) by misrepresenting his handling of his client's case and DR 6-101(A)(3), for neglecting to prepare an answer for his client which, in turn, led to a default judgement. Mr. Barber represented that he would move to set aside the judgement but neglected to do so. His client was then adversely affected by the inactions of Mr. Barber. Aggravating factors included Mr. Barber's prior disciplinary history involving matters of neglect and his substantial experience in the practice of law. A factor of mitigation was that during a period of neglect Mr. Barber was experiencing health problems.

# Attorney Discipline

**UTAH STATE BAR ETHICS HOTLINE**

Call the Bar's Ethics Hotline at (801) 531-9110 Monday through Friday from 8:00 a.m. to 5:00 p.m. for fast, informal ethics advice. Leave a detailed message describing the problem and within a twenty-four-hour workday period, a lawyer from the Office of Professional Conduct will give you ethical help about small everyday matters and larger complex issues.

More information about the Bar's Ethics Hotline may be found at www.utahbar.org/opc/office-of-professional-conduct-ethics-hotline/. Information about the formal Ethics Advisory Opinion process can be found at www.utahbar.org/opc/bar-committee-ethics-advisory-opinions/eaoc-rules-of-governance/.

## PUBLIC REPRIMAND

On October 29, 2012, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Gale E. Laser for violation of Rules 4.4 (Respect for Rights of Third Persons), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Ms. Laser used her employee, who had access to another law firm's computer, to access information and obtain evidence about a former client of the firm that violated the rights of the former client, who was now an opposing party in litigation. Ms. Laser acted negligently and caused harm to the legal system and the parties by necessitating the use of court resources to address the issue.

*Mitigating factors:*

Ms. Laser took steps to correct system access issues and her behavior.

## PUBLIC REPRIMAND

On November 1, 2013, the Honorable Todd M. Shaughnessy, Third Judicial District Court, entered an Order of Public Reprimand against Joseph Wrona for violation of Rule 4.3(a) (Dealing with Unrepresented Person) of the Rules of Professional Conduct

*In summary:*

Mr. Wrona was hired to secure a judgment against an individual who he had previously represented on an unrelated legal matter. Mr. Wrona subsequently secured a judgment against his former client on behalf of the client he was presently representing. The former client then contacted Mr. Wrona regarding the unrelated legal matter. Mr. Wrona provided his former client with legal advice while the former client was adverse to his present client. Mr. Wrona's mental state was negligent. There was no injury caused by his misconduct.

*Aggravating factors:*

Substantial experience in the practice of law.

## PUBLIC REPRIMAND

On October 30, 2013, the Honorable Todd M. Shaughnessy, Third Judicial District Court, entered an Order of Discipline: Public Reprimand against James H. Deans for violation of Rule

1.15(a) (Safekeeping Property), Rule 1.15(b) (Safekeeping Property), Rule 1.15(c) (Safekeeping Property), and Rule 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

*In summary:*
Mr. Deans deposited monies into his attorney trust account. Mr. Deans wrote two checks to be paid from his trust account before the deposit was available and there were insufficient funds in the account to cover the checks, causing his account to be overdrawn.

The Office of Professional Conduct ("OPC") received two notices of insufficient funds ("NSF") from Bank of Utah regarding Mr. Deans' attorney trust account. The Office of Professional Conduct sent Mr. Deans a request for a written response and documentation supporting his explanation of the NSFs. Mr. Deans did not respond to the OPC's request for written response.

The OPC served Mr. Deans with a Notice of Informal Complaint for each NSF, requiring him to respond in writing to the Complaints within twenty days pursuant to Rule 14-510(a)(5) of the Rules of Lawyer Discipline & Disability. Mr. Deans did not respond to the Notices of Informal Complaints.

Mr. Deans did not have proper accounting procedures in place. Mr. Deans failed to respond to the OPC's lawful demands for information.

## RECIPROCAL DISCIPLINE

On October 11, 2013, the Honorable Kate A. Toomey, Third Judicial District Court, entered an Order of Discipline: Public Reprimand against Laura J. Edwards for violating Rule 1.15(a) (Safekeeping Property) of the Rule of Professional Conduct.

Ms. Edwards is a member of the Utah State Bar and is also licensed to practice law in Arizona. The Supreme Court of Arizona issued a Final Judgment and Order reprimanding Ms. Edwards for her conduct in violation of the Arizona Rules of Professional Conduct. An Order was entered in Utah based upon the discipline order in Arizona.

*In summary:*
Ms. Edwards did not have proper accounting procedures in place and wrote a check on her client trust account without sufficient funds in the account to cover the check. The check was returned by the bank and an insufficient funds notice was sent to the Arizona State Bar. No client funds were used to rectify the shortages and she took efforts to account for the errors, correct the errors and implement procedures to ensure that the errors will not recur.

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# *Attorney Discipline*

**UTAH STATE BAR ETHICS HOTLINE**
Call the Bar's Ethics Hotline at (801) 531-9110 Monday through Friday from 8:00 a.m. to 5:00 p.m. for fast, informal ethics advice. Leave a detailed message describing the problem and within a twenty-four-hour workday period, a lawyer from the Office of Professional Conduct will give you ethical help about small everyday matters and larger complex issues.

More information about the **Bar's Ethics Hotline** may be found at www.utahbar.org/opc/office-of-professional-conduct-ethics-hotline/. Information about the formal Ethics Advisory Opinion process can be found at www.utahbar.org/opc/bar-committee-ethics-advisory-opinions/eaoc-rules-of-governance/.

**PUBLIC REPRIMAND**

On July 11, 2013, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Derek J. Barclay for violation of Rules 3.3(a) (Candor Toward the Tribunal) and 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Barclay is an employee of a law firm. In the course of a litigation matter, Mr. Barclay was instructed to obtain an affidavit from an employee of a client. The affidavit was to be included in a reply memorandum that was due shortly. Mr. Barclay prepared and sent a draft of the affidavit. On the afternoon of the due date of the affidavit, Mr. Barclay still had not received a signed copy of the affidavit. After trying to reach the affiant at her office and on her cell phone, Mr. Barclay talked to the owner of the firm, who stated that the affiant would sign the affidavit. By 5:00 pm that day, Mr. Barclay had not heard from the affiant. Mr. Barclay signed the affiant's name to the affidavit, and had the signature notarized by a notary at the firm. He then filed the affidavit with the court. The next day, the affiant called Mr. Barclay and indicated that her supervisor had some concern about statements in the affidavit, and she would not be able to sign it until her supervisor spoke to someone at the firm. Two weeks later, the client learned that the affidavit had been filed with the court. She sent several emails to the firm, asking them to strike the affidavit and inform the court what had happened. Mr. Barclay did not attempt to strike the affidavit or inform the court at that time. Mr. Barclay later admitted to the court that he had forged the affiant's signature. Mr. Barclay's mental state was negligent. There was injury to the client in that she had to retain legal counsel to address the situation and there was injury to the legal system and the profession because it undermines the integrity of the courts when an officer of the court submits a forged affidavit

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upon which he knows the court will rely.

*Mitigating factors:*
No prior record of discipline; no selfish motive; and remorse.

**PUBLIC REPRIMAND**

On June 5, 2013, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Raymond N. Malouf for violation of Rules 1.1 (Competence), 3.1 (Meritorious Claims), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
A man was living in a home owned by his parents. The man's girlfriend's mother alleged that she loaned him money. Mr. Malouf, on behalf of the girlfriend's mother, filed a lawsuit against the man and his parents in an effort to collect the money that had been loaned to the man. Mr. Malouf filed a Notice of Lis Pendens against the home owned by the man's parents. At no point did the man ever have a legal interest in the home. The court concluded that the claims were not warranted by existing law, and were without merit and not asserted in good faith, and that the lien on the property was illegal and invalid. Mr. Malouf's behavior was generally negligent. There was injury to the parents in that they spent time and money dealing with the lawsuit. They also had a cloud on the title that kept them from doing anything with the property. There was harm to the system because of the time spent on litigating issues without merit.

**ADMONITION**

On June 1, 2013, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 4.2(a) (Communication with Persons Represented by Counsel) of the Rules of Professional Conduct.

*In summary:*
An attorney representing a client in a dispute sent opposing counsel a letter indicating the representation. Opposing counsel, who was a Utah attorney, responded to the email the


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same day. Even though the opposing counsel was licensed in Utah, the attorney sent an email indicating that the attorney had discovered that opposing counsel was not a licensed Utah attorney and that the attorney intended to delete opposing counsel's previous email without reading it and delete any future emails the attorney received without reading them. According to opposing counsel's notarized statement, opposing counsel responded to the Utah attorney's email the same day and provided the Utah attorney the opposing counsel's Utah Bar number. Even so, the attorney directly contacted opposing counsel's client regarding the possibility of settling the dispute. The attorney admitted that the attorney contacted the client when the attorney knew that the client was represented by counsel. The Utah attorney's mental state was negligent. There was little or no injury caused by the Rule violation.

## ADMONITION

On May 20, 2013, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 3.1 (Diligence) of the Rules of Professional Conduct.

*In summary:*

The attorney represented five defendants in a civil case. On the first day of trial, the attorney informed the court that the attorney had a separate matter set before another judge. The attorney left the courtroom to go deal with that matter. The attorney indicated that an attorney representing one of the other defendants would cover for the attorney in the trial. The other attorney was not co-counsel with the attorney. The attorney returned to the courtroom about an hour later, but then left again late in the afternoon and did not return that day. The attorney never asked the court for permission to leave the trial. The next day, the attorney was late for the trial, because the attorney had been in another courtroom on another matter. Between the first and second day of the trial, the attorney missed over three hours of court time. Later, the trial court entered an Order finding that the attorney developed a course of misconduct during the trial. The trial court found the attorney in contempt of court for the attorney's actions. The sanction was 30-days in jail, which was suspended on the condition that the attorney pay a fine. The attorney's mental state was negligent. There was little or no injury given that the defendants' interests were aligned and the attorney's clients had no defenses that were distinct from the other defendants.

*Mitigating factors:*

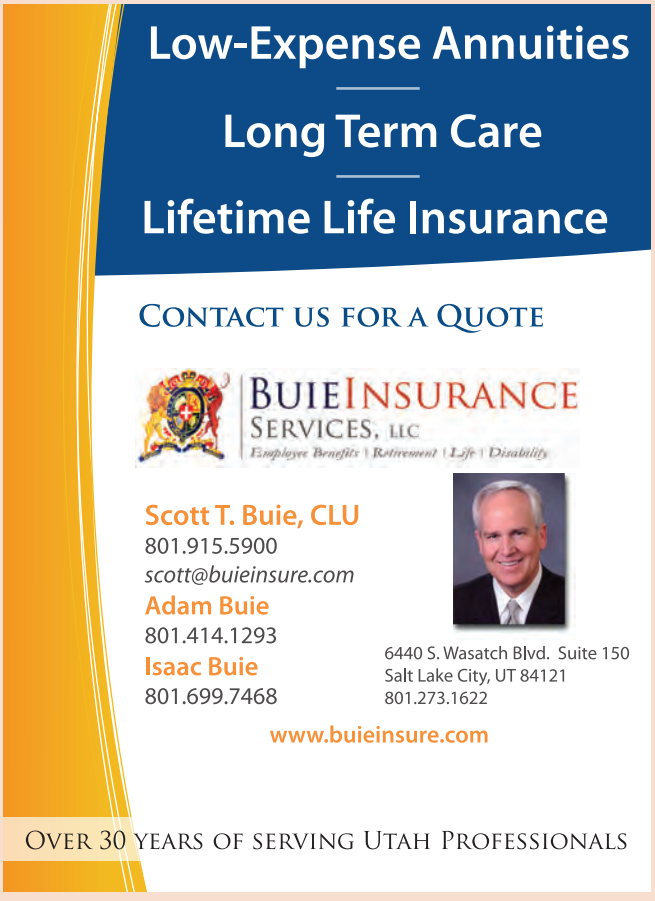
Absence of dishonesty or selfish motive; good faith effort to make restitution and rectify the consequences of the attorney's conduct; imposition of other penalties and sanctions; and remorse.

## RESIGNATION WITH DISCIPLINE PENDING

On July 10, 2013, the Utah Supreme Court entered an Order Accepting Resignation with Discipline Pending concerning James B. Belshe for violation of Rule 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

While working for a law firm, Mr. Belshe submitted reimbursement requests for travel expenses purportedly related to meetings with clients. However, Mr. Belshe did not meet with clients and was actually billing the clients for personal travel. While working for another law firm, Mr. Belshe caused a settlement check to be paid directly to the client, rather than the firm, and then directed the client to pay an expert fee to a consulting company that was owned by Mr. Belshe. Mr. Belshe improperly received funds to which he was not entitled and which belonged to the firm.

## Discipline Corner

### ADMONITIONS

1. On May 6, 1993, a Screening Panel of the Ethics and Discipline Committee of the Utah State Bar voted to admonish an attorney for the attorney's failure to properly supervise a legal assistant who contacted a Creditor and stated that the attorney represented certain parties, had filed a Chapter 13 Bankruptcy on their behalf, and the Creditor should not expect to receive the next payment due. The information given was incorrect and the Screening Panel found that the lack of supervision by the attorney was the cause.

2. An attorney was admonished by a Screening Panel pursuant to Rule VII(f) of the Procedures of Discipline for violating Rule 1.5(c), FEES. The attorney initially entered into a written hourly fee agreement to represent the client in a civil action. Subsequently, due to the client's failure to remain current with the monthly statements, the attorney had a telephone discussion with the client, purporting to change the fee agreement to include an additional 15% contingency fee. The attorney detailed the proposed change in a letter to the client soliciting the client's acknowledgement. The client did not respond. Upon settlement of the case, the attorney, in addition to the hourly fees, deducted 15% from the settlement proceeds. The client disputed the additional attorney fees, denied having had any discussion with the attorney regarding the change in the fee structure and reported the matter to the Bar.

### PRIVATE REPRIMANDS

3. On June 1, 1993, the Board of Bar Commissioners approved a Discipline by Consent which Privately Reprimanded an attorney for violating Rules 1.2(a), SCOPE OF REPRESENTATION, 1.3, COMMUNICATION, 1.4(a), COMMUNICATION, 1.13(b), SAFEKEEPING OF PROPERTY, and Rule 8.4(d), MISCONDUCT.

In or about August 1990, an attorney was retained to obtain child and spousal support on behalf of a client who was separated from her husband. Between November 1990, and April 1991, the attorney failed to provide any assistance to the client even though she was in dire financial circumstances. In April 1990, the attorney failed to file an objection to an Order to Show Cause as to why the client's case should not be dismissed for failure to prosecute. This ultimately led to a reduction in the amount of support due the client. Between November 1990 and April 1991, the attorney failed to keep the client informed as to the status of the case and to respond to requests for information. Subsequently, the attorney failed to take timely action to prevent the client's husband from liquidating marital property. The attorney also lost evidence entrusted to the attorney by the client. During this period of time the attorney was not receiving any fees. However, instead of withdrawing as counsel the attorney limited the quality and quantity of services to the detriment of the client.

4. On April 30, 1993, the Board of Bar Commissioners upheld the decision of a Screening Panel of the Ethics and Discipline Committee privately reprimanding an attorney for violating Rule 4.4, RESPECT FOR RIGHTS OF THIRD PERSONS. The attorney violated this Rule by writing to the ecclesiastical authorities of opposing counsel's church wherein the attorney suggested opposing counsel was violating the tenets of his faith by representing a client who would not willingly pay child support.

5. On April 30, 1993, the Board of Bar Commissioners upheld the decisions of a Screening Panel privately reprimanding an attorney for violating Rule 1.3, DILIGENCE, and Rule 1.4(a), COMMUNICATION, by undertaking to represent clients in a bankruptcy case and failing, thereafter, to provide any meaningful legal services for a period of thirteen months at which time the services were terminated by the clients. Additionally, the attorney failed to keep the clients informed as to the status of their case.

6. On April 30, 1993, an attorney was privately reprimanded pursuant to the terms of a Discipline by Consent for violating Rule 1.3, DILIGENCE. The attorney failed to calendar a follow-up date with the clients who were to furnish information with which to respond to pending discovery requests. A timely response to discovery was not submitted. Subsequently, a summary judgment was entered against the attorney's clients, not on the basis of the attorney's failure to timely file a response to requests for discovery, but rather the inadequate nature of some of the responses and the attorney's failure to designate experts. The inadequate responses were the consequence of failing to diligently seek the information necessary to adequately respond to discovery.

7. An attorney was privately reprimanded by a Screening Panel on June 24, 1993, for violating Rules 8.4(c) MISREPRESENTATION and 8.4(d), MISCONDUCT. On or about July 16, 1991, the attorney subpoenaed an expert witness to testify on behalf of the attorney's client at a deposition on July 17, 1991. The expert was retained to conduct a child custody evaluation. Previously, the attorney had sent the witness a letter agreeing to pay the witness for the extra time that had been involved in two previously postponed depositions and the time to be expended at the deposition on July 17, 1991. The expert witness complied with the attorney's request to send copies of the materials to designated people.

The witness contacted the attorney several times about the bill and the attorney did not dispute that the payment was owed. The expert witness routinely works with attorneys and the court in child custody matters and testified that, if the attorney's attitude was to prevail, expert witnesses would not testify when asked. In mitigation, the attorney paid restitution within the time designated by the Screening Panel to avoid a formal complaint. In aggravation, the attorney received the service and represented in writing that payment would be made. The witness' allegations were factually documented and the witness had a right to expect compensation unless some other arrangement was clearly made by counsel.

8. An attorney was privately reprimanded on June 24, 1993, by a Screening Panel for violating Rule 1.4(a), COMMUNICATION. On or about March 12, 1992, the attorney was retained to represent the client in a divorce action. The attorney failed to answer several phone calls and several letters from the client between March 12, 1992 and June 29, 1992. The attorney continued to send billing information and letters regarding court

appearances to the wrong address from March 29, 1992 through June 15, 1992, even though a correct address had been provided on three occasions.

The client appeared in court on June 29, 1992 without the attorney because the attorney had been called out of town. The judge granted the default divorce and signed the Decree of Divorce on June 29, 1992 even though the attorney was not present. The client did not receive a letter from the attorney explaining that a continuance was necessary until several days after the Decree of Divorce was signed, even though the letter was dated June 25, 1992. The Screening Panel found that there were no mitigating facts. In aggravation, the Screening Panel found the attorney's failure to effectively communicate the need to continue the hearing caused great distress to the client which could have been avoided.

**PUBLIC REPRIMAND**

9. On June 28, 1993, Anthony M. Thurber was publicly reprimanded by the Utah Supreme Court pursuant to a Discipline by Consent for violating Rule 1.4, COMMUNICATION. The basis of this action was that on May 11, 1990, Mr. Thurber settled his client's personal injury case in the amount of $50,000.00. On or about June 7, 1990, Mr. Thurber executed the settlement documents on behalf of his client. Prior to executing the settlement documents Mr. Thurber failed to communicate with his client to confirm that she had in fact executed a Power of Attorney to facilitate the settlement. The client disagreed with the net recovery and initially refused to accept her share of the settlement proceedings.

10. On June 28, 1993, Donn E. Cassity was publicly reprimanded by the Supreme Court for violating Rules 1.5(a) FEES, Rule 1.3, DILIGENCE, Rule 1.4(b), COMMUNICATION, and Rule 5.3(a), SUPERVISION OF NONLAWYER ASSISTANTS. This was done pursuant to a Discipline by Consent which resolved two Formal Complaints. In the matter involving the fee violation, Mr. Cassity was retained by the seller of real property to resolve a dispute with the purchaser. During the course of that representation Respondent included $4,100.00 in fees that had already been paid to Respondent by the seller. He also generated additional fees to the seller in the amount of $11,713.88 to collect on an outstanding debt to the seller in the amount of $1,990.00.

In the case involving the failure to supervise nonlawyer assistants, Mr. Cassity permitted a paralegal in his office to meet with a client and provide advice to the client regarding the differences between Chapter 7 and Chapter 13 bankruptcies. This resulted in an election being made as to which Chapter to file without the benefit of advice from an attorney. Thereafter, Mr. Cassity did not meet with or explain to the client his rights under the various bankruptcy chapters prior to the filing of the petition. Further, there was inadequate communication between Mr. Cassity and the client which resulted in the client failing to obtain proof of insurance on his automobile. This resulted in the loss of the automobile in the bankruptcy proceedings. Inadequate communication and lack of diligence were also exhibited when Mr. Cassity sent the client to attend a hearing by himself on a Motion to Lift the Automatic Stay. The client could not find the location of the hearing and, therefore, the hearing was not attended by either Mr. Cassity or his client and the Automatic Stay was lifted. Thereafter, Mr. Cassity attempted to regain his client's automobile but was not successful.

**SUSPENSIONS/SUPERVISED PROBATIONS**

11. On June 29, 1993, the Utah Supreme Court entered two orders placing Evan Hurst on suspension for one (1) year each, to run consecutively. The suspensions were stayed so long as Mr. Hurst satisfactorily completed supervised probation for two periods of one (1) year each to run concurrently. The discipline was imposed for violating Rule 1.3 DILIGENCE, 1.4(a) COMMUNICATION and 8.1(b) BAR ADMISSION AND DISCIPLINARY MATTERS. In both instances, Mr. Hurst failed to perform any meaningful services on behalf of the clients after having been retained to represent them and having been paid a fee. He further failed to respond to requests for information by the clients, failed to keep them informed as to the status of their cases and failed to respond to requests for information from the Office of Bar Counsel.

12. On June 28, 1993, Steven R. Angerbauer was suspended from the practice of law for violating Rule 8.4(b), MISCONDUCT, for a period of 6 months followed by supervised probation for one year pursuant to the terms of a Discipline by Consent. The basis of this action was the issuing of a sizable bad check. The check was not associated with the practice of law or client funds and the conduct did not involve moral turpitude.

13. On June 28, 1993, attorney John M. Bybee entered into a Discipline by Consent with the Office of Bar Counsel agreeing to a nine (9) month suspension starting October 1, 1993, for violating Rules 1.3, DILIGENCE; 1.13(c), SAFEKEEPING PROPERTY; and 8.4(c), MISCONDUCT related to representing a client in a custody dispute and personal injury action pending in the State of California. Mr. Bybee accepted representation in late April 1992 knowing that a hearing had been scheduled for May 5, 1992. Thereafter, he attempted, unsuccessfully, to continue the hearing. Notwithstanding his failure to obtain a continuance, he failed to appear at the custody hearing which resulted in a change of custody from Mr. Bybee's client to the opposing party. Subsequently, the client retained local counsel in California and was able to regain custody. Six (6) months of Mr. Bybee's suspension shall be stayed upon his successful completion of an actual three (3) months suspension. Upon his reinstatement, Mr. Bybee shall be placed on a two (2) year supervised probation, shall pay the registration fee and successfully complete the six (6) hour Utah State Bar Ethics School and make restitution in the amount of $276.92 to his former client. In the event that Mr. Bybee violates any of the terms of his Suspension/Probation or any of the Rules of Professional Conduct, he shall serve the entire period of his suspension.

14. On June 28, 1993, attorney D. Richard Smith entered into a Discipline by Consent with the Office of Bar Counsel agreeing to a six (6) months and one (1) day suspension starting August 1, 1993 for violating Rules 1.1, COMPETENCE; 1.2(a), SCOPE OF REPRESENTATION; 1.3, DILIGENCE; 1.4(a), COMMUNICATION; 1.5(c), FEES; 1.14(d), DECLINING OR TERMINATING REPRESENTATION; 5.3(c), RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS; 8.1, BAR ADMISSIONS AND DISCIPLINARY MATTERS; and 8.4(a, b, & c), MISCONDUCT. Four (4) months and one (1) day of Mr. Smith's suspension shall be

stayed upon his successful completion of two (2) months suspension. Thereafter, Mr. Smith shall be placed on a one (1) year supervised probation consecutive to his supervised probation in a prior disciplinary matter. Mr. Smith is also required to pay the registration fee and successfully complete the six (6) hour Utah State Bar Ethics School. In mitigation, the Office of Bar Counsel considered Mr. Smith's decision to sever all affiliation with the law firm of Morris & Morris. In the event that Mr. Smith violates any of the terms of his Suspension/Probation or any of the Rules of Professional Conduct, he shall serve the entire period of his suspension.

15. On June 28, 1993, attorney Dean H. Becker entered into a Discipline by Consent with the Office of Bar Counsel and was placed on a one (1) year suspension starting August 1, 1993, for violating Rules 1.1, COMPETENCE; 1.3, DILIGENCE; 1.4, COMMUNICATION; 1.13(b), SAFEKEEPING PROPERTY; 1.14(d), DECLINING OR TERMINATING REPRESENTATION; 3.2, EXPEDITING LITIGATION; 8.1(b), BAR ADMISSIONS AND DISCIPLINARY MATTERS; and 8.4(c) MISCONDUCT. In one of the legal matters entrusted to Mr. Becker, he failed to file a complaint or engage in negotiations with the opposing party on behalf of his client for nearly three (3) years. Notwithstanding said failure, Mr. Becker continued to misrepresent to his client that he was engaged in ongoing negotiation with the opposing party's insurance carrier and had received offers of settlement. In another matter, Mr. Becker was retained in 1988 to defend a client in a civil dispute. After filing an answer and a counterclaim, he failed to pursue his client's counterclaim and the matter was ultimately dismissed for failure to prosecute. Mr. Becker also neglected to complete a will and trust for which he was retained in November of 1991. Nine (9) months of Mr. Becker's suspension shall be stayed upon his successful completion of an actual sixty (60) day suspension. Thereafter, Mr. Becker shall be placed on a two (2) year supervised probation and shall make restitution of $3,802.50 to four of his former clients, submit to a binding fee arbitration with another former client, pay the registration fee and successfully complete the six (6) hour Utah State Bar Ethics School. In the event that Mr. Becker violates any of the terms of his Suspension/ Probation or any of the Rules of Professional Conduct, he shall serve the entire period of his suspension.

16. On June 28, 1993, attorney Aric Cramer entered into a Discipline by Consent with the Office of Bar Counsel and was given a ninety (90) day suspension for violating Rules 1.1, COMPETENCE; 1.4, COMMUNICATION; and 1.13(b), SAFEKEEPING PROPERTY in representing two clients in bankruptcy proceedings. Mr. Cramer filed two Chapter 13 petitions without meeting with the clients and establishing an attorney-client relationship. Thereafter, he failed to appear at the creditor's meetings resulting in the dismissal of the petitions. After the dismissal, Mr. Cramer prepared and filed for the second time two (2) Chapter 13 petitions which he knew or should have known could not be confirmed, considering the totality of his clients' circumstances. Upon denial of the petitions and the trustee's return of the clients' funds, Mr. Cramer endorsed the checks by signing the clients' names pursuant to a power of attorney which he obtained without disclosing to the client the significance and the consequences of the same. Thereafter, Mr. Cramer negotiated the checks and kept the funds as his fees. Mr. Cramer's suspension was stayed and he was placed on a two (2) year supervised probation, ordered to pay $1,800.00 in restitution to his former clients, pay the registration fee and successfully complete the six (6) hour Utah State Bar Ethics School. In the event that Mr. Cramer violates any of the terms of his Suspension/ Probation or any of the Rules of Professional Conduct, he shall serve the entire period of his suspension.

17. Clayne I. Corey was placed on interim suspension from the practice of law on December 28, 1992. On June 29, 1993, pursuant to the terms of a Discipline by Consent, his interim suspension was extended to October 1, 1993. As a condition precedent to reinstatement Mr. Corey must make restitution of unearned fees to twelve clients. Upon being reinstated to practice law he will be placed on supervised probation for one year. Further, any future violations of the Rules of Professional Conduct will result in his suspension from the practice of law for the remainder of the probationary period. This action was taken for violating Rule 1.3, DILIGENCE, Rule 1.4(a), COMMUNICATION, Rule 1.5(a), FEES, and Rule 1.13(b), SAFEKEEPING PROPERTY by accepting fees from clients and failing, thereafter, to provide any meaningful legal services.

18. On May 24, 1993, the Utah Supreme Court granted attorney C. DeMont Judd's Petition for Suspension for Disability disposing of certain formal and informal discipline matters against Mr. Judd. Mr. Judd will not be eligible for readmission until June of 1998, and then only upon a showing of his recovery from his disabilities.

**RESIGNATION WITH DISCIPLINE PENDING**

19. On June 28, 1993, attorney Lorin Pace Resigned with Discipline Pending under Rule VII(k), and agreed to refrain from the practice of law for a minimum of five (5) years for violating Rules 1.3, DILIGENCE; 1.4(a), COMMUNICATION; 1.13(b), SAFEKEEPING PROPERTY; 1.14(d), DECLINING OR TERMINATING REPRESENTATION; and 8.1(b), BAR ADMISSION, in representing two clients in a contract dispute and a probate matter. In the case involving a contract dispute, Mr. Pace failed to file a response to a motion for summary judgment which resulted in a judgment being entered against his client. As a condition precedent to his readmission, Mr. Pace is required to make restitution to his former client. In the probate matter, Mr. Pace collected the proceeds of a $60,000.00 life insurance policy and deducted approximately $26,000.00 as costs and fees. Further, he failed to deliver to his client the balance of the life insurance policy for over two (2) years. In addition, Mr. Pace was unable to locate and return to his client some original documents given to him during the course of his representation. In mitigation Mr. Pace has agreed to submit to a binding fee arbitration. The Board of Bar Commissioners considered Mr. Pace's long record of service (28 years) to the organized Bar and the injuries he sustained in a fall in 1990 which continues to interfere with his ability to practice law.

# Discipline Corner

## DISBARMENTS

El Ray F. Baird was disbarred pursuant to stipulation on June 16, 1992, for continuing to practice law in violation of a previous Order of Discipline entered by the Supreme Court on November 6, 1991. The evidence submitted in support of a Motion for Order to Show Cause substantiated that Respondent continued to represent his clients in a personal injury case and in bankruptcy cases following his suspension. In each instance he failed to notify his clients he had been suspended, accepted new clients following his suspension and collected or attempted to collect legal fees. Additionally, he failed to comply with Rule XVIII(a) of the Procedures of Discipline of the Utah State Bar which requires that within 20 days of the effective date of his suspension he notify his clients of his suspension, return client files and within 40 days of his suspension file proof of compliance with this Rule with the Supreme Court.

Jay W. Fitt was disbarred by the Utah Supreme Court on June 25, 1992, for violating Rule 1.3, (Diligence), Rule 1.4, (Communication), Rule 1.5(a), (Fees), Rule 1.13(b), (Safekeeping of Property), and Rule 8.4(c), (Misconduct), of the Rules of Professional Conduct. These violations stemmed from accepting fees from clients to represent them in criminal matters and, thereafter, providing no legal services. On September 24, 1990, he accepted $2,500.00 to represent a client in his appeal of drug related charges but did not file the appeal. In October 1989, Mr. Fitt accepted $25,000.00 from the parents of an inmate in the Utah State prison. No meaningful legal services were provided. On August 1, 1990, Mr. Fitt accepted a fee of $20,000.00 to represent another prisoner in Utah State Prison seeking to have his conviction overturned. In this instance $5,000.00 was to be kept as a retainer and the balance of the funds were to be placed in Mr. Fitt's trust account and withdrawn upon consent of the client as legal services were provided. Mr. Fitt failed to deposit the money in the trust account and performed no legal services. Mr. Fitt has been ordered to make restitution to these clients as a condition precedent to readmission to the Bar.

## SUSPENSIONS

On May 19, 1992, the Supreme Court entered an Order suspending John R. Bucher from the practice of law for a minimum period of 6 months and 1 day pursuant to Rule XIX, SUSPENSION FOR DISABILITY, of the Procedures of Discipline of the Utah State Bar. This Order was entered pursuant to Discipline by Consent wherein Mr. Bucher stipulated to this action in settlement of the complaints, described hereinafter, which charged that he violated Rules 1.3, (Diligence), Rule 1.7, (Conflict of Interest), Rule 1.13(b), (Safekeeping of Property), Rule 1.14, (Declining or Termination Representation), and Rule 8.4(c) (Misconduct).

Case number 1 involved the allegation that upon learning that he had a conflict of interest in a domestic relations matter, he failed to withdraw from the case or take action to adequately protect the client's interests including returning the client file and arranging for new permanent counsel. Consequently, counsel failed to appear on behalf of the client at a Show Cause hearing which operated to the detriment of the client. Additionally, when the client requested return of the unearned attorney's fees they were not then available having not been separately maintained and preserved as required by Rule 1.13.

Case number 2 alleged improprieties involving the use of his trust account and involved a situation wherein Respondent placed funds in his account in connection with the sale of a client's personal property stemming from a domestic relations matter. All of the funds were not available when requested by the client and a full accounting of the funds was not provided. Respondent has since made complete restitution to the client in the amount of $810.00

Case number 3 involved the representation of clients in criminal matters who had interests in conflict with each other. One of the clients was charged with burglary which was the means whereby he supported a drug habit. The other client was a suspected supplier of drugs to Respondent's other client. This dual representation prevented Respondent's first client from entering a plea bargain which included testimony against his drug supplier.

Jerald N. Engstrom was placed on indefinite interim suspension by the Supreme Court on June 25, 1992, pending final disposition of disciplinary action currently pending against him as a result of his conviction on January 31, 1991, in the United States District Court, District of Utah, of 5 counts of Misapplication of Funds by a Bank Officer. The conviction arose when Mr. Engstrom became involved with a group of people who were forming a corporation to purchase the IML terminal when that company was in bankruptcy in 1984. Mr. Engstrom had an interest in the transaction in that it was proposed that he would be an officer and general counsel in the new corporation. The purchase was to be facilitated through the bank where Mr. Engstrom was employed. Mr. Engstrom represented to the bankruptcy trustee, as a representative of the bank, that funds totaling $250,000.00 had been deposited in his bank by the proposed purchasers of the terminal when in truth and in fact no such funds were deposited. This ultimately caused Mr. Engstrom to have to pay $256,712.67 to the trustee of bank funds for which no corresponding deposit had been made. Through other fund manipulations by Mr. Engstrom relating to this transaction his bank ultimately lost the sum of $2,081,712.00.

## PUBLIC REPRIMANDS

On June 9, 1992, the Supreme Court entered an Order Publicly Reprimanding Gary J. Anderson. Mr. Anderson was charged with violating Rules 1.3 (Diligence) and 1.4(a) (Communication) in that he was retained in November 1989 by the Complainant to file and complete an uncontested divorce. The case was finally concluded on January 8, 1991 following a default hearing. Mr. Anderson denied the allegations of the disciplinary complaint but his Answer was stricken, default entered and a sanction imposed for his failure to respond to discovery requests filed by Office of Bar Counsel and his failure to participate in a pre-trial conference.

Arden E. Coombs was publicly reprimanded for violation of Rule 1.3, (Diligence), and Rule 1.4(b), (Communication), of the Rules of Professional Conduct. On or about June 15, 1988, Mr. Coombs agreed to represent two clients in a civil suit which had been filed against them in the Circuit Court of Weber County. Mr. Coombs failed to file a timely Answer to the Complaint resulting in a

Default Judgment. Mr. Coombs filed a Motion to Vacate the Judgment but the motion was denied. Judgment was entered against his clients in the amount of $3,724.36.

**PRIVATE REPRIMANDS**

An attorney was privately reprimanded and placed on one year supervision by a Screening Panel for violating Rule 1.13 (Safekeeping of Property) of the Rules of Professional Conduct. Prior to April 1990, the attorney was retained to defend the client in several criminal matters. The client was ultimately incarcerated. In April of 1990, the attorney agreed to manage the financial affairs of the client through the use of the client's First Security Bank ATM card during the incarceration. From April Through July of 1990 and again October through December of 1990 the attorney and individuals under his control made numerous withdrawals using the ATM card, failing to provide an accounting notwithstanding the client's repeated requests. There was conflicting testimony as to the validity of the document purporting to give the attorney a limited power of attorney pursuant to which the withdrawals were made. The attorney kept no ledger regarding payments made to third persons on behalf of the client. Should the attorney fail to comply with the terms and conditions of the supervision the matter will be reconsidered by the Screening Panel for imposition of a formal complaint.

An attorney was privately reprimanded and ordered to make restitution for violating Rules 1.3 (Diligence), 1.4 (Communication) and 1.13(b) (Safekeeping Property) of the Rules of Professional Conduct of the Utah State Bar. The attorney was retained in August 1990 to file a complaint involving a contract dispute. The attorney researched the issues and concluded there was no cause of action. However, he failed to communicate his opinion to the client and failed to refund the unused portion of the retainer fees notwithstanding the client's written demands.

An attorney received a Private Reprimand for violation of Rule 1.3, (Diligence), and Rule 1.13(b), (Safekeeping of Property), of the Rules of Professional Conduct. The attorney was retained on or about January, 1990, to represent a client in a bankruptcy matter. Respondent failed to inform a collection agency of the filing of the petition for bankruptcy which resulted in garnishment of the client's payroll check. Additionally, the attorney deposited $944.75 belonging to the client into a trust account on or about October 18, 1990, and failed to deliver the funds to the client until on or about January 3, 1992.

An attorney received a Private Reprimand and agreed to make restitution to the client in the amount of $7,000.00 for violation of Cannon 6, DR-6-101(A) (3), (Diligence), and Rule 1.4(a) (b), (Communication), of the Rules of Professional Conduct. The client retained the attorney in August, 1981 to pursue a wrongful death claim arising out of the death of her husband. During the course of this representation the attorney entered into negotiations with the client to purchase certain real property from the client. The attorney drafted the Real Estate Purchase contract which provided for brokerage commissions and attorney's fees both of which were to be paid to the attorney. The attorney never disclosed to the client that the attorney would be paid both fees.

**ADMONITIONS**

An attorney was admonished for lack of diligence (Rule 1.3) in failing to obtain a timely judgment. The attorney was retained on or about February 21, 1991 to represent a client in a collection matter. The attorney filed the complaint on April 2, 1991, and a default was requested in June, 1991, but not signed by the judge because it contained a request for attorney's fees. The attorney delayed filing the Amended Default, deleting the request for attorney's fees, until October 8, 1991. On October 21, 1991 the attorney misrepresented to his client that he had obtained a Writ of Execution and had delivered it to a Constable. In fact, the Writ was not obtained until December 30, 1991 and delivered to the constable on December 26, 1991, lacking proper execution. The delay in serving the Writ permitted the debtors to move and liquidate their assets.

**REINSTATEMENTS**

On May 12, 1992, Kenn Martin Hanson was reinstated by the Supreme Court having complied with the terms of his suspension and Rule XVIII of the Procedures of Discipline.

On May 27, 1992, David K. Smith was reinstated by the Supreme Court having complied with the terms of his suspension and Rule XVIII of the Procedures of Discipline.

# Appellate Courts Judicial Nominating Commission Applicants Sought

The Board of Bar Commissioners is seeking applications from Bar members for the Bar appointments of alternates to the Appellate Courts Nominating Commission to fill the unexpired terms of Michael N. Martinez and John Paul Kennedy, ending August 1, 1994. Alternates would serve in the place of Bar appointed commissioners, Francis M. Wikstrom and Peter Stirba, if they were unable to serve. Bar appointed alternates must be of different political parties. This nominating commission is for the Supreme Court and the Court of Appeals.

Bar members who wish to be considered for this appointment must submit a letter of application, including resume and designation of political affiliation. Applications are to be mailed to John C. Baldwin, Executive Director, Utah State Bar, 645 South 200 East #310, Salt Lake City, Utah 84111, and must be received no later than 5:00 p.m., on September 1, 1992.

# Attorney General Candidates' Forum

The Women Lawyers of Utah and the University of Utah Women's Law Caucus will co-sponsor a political forum for the Attorney General candidates on Thursday, August 20, 1992. All are welcome to attend this free event. The forum will be held in the Governor's Board Room at the Utah State Capitol. Refreshments will be served at 5:30 p.m. Candidate presentations will begin at 6:00 p.m. with questions to follow. For more information, contact Monica Whalen Pace at 532-1234.

# Discipline Corner

## PRIVATE REPRIMAND

1. An attorney was privately reprimanded on January 28, 1993, for violating Rule 1.1, Competence, and Rule 8.1, Bar Admission and Disciplinary Matters. The attorney was appointed in February 1990 to appeal the client's criminal conviction for charges of D.U.I., assault on a police officer, possession of drug paraphernalia and failure to yield. Shortly thereafter, the attorney filed the Notice of Appeal but failed to file a docketing statement. Ultimately, on May 2, 1990, the appeal was dismissed. On March 4, 1992, the client filed a Bar Complaint. Initially, the attorney failed to respond to the Bar Counsel's request for information. Subsequently, the attorney appeared before the Screening Panel of the Ethics and Discipline committee and testified to the Committee that during the representation the client was extremely abusive. He also had an extensive criminal record which, initially, caused him to conclude that the appeal was futile and so instructed the attorney. Subsequently, he had a change of mind and instructed the attorney to file a notice of appeal.

In mitigation, the Committee considered the client's substantial abusive attitude which adversely affected the communication between the attorney and the client, the attorney's candidness at the hearing, and his genuine remorse over the entire incident.

2. An attorney was privately reprimanded on January 28, 1993, for violating Rule 1.1, Competence; Rule 1.2(a), Scope of Representation; Rule 1.4(a), Communication; Rule 1.5(a), Fees; and Rule 1.14(d), Declining or Terminating Representation. The attorney accepted a $400.00 retainer fee in September of 1991 to represent a client in a divorce action in which, due to the opposing party's prior history of sexual abuse of children and subsequent conviction therefore, the issues of custody and visitation were of serious concern to the client. The attorney failed to act upon the client's request to obtain a restraining order, making it necessary for the client to appear before the Juvenile Court pro se and obtain a protective order. During the period September 1991 through February 1992, the attorney failed to communicate with the client. Further, upon termination of the attorney-client relationship and substitution of counsel, the attorney failed to comply with the client's requests and provide the client file or a copy thereof to the client or the substitute counsel. Ultimately, in February of 1992, the matter went to trial. However, due to the attorney's failure to prepare an income declaration or a child support worksheet pursuant to the Uniform Child Support Guidelines the court had a difficult time determining the amount of child support.

In mitigation, the Committee considered the fact that due to the opposing party's criminal conviction and prior stipulation curtailing any contact with minor children, the failure to obtain a restraining order was in fact a moot issue. Further, the client's multiple, daily attempts at contacting the attorney's office and her expectation to receive daily calls in return were unreasonable. Also, in mitigation the Committee noted that the attorney is a recovering substance abuser with multiple personal problems. In aggravation, the Committee considered the attorney's two (2) prior formal complaints in 1988 and 1990 and two Private Reprimands in 1990.

3. An attorney was privately reprimanded on January 28, 1993, for violating Rule 1.3, Diligence; and Rule 1.4(a), Communication. The attorney was retained in May of 1991 to pursue a claim for property damages sustained in an automobile accident in 1989 in which the opposing driver, an employee of the United States Forest Service, was cited. On June 12, 1991, the U.S. Forest Service made an offer of settlement. The attorney failed to convey the offer to the client until April of 1992. In the interim, the attorney relocated and failed to notify the client. The attorney failed to release the settlement proceeds to the client until May 27, 1992, subsequent to the filing of the Bar complaint.

In mitigation, the Committee considered the fact that the settlement proceeds were received from the U.S. Forest Service on or about April 13, 1992, and were disbursed on or about May 27, 1992. Further, the Committee considered the attorney's representation that their office was updating its computer system which will reduce similar problems in the future. However, the Committee, in aggravation, considered the attorney's lack of concern regarding the failure to act diligently.

4. An attorney was privately reprimanded on February 12, 1993, for violating Rule 1.3, Diligence. The attorney was retained in January of 1983 to represent the client in a divorce action. At the time, the client agreed to waive five (5) years of child support in exchange for the opposing party's equity interest in the family home. Accordingly, the attorney was directed to prepare an order for the court's signature entitling the client to receive child support commencing in September of 1988. The attorney failed to do so.

In mitigation, the Committee considered the lapse of time from 1983 to 1988 and the fact that the attorney ultimately filed the order which became retroactive and thus minimized any actual financial losses to the client. In aggravation, the Committee considered the attorney's initial misrepresentation to the client claiming the order had been filed.

5. On January 28, 1993, the Board of Bar Commissioners entered an Order of Discipline for a Private Reprimand against an attorney for violating Rule 8.4(d), Conduct Prejudicial to the Administration of Justice, of the Rules of Professional Conduct. This stemmed from an incident where the attorney was representing a minor in an action in juvenile court. The court ruled the relief being sought by the minor and remanded the youth to the custody of the parents. The attorney, with the aid of an assistant, took the minor out of the courthouse through a rear door, placed the minor in an automobile and drove the minor back to the attorney's office. The minor exited the automobile and had no further contact with the attorney. The parents were unaware of the whereabouts of the minor for some period of time thereafter. This conduct by the attorney prevented the parents from exercising parental control over the minor and had the effect of frustrating the order of the court.

## SUSPENSION

On February 11, 1993, the Utah Supreme Court entered an Order placing Richard S. Clark on suspension from the practice of law for one year. However, the period of suspension may be reduced to six months and one day provided restitution due clients is made within the first six months of suspension. This action was based upon two Formal Complaints wherein Mr. Clark was found to have violated Rule 1.3, Diligence, Rule 1.4(a),

Communication, Rule 1.5(c), Fees, and Rule 1.13(b), Safekeeping of Property, of the Rules of Professional Conduct of the Utah State Bar.

In the first Formal Complaint, Mr. Clark was paid $400 in February 1989 to represent a client in a domestic relations action that had already been initiated. Mr. Clark prepared and completed a Stipulation and Property Settlement Agreement but failed to have it executed by the parties. Subsequently, Mr. Clark was paid an additional $200.00 but failed to provide any legal services on behalf of his client. Thereafter, he failed to respond to requests for information and failed to refund any of the unearned fees.

In the second Formal Complaint, Mr. Clark was retained to represent a client in a personal injury action. When the case was settled Mr. Clark took his fee and remitted the balance to the client without paying existing medical bills. Mr. Clark agreed to pay his client $5,000.00 less any sums paid to medical providers. Thereafter, he failed to pay the medical providers or his client pursuant to their agreement.

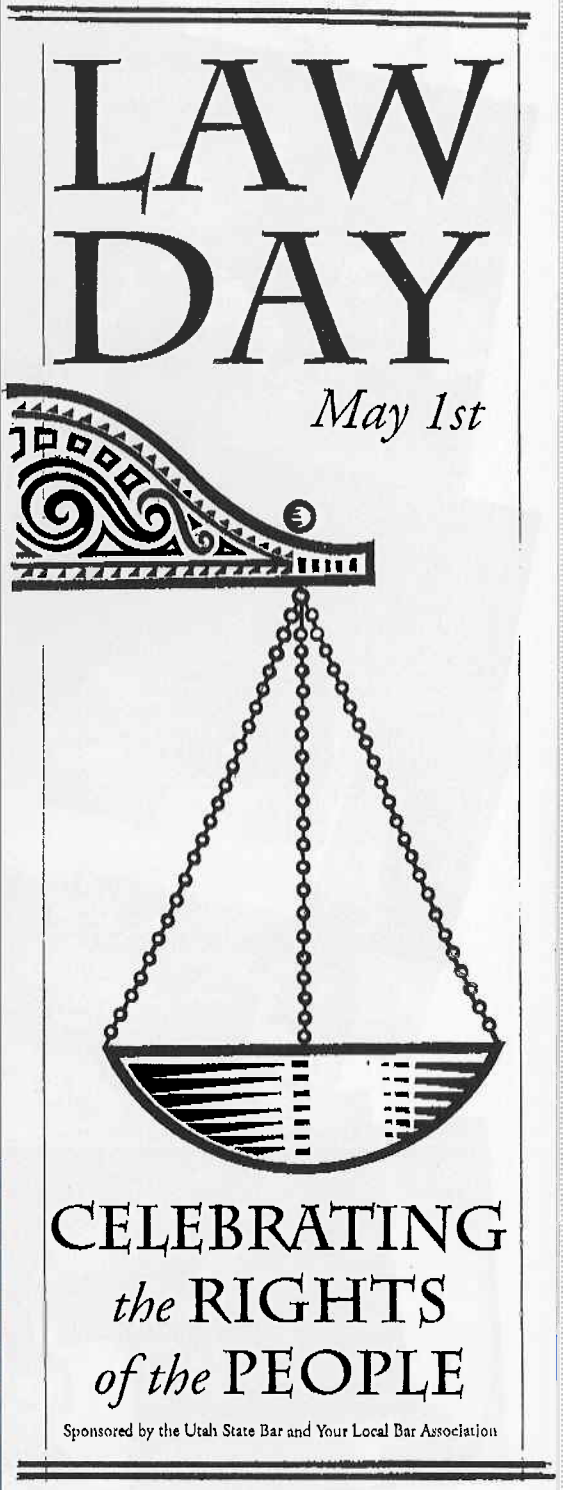
## Seminar on Mental Health and Law to Be Held

The Second Annual Interdisciplinary Seminar on Mental Health, Law, Policy and Practice will be held May 7-8, 1993, at the College of Law, University of Utah. The seminar is jointly sponsored by the State of Utah Divisions of Mental Health and Services to the Handicapped, the Office of Courts Administration, Utah State Hospital, and the University of Utah's Department of Psychology and College of Law.

Presenters, representing a variety of mental health professionals, the judiciary, and prosecuting and defense attorneys, will address a variety of pre-trial evaluation and treatment issues. Registration fee for two-day seminar is $75. CLE credits applied for. For further details and registration materials, contact either Stephen L. Golding, Director of Clinical Training, University of Utah, 581-8028, or Sharon Angus, Division of Continuing Legal Education, 581-5809.

**Thanks to the Mid-Year Meeting Committee for a well-planned and well-executed Utah State Bar Mid-Year Meeting.**

Earl Jay Peck — Chair, Thomas B. Brunker, Elizabeth S. Conley, Robert P. Faust, Marilyn M. Henrikson, R. Clayton Huntsman, Maxwell A. Miller, Mark W. Nash, Carolyn Nichols, E. Jay Sheen, Gregory M. Simonsen, Peter Stirba, Ann Swensen, Thomas L. Willmore, H. James Clegg — Commission Liaison.




## 1993 Annual Meeting Awards

The Board of Bar Commissioners is seeking nominations for the 1993 Annual Meeting Awards. These awards have a long history of honoring publicly those whose professionalism, public service and personal dedication have significantly enhanced the administration of justice, the delivery of legal services and the building up of the profession. Your award nomination must be submitted in writing to Kaesi Johansen, Convention Coordinator, 645 South 200 East, Suite 310, Salt Lake City, Utah 84111, no later than **Wednesday, April 14, 1993**. The award categories include:

1. Judge of the Year
2. Distinguished Lawyer of the Year
3. Distinguished Young Lawyer of the Year
4. Distinguished Section/Committee
5. Distinguished Non-Lawyer for Service to the Profession
6. Distinguished Pro Bono Lawyer/Law Firm of the Year

## Bob Miller Memorial Law Day Run

The 1993 Bob Miller Memorial Law Day Run is scheduled to begin Saturday morning, April 24, 1993 at 10:00 a.m. The 5-Kilometer race, now in its eleventh year, will again use the University of Utah College of Law as the staging area and finish line. The race will start at the Red Butte Gardens above the campus and will run a mostly downhill course. All law firms are encouraged to field teams and to enjoy the camaraderie of the race. Information about the race can be obtained from Howard C. Young of Parsons Behle & Latimer, 532-1234.

## CORRECTION

The advertisement on page 15 of the March 1993 issue for Rollins Burdick Hunter was incorrect. The firm has changed its name to Rollins Hudig Hall of Utah. Their address and phone number remain the same. We apologize for any inconvenience this has caused.

## Discipline Corner

### DISBARMENT

On June 3, 1996 the Hon. Timothy Hanson, Third Judicial District Court entered a default order disbarring attorney Robert J. Nielson, ("Nielson").

The Court found that in or about December, 1991, Nielson requested his client wire transfer $40,000.00 in funds to a closed trust account. Since the account was closed, the receiving bank issued a cashier's check made out to Nielson, personally. Nielson used the funds for his personal use and failed to account for and pay over the funds to his client. The Court found that the requested transfer, retention, and failure to account for the funds constitute knowing misconduct with the intent to benefit Nielson and caused serious financial harm to the client. The circumstances under which the funds were retained constitute serious criminal conduct involving theft and/or misappropriation. The acts of the misconduct by Nielson were intentional and involved dishonesty, deceit and/or misrepresentation which seriously, and adversely reflect on Nielson's fitness to practice law.

The Court found that Nielson repeatedly refused to comply with formal and informal discovery requests which obstructed the disciplinary process, his violations of the Rules involved dishonest or selfish motive, Nielson had substantial experience in the practice of law and extensive experience in areas of securities and securities regulation, and made no effort to pay restitution or account for the missing funds.

Applying Rules 4 and Rule 6 of the Standards for Imposing Lawyer Sanctions, the Court found that disbarment was the appropriate sanction. The Court ordered Nielson to pay restitution as a precondition for readmission.

### SUSPENSION

On June 6, 1996, Judge William A. Thorne of the Third District Court entered an Order suspending Paul R. Ince ("Ince") from the practice of law for fifteen (15) months, effective May 1, 1996. The Court specifically found that Paul R. Ince committed nineteen (19) major actions of misconduct over a fifteen (15) month period of time. These acts of misconduct included conversion of law firm funds, forged signatures and forgery of a notary stamp on a quitclaim deed, and other acts of dishonesty.

The Court found that the misconduct, conversion of funds and forgery rose to the level of criminal conduct. Ince's conduct also involved false swearing, misrepresentation, misappropriation, theft by deception and unlawful dealing of property by a fiduciary. The Court found that this misconduct seriously and adversely reflected on Ince's fitness to practice law.

As mitigating circumstances, the Court found that Ince had no prior record of discipline, had personal or emotional problems at the time of his violations, made timely, good faith restitution, had a good reputation, was remorseful and showed interim reform.

The Court found that, absent aggravating and mitigating circumstances, the appropriate discipline was disbarment. The Court found the mitigating circumstances outweighed the misconduct and imposed a fifteen (15) month suspension from the practice of law. The Court also ordered that Ince serve a period of probation supervised by the Office of Attorney Discipline for a period of twenty-four (24) months following the termination of his suspension, that, during the term of probation, Mr. Ince will spend a minimum of thirty (30) hours per month in service to the homeless through an agency or agencies approved by the Office of Attorney Discipline with the service being reported to the Office of Attorney Discipline on a monthly basis, that Ince should not handle client funds during the probationary period except upon full written disclosure of the Court's disciplinary order.

The Bar has filed an appeal on the issue of sanctions.

### INTERIM SUSPENSION

On May 13, 1996 Michael Lee was placed on Interim Suspension from the practice of law by the Hon. Pat B. Brian of the Third Judicial Court.

Judge Brian ordered that Mr. Lee be immediately suspended pending the outcome of disciplinary proceedings pursuant to Rule 19(b) and (c) of the Rules of Lawyer Discipline and Disability. Mr. Lee stipulated to the Interim Suspension after he pled guilty and was convicted of a one count felony information charging a violation of 18 U.S.C. § 1344(2) – Bank Fraud, on March 13, 1996. Lee admitted forging the signature of a payee on a check, opening an account in the name of the payee, and depositing the check into this account. Mr. Lee later transferred $109,712.58 from this account into an account at another institution, which was under his control.

### ADMONITION

On or about May 10, 1996, an Attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for the negligent violation of Rule 1.15(b) (formerly Rule 1.13(b)) – Safekeeping Property.

In or about 1990, the Complainant filed a bankruptcy proceeding through a different attorney. Due to substantial problems caused by the Complainant's former attorney, the Attorney in this action took over Complainant's bankruptcy. A hearing on the Chapter 13 Plan was to be held, but the Attorney had reviewed the previous attorney's work and determined that an amended plan would have to be filed and did file the plan. Confirmation of the amended plan was denied. The stated reason for the dismissal was "debtor's plan is not feasible at this time due to insufficient income."

Immediately after the plan had been dismissed, the Complainant contacted the Attorney to determine what to do. At that meeting, the Complainant was informed that a new plan would be filed. Shortly afterwards, the Attorney received a check from the standing Chapter 13 Trustee. This check was for payments made into the Chapter 13 Bankruptcy Plan by the Complainant that had not been allocated by the Trustee. The money was refunded since the plan had not been confirmed. The Attorney endorsed the check, but failed to have Complainant sign a power of attorney to authorize the Attorney to endorse it. The funds retained by the Attorney were returned to the Complainant with interest.

In mitigation, the Chair found that the Attorney's failure to obtain the Power of Attorney was an oversight and not an intentional act and that the Attorney was under severe pressures due to problems created by the client's prior representation

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# A Call For Spanish Speaking Lawyers

The Governor's Office of Hispanic Affairs and the Tuesday Night Bar Program have come together to provide assistance to Spanish speaking members of our community. Lawyers who speak Spanish are needed to assist in this program so that Spanish speaking Hispanics can benefit from the Tuesday Night Bar Program. This program has been helping our community since March of 1995, and we need your help to continue. If you speak Spanish and are interested in participating in this program, please contact Kim Williams at 531-9077, Utah State Bar, or Lorena Riffo, Governor's Office of Hispanic Affairs at 538-8850.

and was trying to assist as many of the previous attorney's former clients as possible. As aggravation, the Chair found that the Attorney is an experienced practitioner.

**ADMONITION**

On June 14, 1996, the Chair of the Ethics and Discipline Committee issued an Admonition to an Attorney for violating Rule 1.2(a) Scope of Representation, Rule 1.3 Diligence, Rule 1.4(b) Conduct.

The Attorney was retained in or about March, 1993, to represent a client in a child custody matter and was paid a fee of $1,500.00. On or about June 21, 1993, the Attorney filed a Petition for Modification of the Divorce Decree. Thereafter, the Attorney failed to provide any meaningful legal services. The Attorney failed to respond to discovery resulting in an Order to Strike the Petition for Modification.

An Admonition was deemed appropriate by the Screening Panel because the Attorney was suffering from severe medical problems requiring hospitalization and the fee was refunded.

**ADMONITION**

On July 2, 1996, the Chair of the Ethics and Discipline Committee admonished an Attorney pursuant to the recommendation of a Screening Panel for violating Rule 8.4(d) of the Rules of Professional Conduct.

The Attorney was retained to represent a client in a civil matter with fees to be charged on an hourly basis. Subsequently, a dispute arose between the Attorney and the client regarding the payment of the fee. The Attorney filed an attorney's lien on real property owned by the client which was the subject of the litigation. The Screening Panel found this violated Rule 8.4(d), Administration of Justice, in that the attorney's lien statute, U.C.A. 78-51-41, provides for a lien only when there is a recovery in favor of the client. There was no recovery for the client, therefore, there was no basis to file an attorney's lien.

# Ethics Opinions Available

The Ethics Advisory Opinion Committee of the Utah State Bar has compiled a compendium of Utah ethics opinions that are now available to members of the Bar for the cost of $5.00. Forty five opinions were approved by the Board of Bar Commissioners between January 1, 1988 and July 3, 1996. For an additional $2.00 ($7.00 total) members will be placed on a subscription list to receive new opinions as they become available during 1996.

**ETHICS OPINIONS ORDER FORM**

| Quantity | | Amount Remitted |
|---|---|---|
| _____ | Utah State Bar Ethics Opinions | _____ ($5.00 each set) |
| _____ | Ethics Opinions/ Subscription list | _____ ($7.00) |

Please make all checks payable to the Utah State Bar
Mail to: Utah State Bar Ethics Opinions, ATTN: Maud Thurman
645 South 200 East #310, Salt Lake City, Utah 84111.

Name _____

Address _____

City _____ State _____ Zip _____

Please allow 2-3 weeks for delivery.

# Highlights of the August 26 Bar Commission Meeting

The meeting of the Bar Commission of August 26 was held at the J. Rueben Clark College of Law in Provo, Utah. In actions taken, the Commission:

A. Approved minutes of the July 21 meeting.
B. Received a report from the Executive Committee including information of the activity of the Board of Trustees of the Law and Justice Center in preparation for the dedication of the building, disposition of various administrative items by the President and/or Executive Committee and appointment of Robert S. Campbell to the Executive and Judicial Compensation Commission as the state bar representative.
C. Considered information developed on the pending tax initiatives and voted to actively oppose all three tax initiatives, based upon information provided by the judiciary on the impact of such initiatives on the judicial system in Utah, with the President to communicate the Bar's position opposing the initiatives to the membership and to the public.
D. Received the Admissions Report and approved the results of the July bar examination. Appointed a grievance hearing panel to review any appeals which might be filed, reinstated a member who had been suspended for non-payment of dues, discussed the policy question regarding expungement of records of administrative suspensions and referred the question to the Policies and Procedures Committee for its review and recommendation.
E. Received the Discipline Report, acted on discipline matters and requested Bar Counsel to prepare proposed revision to Rule 7.3 on targeted mail solicitations.
F. Received report on legislative affairs from Travis Bowen, legislative liaison. Mr. Bowen reported activities of the legislative interim committees. Commissioner Hanson reported on the activities of the Tort and Insurance Industry Reform Task Force. Reviewed recent developments in pension plan cases removing the exemption of certain pension plans, which developments will receive further study and consideration.
G. Received the monthly report of the Budget and Finance Committee. Authorized the Executive Committee to negotiate a line of credit to more effectively respond to seasonal cash flow needs. Authorized a new administrative policy to impose late fee charges of 1½ percent per month on various services and space fees charged by the Bar.
H. Reviewed the status of litigation pending against the Bar, including the dismissal of certain cases in Federal courts and the affirmation of an Administrative Law Judge ruling in favor of the Bar and the case alleging wrongful discharge wherein the Board of Review reiterated the finding of the termination for just cause based on insubordination.
I. Appointed a committee to review the process for the selection of persons to receive Bar awards.
J. Determined that it will study the possible promulgation of a code of professional courtesy as has been adopted in numerous other jurisdictions.
K. Received a report of the Executive Director summarizing recent meetings in Toronto as part of the ABA Annual Meeting.
L. Received a preliminary report from the Bar Commission's Representation Study Committee regarding their review of the districting process and a proposed questionnaire for the membership to be used in conjunction with several regional meetings with Bar members to discuss governance and structure issues.

# Bar Dues Notice

The 1989 Bar Licensing and Membership Dues forms will be mailed on November 1. You will notice that dues are slightly higher than last year and that this reflects the third and final incremental increase as approved by the Supreme Court in 1986 for the 1987-89 dues cycles. We will appreciate your return of the completed license form and dues payment as early as possible. If you have any questions concerning your dues form or licensing status, please call our Licensing Clerk at the Bar Office.

# Discipline Corner

ADMONITIONS:

1. An attorney was admonished for violating DR 1-102(A)(6) for conduct adversely reflecting on the attorney's fitness to practice law for inappropriately substituting the attorney's will and decision-making authority for that of the client in the settlement of the client's case.

PRIVATE REPRIMANDS:

1. An attorney was privately reprimanded for violating DR 6-101-(A)(3) and Rules 1.1 and 1.3 of the Rules of Professional Conduct for failing to exercise reasonable diligence and promptness in representing a client by failing to file an appellee's brief with the Utah Court of Appeals for a period of 14 months after the briefs were due and after the attorney had received an extension of time in which to file the brief.

PUBLIC DISCIPLINE:

1. Phil L. Hansen was placed on Interim Suspension from the practice of law by the Utah Supreme Court on July 28, 1988, said interim suspension continuing until the pending formal complaints have been resolved. The Supreme Court by that order is permitting Mr. Hansen to continue representation of clients whose cases were currently active at the time the Interim Suspension was imposed.

REINSTATEMENTS:

1. Jerry V. Strand was reinstated to the practice of law effective September 6, 1988.

CLARIFICATION;

The Charles M. Brown Jr. who is on disability suspension as noted in the August/September *Bar Journal* is *not* Charles R. Brown of the firm Hunter & Brown, Charles C. Brown of the firm Brown, Smith & Hanna or Charles S. Brown of the firm Watkiss & Campbell.

# ETHICS COUNSEL

- Representation in Bar Disciplinary Proceedings
- Plaintiff and Defense Malpractice
- Ethics Advice; In-house Ethics Seminars

## Jo Carol Nesset-Sale

- Former Utah Bar Counsel
- Ten years litigation experience: criminal defense; Bar discipline

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## Direct Mail Solicitation Permissible

The U.S. Supreme Court in *Shapero v. Kentucky*, No. 87-6 (U.S. June 14, 1988), recently struck down as unconstitutional Rule 7.3 of the Rules of Professional Conduct. Traditionally direct communication, by mail, to a specific individual concerning a specific cause of action or legal matter has been prohibited. The Court in *Shapero* held that such a prohibition violates an attorney's first amendment right of free speech. Consequently, attorneys may send direct solicitation letters to specific individuals. However, the rules of professional conduct requiring truthfulness and accuracy in content of those letters still apply. The U.S. Supreme Court also left open the door for State bar associations to fashion rules requiring submission to the Bar of direct solicitation letters for review of the content prior to mailing. The Board of Bar Commissioners, through Bar Counsel, will be submitting a proposed rule change to the Utah Supreme Court which will be consistent with the *Shapero* decision.

It should be noted that direct person-to-person solicitation is still prohibited.

If you have any questions regarding direct mail solicitation, please contact the Office of Bar Counsel at 531-9110.

## Bar Foundation Appoints Steve Nebeker to Board of Trustees

Salt Lake City Attorney Steve Nebeker has been appointed a Trustee of the Utah Bar Foundation to fill the vacancy created by the Honorable J. Thomas Greene Jr., who recently resigned from the Foundation's Board of Trustees. A partner in the law firm of Ray, Quinney & Nebeker, Steve Nebeker will serve the remainder of Judge Greene's term on the Foundation's Board of Trustees. Judge Greene served continuously as a Trustee since 1972 and is a past president of the Foundation.

## Bar Foundation's *Legal Briefs* Will Air on KUED Channel 7

The Utah Bar Foundation's series of informational mini-programs titled *Legal Briefs* will again air on KUED Channel 7 beginning Saturday, October 15, 1988, at 5:55 p.m. The 13-part series will be run weekly at that time for 26 weeks immediately following the consumer advocacy program "Fight Back," hosted by David Horowitz. *Legal Briefs* is designed to educate the public about basic legal situations, such as jury duty, small claims court, hiring a lawyer, and traffic court, as well as specific areas of law such as divorce, wills and trust, contracts, and real property. The series is hosted by Third District Court Judge J. Dennis Frederick and features various members of the Bar.

## Depositions to be Destroyed

All depositions on cases filed 10 years ago or earlier in the Third District Court will be destroyed beginning January 1, 1989, because of the inadequate storage space in the court.

It is possible that some of these depositions may be on open cases, therefore lawyers should check their files and reclaim any depositions they need.

**It is important lawyers reclaim depositions before January 1.** For more information, contact Craig Ludwig at 535-5111.

## Claim of the Month

### ALLEGED ERROR OR OMISSION

The insured attorney failed to timely file a personal injury action.

### RESUME OF CLAIM

The insured represented an elderly brother and sister who were injured in an automobile accident. He was retained by them approximately one month after the accident.

During the time between the insured's retention by the claimants and the expiration of the statute of limitations, the insured became ill and required surgery and hospitalization for an extended period of time. He hired an attorney as an independent contractor to manage his office while he was away. The attorney hired was not the person listed on the application. While the insured was in the hospital, this attorney failed to timely file the action.

When the insured returned from the hospital, the hired attorney represented that all matters had been taken care of expeditiously. The insured took him at his word and did not learn of this error until he was reviewing his entire caseload prior to retirement. As a further complication, the hired attorney passed away shortly after the claim was tendered to the carrier.

### HOW CLAIM MIGHT HAVE BEEN AVOIDED

This claim might have been avoided if the insured had properly prepared for his time away from his office. This would have included preparation of a list of upcoming filing deadlines as well as other items which required particular care. Proper preparation would also entail his having a person whom he knows and trusts to take over his caseload. In the instant claim, he hired an attorney from another part of the state to cover for him in his absence. This was not the person listed in his application for insurance, with whom it is presumed a working

# Bar Commission Highlights

At its regularly scheduled meeting on February 17, the Board of Bar Commissioners received the following reports and took the actions indicated:

1. Received a report of the Lawyer Benefits Committee by Randon Wilson, Chair; approved a disability insurance program of Standard Insurance Company for endorsement; reviewed preliminary data on a member FAX program; and discussed the administration of the Blue Cross, Blue Shield Program.

2. Approved the minutes of the January 27 meeting with minor amendments.

3. Received the Executive Committee report, including reports on Bar representatives' presentations at the ABA Mid-Year meetings; noted upcoming presentations to be made at the Western States Bar Conference; appointed Keith Chiara to the Board of Trustees of DNA-Peoples Legal Services; and acted on various administrative inquiries.

4. Received the Executive Director's Report noting the filing of three research grant requests for the Law and Justice Center; reviewed the increased consumer use of the Tuesday Night Bar; accepted for study a proposal by the Administrative Practice Section for new membership categories; reviewed materials regarding further development of pro bono legal services efforts; and discussed suggested enhancements to the annual Bar Directory.

5. Received the Admissions Report, approving petitions related to the MPRE exam and a reinstatement following suspension for dues nonpayment; considered and approved a report of the Character and Fitness Committee on a petition for readmission; and noted status of pending petition for proposed changes to Bar exam rules.

6. Received the Discipline Report, acting on pending private and public discipline matters as reported elsewhere in this issue; and reviewed the annual report of the Office of Bar Counsel.

7. Received the report of the Legislative Affairs Committee by Roger Sandack, Chair, and Travis Bowen, Legislative Liaison. Reviewed status of bills regarding child support guidelines, judicial review of administrative agency rulings, products liability, punitive damages, rules of criminal procedure, pro bono counsel immunity and others.

8. Received the report of the Associate Director on plans for the Mid-Year and Annual Meetings.

9. Met for a working luncheon with the Utah Supreme Court.

10. Reviewed the status of pending litigation.

11. Received the report of ABA Delegate Norman Johnson regarding actions taken by the ABA House of Delegates at its Mid-Year Meeting in Denver.

12. Received the report of the Ethics Advisory Opinion Committee by Patricia Christensen including proposed rules of procedure for the committee; adopted a policy, pending further action on the rules, that no ethics opinions would be issued in response to requests where the issues involve pending litigation.

13. Received the report of the Young Lawyers Section by Jerry Fenn, Young Lawyers Section President, noting Young Lawyers Section representation at recent and future ABA meetings; and acknowledged the Section's development of its Community School Program.

14. Reviewed space development needs and proposals for the undeveloped areas of the Law and Justice Center, approving further development of the space subject to certain financial arrangements being accomplished.

15. Received a report on MCLE and the invitations to Bar members to apply for nomination to the MCLE Board.

16. Reviewed a committee report on alternative methods of filling vacancies on the Bar Commission, electing to preserve present provisions of the Bylaws.

17. Reviewed the report on the Apprenticeship Project, including a minority report and acted to repeat the program in the fall of 1989.

A full text of the minutes of this and other meetings of the Bar Commission is available for inspection at the office of the Executive Director.

# Discipline Corner

### ADMONITIONS

1. An attorney was admonished for violating Rule 4.2 by communicating by letter with an opposing party whom the attorney knew was represented by counsel.

2. For the inappropriate manner in which the attorney handled a client's divorce hearing; specifically, the attorney had attempted to postpone the hearing solely for the attorney's own convenience and was admonished.

3. An attorney was admonished for violating Rule 1.4(a) by failing to communicate adequately with the client regarding court orders or actions taken and for failing to respond adequately to the client's requests for status reports and information.

### PRIVATE REPRIMAND

1. For violating DR 6-101(A)(3) for neglect of a legal matter, an attorney was privately reprimanded for failing to monitor the entry of a judgment against the client, failing to inform the client as to the status of the entry of the judgment, and failure to file a timely appeal after express direction to do so by the client.

### PUBLIC REPRIMAND

1. Anthony M. Thurber was publicly reprimanded for engaging in conduct prejudicial to the administration of justice in violation of DR 6-102(A)(5), by paying the net proceeds of a settlement directly to his client in violation of the client's earlier assignment of those proceeds to a bank and the client's earlier instructions that Mr. Thurber should honor the assignment, and for presenting defenses and testimony in a subsequent lawsuit in an attempt to avoid liability for his actions, which the trial and appellate courts chose to reject.

### SUSPENSION

1. On March 2, 1989, the Utah Supreme Court entered an order of interim suspension suspending Gerald Turner from the practice of law during the pendency of his appeal of his conviction of bankruptcy fraud in violation of 18 U.S.C. Sect. 152.

At its regularly scheduled meeting on July 20, the Board of Bar Commissioners received the following reports and took the actions indicated.

1. Approved minutes of the June 16 and June 30 meetings.

2. Received the Executive Committee report, approving committee leadership appointments, reviewing and acting on various correspondence, and reviewing plans for the August meeting in Cedar City.

3. Received the Executive Director's report, noting recent speeches given by the Executive Director, reviewing activities of the Law and Justice Center Program and Policies Committee, and noting the continuing success of the weekly KSL Radio produced by the Bar.

4. Received the Annual Meeting site selection report and approved the designation of Beaver Creek, Colorado, for the Annual Meeting in 1990.

5. Received the Admissions report, approving reinstatements for individuals who had corrected dues deficiencies, approving individuals to sit for the July Bar Examination and reviewing the statistical profile of applicants for the July examination.

6. Received the Discipline report, acting on pending private and public discipline matters as reported elsewhere in this issue and noting the denial by the Supreme Court of a petition by a foreign trained attorney seeking waiver of the applicable admissions rule.

7. Received a report and appearance by Law Related Education Committee leaders who reviewed activities of the committee for 1988-89 and presented an agenda of proposed programs for 1989-90 and a budget request.

8. Received the budget proposal of the Budget and Finance Committee for fiscal year 1990. After considerable debate and discussion as to the ramifications of various budget cuts, the budget was approved subject to further monitoring and review.

9. Received an interim report of the Bar Organization Committee and approved an enlargement of the membership of the committee with appointments to be made by the Executive Committee.

10. Received a litigation report on pending litigation.

11. Received a report of the Young Lawyers Section, including the current organizational structure and program components of the sections and an announcement of activities planned for the Bill of Rights Bicentennial Project.

12. Received a report on a proposed new courts complex and on the status of the Judicial Poll Project.

A full text of the minutes of this and other meetings of the Bar Commission is available for inspection at the Office of the Executive Director.

# Discipline Corner

### ADMONITIONS

1. An attorney was admonished for violating DR 1-102(A)(5) and Rule 8.4(d) by failing to include the specific terms of visitation, as described by the domestic relations commissioner, in the divorce decree and for violating Rule 3.4(d) by failing to timely comply with a pro se opposing party's discovery requests.

2. For failing to provide information in a timely manner to an opposing party and counsel as promised, an attorney was admonished for violating DR 7-102(A)(3), DR 1-102(A)(4) and (5), Rule 3.4(a) and Rule 8.4(c) and (d). The sanction was aggravated by the attorney's tardy responses to the Office of Bar Counsel.

### PRIVATE REPRIMANDS

1. For violating Rule 1.3, an attorney was privately reprimanded for failing to perform any substantive work on an ongoing divorce action after entering an appearance, for failing to communicate with the client and for failing to order an appraisal on the marital residence or to set a trial date after promising to do so. The sanction was mitigated because the attorney sought and is receiving assistance from the Lawyers Helping Lawyers Committee.

2. For failing to pursue his client's civil rights action and for failing to communicate with the client that he would no longer pursue the action, an attorney was privately reprimanded for violating DR 6-101(A)(3) and Rules 1.3 and 1.4(a). The sanction was mitigated because the attorney sought and is receiving assistance from the Lawyers Helping Lawyers Committee.

3. An attorney was privately reprimanded for violating DR 1-102(A)(4) and DR 9-102(A)(2) by applying trust monies to his fees without client authorization and prior to sending the client any statement for services rendered and failing to respond to the client's verbal and written protests of his actions.

4. An attorney was privately reprimanded for violating DR 1-102(A)(6) and DR 2-110(B)(2) by failing to withdraw from representing a client after he became emotionally infatuated with the client who was in an emotionally vulnerable state. The sanction was mitigated by the fact that the client's legal matter was not compromised, but aggravated by the fact that the attorney misrepresented his prior disciplinary history.

5. For violating DR 6-101(A)(3), Rule 1.3 and Rule 1.4(a) by failing to file an objection to a magistrate's recommendation that the clients' civil rights action be dismissed, and by failing to return the clients' numerous telephone requests for information and status reports, an attorney was privately reprimanded.

6. For failing to respond to the client's numerous telephone calls over a two and a-half-year period, for failing to communicate with the client regarding post-trial settlement negotiations and for failing to follow his client's directions regarding settlement, an attorney was privately reprimanded for violating DR 6-101(A)(3), DR 7-101(A)(2), Rule 1.3 and Rule 1.4(a).

7. For violating DR 1-102(A)(4) and (6), an attorney was privately reprimanded for failing to maintain adequate controls over his trust account, by failing to provide an accurate accounting of monies received and disbursed on behalf of his client and by failing to inform his client regarding the insolvency of his trust account.

### PUBLIC REPRIMANDS

1. On June 21, 1989, Michael R. Loveridge was publicly reprimanded for violating DR 2-103(C) and DR 3-102(A) by improperly soliciting referrals from and splitting legal fees with an organization which Mr. Loveridge created and of which he was the president, which consisted of an association of financial planners and insurance agents who conducted financial seminars, referring the clients to Mr. Loveridge for any legal advice or representation.

2. On July 17, 1989, Elliott Levine was publicly reprimanded for violating DR 6-101(A)(3), Rule 1.3 and Rule 1.4(a) by failing to serve possible interest owners with a Notice of Default in a foreclosure action, by failing to order a foreclosure report on the property until after being terminated from representation, by failing to respond to his client's numerous requests for information and by telling the client a foreclosure sale was scheduled for a certain date when the Notice of Default had not yet been filed.

3. On July 25, 1989, William L. Schultz was publicly reprimanded for violating Rule 1.4(a) by failing to acknowledge his client's

parents' numerous attempts to notify him that the client was incapacitated and therefore unavailable for trial and by failing to notify the Court regarding his client's unavailability, and for violating Rule 1.14(d) by failing to return the unused portion of his retainer after withdrawing from representation. Mr. Schultz was also ordered to make restitution of the retainer to his client's mother.

**SUSPENSIONS**

1. On June 13, 1989, Phillip Lang Foremaster was suspended from the practice of law for 90 days, which suspension was stayed pending Mr. Foremaster's successful completion of a six-month probation for violating DR 1-102(A)(6) by engaging in conduct adversely reflecting on fitness to practice. Mr. Foremaster's conduct involved the making of several threatening phone calls to law enforcement officials and a third party; the calls were made while the attorney was under the influence of alcohol.

2. On July 25, 1989, Richard B. Johnson was suspended from the practice of law for six months, which suspension is stayed pending Mr. Johnson's successful completion of a one-year probationary period. The sanction was based on a violation of DR 6-101(A)(3) by failing to appear at a pretrial conference thereby allowing the lawsuit to be dismissed, by failing to respond to telephone calls and letters from his client and from opposing counsel, and by failing to inform his client that the lawsuit had been dismissed for several months.

**DISBARMENTS**

1. On July 17, 1989, B. Deon Criddle was disbarred from the practice of law in the State of Utah for violating DR 1-102(A)(4) and Rule 8.3(b) by misrepresenting to his client that various foreign patent applications had been filed when they had not, by producing false evidence of patent filings, and by sending the client statements for legal services which had not been rendered and for which the client paid approximately $10,000; for violating DR 6-101(A)(3) and Rule 1.3 by neglecting to secure foreign patents for the client's numerous inventions; for violating Rule 1.4 by failing to keep his client informed as to the actual status of the various patent filings; for violating DR 2-110 by charging an illegal fee of $44,000 plus the additional $10,000 paid by the client; and for violating DR 9-102(A) by failing to account for client funds held in trust.

**REINSTATEMENTS**

1. On July 6, 1989, Charles M. Brown Jr. was reinstated to the practice of law in the State of Utah from a disability suspension subject to the successful completion of a two-year probationary period.

**CLARIFICATION**

The Charles M. Brown Jr. listed in the above reinstatement is not Charles R. Brown of the firm Hunter & Brown, Charles C. Brown of the firm Brown, Smith & Hanna or Charles S. Brown of the firm Watkiss & Campbell.

## Judicial Nominating Commission Vacancy

Due to the resignation of Kristine Strachan, the Judicial Nominating Commission for the Third District has a vacancy. This position is an appointment of the Board of Bar Commissioners, who hereby invites applications from all interested members who reside in the District. Per applicable rules regarding political balance, the appointee's political affiliation must be other than Republican, e.g. Democrat, Independent, etc.

Application letters with resumes attached will be considered if received by 5:00 p.m. on Tuesday, October 24, 1989 at the Office of the Executive Director, Utah State Bar, 645 S. 200 E., Salt Lake City, UT 84111.


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David C. Wright
Bruce Wycoff

Valley Tower Building
50 West Broadway, Sixth Floor
Salt Lake City, Utah 84101
801-532-7520

# New Officers for the Legal Assistants Association of Utah (LAAU)

The Legal Assistants Association of Utah (LAAU) elected officers for 1989 at a recent business meeting held at the Law and Justice Center. Brent Scott was elected to a second term as President of the association. Mr. Scott is a legal assistant employed by Equitable Life & Casualty Company. Mr. Scott will be assisted by Vice President Kaye D. Bateman, who is employed by Watkiss & Campbell. Deanna Spillman, Robert DeBry & Associates, will serve as Secretary, and Kathryn Packard, Strong & Hanni, will serve as Treasurer. LAAU is a non-profit association which was organized to support the professional, educational and social interests of legal assistants throughout Utah. It operates and functions through various committees whose elected chairs are Marilu Peterson, CLA, Jensen & Lewis Education; Carol Elggren, CLA, US West Communications, Public Relations; Ellen Arnett, Kipp & Christian, Membership; and Carole Miller, Energy Mutual Insurance Company, Ethics.

# Government Law Section Sponsors Conference

The Government and Politics Legal Society of the J. Reuben Clark Law School at Brigham Young University and the Government Law Section of the Utah State Bar will hold the Seventh Annual Conference on State and Local Government at the Provo Excelsior Hotel on Friday, March 24, 1989.

Co-sponsors are: the law firm of Ballard, Spahr, Andrews & Ingersoll, Salt Lake City, the Utah League of Cities and Towns, the Utah Association of Counties, Common Cause, and the Statewide Association of Prosecutors.

Program brochures and registration forms will be mailed to members of the Bar and others in the near future. For further information, contact Carolyn Stewart, Government and Politics Legal Society, Brigham Young University Law School, 348 JRCB, Provo, UT 84602, 378-6384.

# DISCIPLINE CORNER

**ADMONITIONS**

1. An attorney was admonished for violating Rule 1.3 for neglect in failing to file the appropriate documents for the court's signature for a period of approximately six months after conclusion of the trial; the sanction was mitigated due to the attorney's acknowledgment of the misconduct and the fact that it was an isolated incident.

**PRIVATE REPRIMAND**

1. An attorney was privately reprimanded for violating Rule 1.3 for neglect in failing to file timely Docketing Statements and/or appellate briefs with the Tenth Circuit Court of Appeals in two separate cases, and for violating Rule 8.4(d) for conduct prejudicial to the administration of justice for failure to respond to the Tenth Circuit's Orders to Show Cause in those two matters, for failure to respond to the Notice of Complaint issued by Bar Counsel and for failure to appear before the Screening Panel.

2. For handling a criminal matter without appropriate criminal defense experience, and for failing to delineate clearly his separate duties as attorney and ecclesiastical counselor, an attorney was privately reprimanded for violating DR-6-101(A)(1) and DR-5-101(A) for handling a matter he is not competent to handle and for accepting employment when his judgment was likely to be adversely affected by his church affiliation.

3. An attorney was privately reprimanded for violating Rule 1.2(a) for failure to abide by a client's decisions and failure to consult with the client by filing an inaccurate Answer to a divorce complaint after failing to discuss said Answer with his client.

**PUBLIC REPRIMAND**

1. Ray Stoddard was publicly reprimanded for violating DR-6-101(A)(3) for neglect and DR-1-102(A)(6) for conduct adversely reflecting on his fitness to practice law, by failing to inform his client of the trial date and failing to appear for trial, resulting in a default judgment being entered against his client; and failing to file a lawsuit for over two and a half years after being retained to do so.

**SUSPENSION**

1. On December 19, 1988, Edward D. Flint was suspended from the practice of law for a 30-day period and placed on probation for six months for violating DR-1-102(A)(5) for conduct prejudicial to the administration of justice by threatening, coercing or intimidating a witness.

# Jack Rabbit Bar Will Meet in Utah

For the first time in history, Utah will host the 1989 Annual Meeting of the Jack Rabbit Bar Association. Scheduled for Snowbird on June 2 to 4, this annual conclave of the 25-year-old organization brings together lawyers, judges and bar leaders from North and South Dakota, Montana, Wyoming, Idaho, Nevada and Utah. The current leader or "Chancellor" is Bert L. Dart of Salt Lake City. Chancellor Dart explained that the Jack Rabbit Bar is a unique and informal gathering of attorneys from states with common socio-economic and professional environments. Sharing time is unstructured but productive and the collegiality factor is very high, noted Chancellor Dart. He anticipates approximately 100 members of the Jack Rabbit Bar will attend the meeting this summer and encourages Utah lawyers and judges to consider attending.

All interested in attending this convention should call Chancellor Dart or Barbara Bassett at the Bar offices.

# 1989 Bob Miller Memorial Law Day Run

The 1989 Bob Miller Memorial Law Day Run is scheduled for April 29, 1989. The course will remain the same and begin at Pioneer Trail State Park, "This is the Place" monument. Despite a great deal of agitation for change in the rules for law firm team composition, last year's rules will remain in place. Preregistration is $8 and day-of-registration is $10. T-shirts to all finishers. If you have any questions, please contact Gary L. Johnson at Richards, Brandt, Miller & Nelson.

## PARTICIPANTS FEATURED

*(continued from page 23)*

**CRAIG J. MADSON, ESQ.**
Member of the firm of
Workman, Nydegger & Jensen

**MICHAEL J. MAZURAN, ESQ.**
Member of the firm of
Mazuran, Verhaaren & Hayes
Chairman of the 1989
Annual Meeting Committee

**H. CHRISTINE O'CLOCK**
Membership group account executive for
Mead Data Central—LEXIS program

**PROFESSOR DAVID C. RASKIN**
Professor of psychology at the
University of Utah

**CATHERINE PARDOE REESE**
Office Manager for the firm of
Strong & Hanni

**BRADLEY V. SHAW, ESQ.**
Firm Administrator for the firm of
Nielsen & Senior

**ROBERT L. STOTT, ESQ.**
Deputy County Attorney
for Salt Lake County

**ALAN L. SULLIVAN, ESQ.**
Partner in the firm of
Van Cott, Bagley, Cornwall
& McCarthy

**C. JEFFREY THOMPSON, ESQ.**
Associated with the firm of
Hatch, Morton & Skeen

**RICHARD B. TURNBOW**
Director of Administration
for the firm of Kirton,
McConkie & Poelman

**RUSSELL S. WALKER, ESQ.**
Associated with the firm of
Woodbury, Jensen, Kesler & Swinton

**CHRIS WANGSGARD, ESQ.**
Shareholder of the firm of
Van Cott, Bagley, Cornwall & McCarthy

**DAVID R. WRIGHT, ESQ.**
Associate with the firm of
Callister, Duncan & Nebeker

**RONALD J. YENGICH, ESQ.**
Partner in the firm of
Yengich, Rich, Xaiz & Metos

# Apprenticeship Mentors Needed

The Board of Bar Commissioners has voted to repeat the highly successful Apprenticeship Program held last year. The 1989 program will commence in mid-August and extend for a three-month term. Lawyers and law firms throughout the state are invited to sign up promptly for apprentice placement. In the 1988 program, apprentices were placed in firms from Cedar City to Logan, and in firms of all sizes. Firms which did not participate in the 1988 program and would like to consider participation in the 1989 program should contact Paige Holtry at the Bar office for details. Based on the evaluations by mentors and apprentices in the 1988 program, this project offers a tremendously rewarding educational and professional experience for apprentices and mentors.

Please indicate your interest in participating in the 1989 program promptly as apprentices will need to be screened and placed before the end of July for the project to commence on or about August 15.

*CALL NOW!*

# Discipline Corner

### ADMONITIONS

1. An attorney was admonished for violating Rule 1.7(c) by failing to obtain and document consent to represent a woman in a divorce action while simultaneously representing the woman and her husband in a foreclosure matter.

2. For the inappropriate use of a trust account in violation of Rule 1.13(a), by writing a check for personal use on a trust account that did not in fact contain any client monies, and for failing to remit payment immediately upon notification that the check had not cleared the account in violation of Rule 8.4(b), an attorney was admonished.

### PRIVATE REPRIMANDS

1. For violating DR 6-101(A)(3) for neglect of a legal matter, Rule 1.3 for lack of diligence, and Rule 1.4(a) for lack of timely communication with the client, an attorney was privately reprimanded for failing to file a writ of habeas corpus after accepting $1,000 to do so, for failing to respond to his client's requests for information, and later for failing to timely return the client's documents and the retainer.

2. For violating DR 6-101(A)(3) for neglect of a legal matter, an attorney was privately reprimanded for failing to prosecute a lawsuit on behalf of his client to recover approximately $3,000 on a construction contract and failing to discuss the status of the case with his client. The sanction was aggravated by the attorney's failure to appear before the Screening Panel on this matter.

3. An attorney was privately reprimanded for violating DR 6-101(A)(3) for neglect and Rule 1.3 for lack of diligence by failing to prosecute his client's probate matter for a period exceeding three years; for violating DR 1-102(A)(4) for misrepresentation by telling his client that the probate was nearly complete and that the papers were in the mail when in fact the attorney had done no work on the matter; and for violating Rule 8.4(d) for conduct prejudicial to the administration of justice by failing to respond to the inquiries forwarded to him by the Office of Bar Counsel, by failing to respond to the Notice of Complaint issued by the Office of Bar Counsel, and by failing to respond to a subpoena issued by the Screening Panel. The sanction was mitigated by the fact that the attorney completed the probate matter during the pendency of the disciplinary proceedings.

4. An attorney was privately reprimanded for violating DR 6-101(A)(3) for neglect and DR 7-101(A)(2) for intentional failure to carry out a contract of employment by failing to file a bankruptcy action, failing to return his client's telephone calls for a period of approximately one year and delaying for approximately one year the filing of a civil action on behalf of his client.

5. For violating Rule 1.4(a) and 1.4(b) for failure to timely communicate, an attorney was privately reprimanded for failing to timely inform his client that she had no cause of action, thereby allowing the client to believe that the attorney was pursuing her case for a period of approximately one and a half years.

### PROBATION

1. On March 20, 1989, the Utah Supreme Court suspended Theodore L. Cannon from the practice of law for a period of one year, staying the suspension for a period of two years during which time Mr. Cannon will be on probation and required to file monthly reports with the Office of Bar Counsel, for violating DR 1-102(A)(3) for engaging in conduct involving moral turpitude by his conviction of official misconduct. The sanction was mitigated by the fact that Mr. Cannon served 30 days in jail and was fined more than $4,000; by the fact that Mr. Cannon has taken and will continue to take appropriate steps toward rehabilitation; and by the fact that Mr. Cannon had no disciplinary history prior to the time of his misconduct.

# Discipline Corner

**ADMONITIONS**

1. An attorney was admonished for violating Rule 8.4(d) by representing a client in a divorce action and subsequently, while acting as Deputy County Attorney, prosecuting this client for child sexual abuse. Of concern was that the defendant had originally been charged with a first degree felony, which charge was then reduced to a second degree felony prior to prosecution.

2. An attorney was admonished for violating Rule 3.7(a) and Ethics Opinion #45 by acting as legal representative for a collection agency of which he was the owner.

**PRIVATE REPRIMANDS**

For violating Rules 1.3 and 1.4(a), an attorney was privately reprimanded for accepting a retainer regarding a custody dispute and subsequently failing to appear and file pleadings and failing to return the client's telephone calls and written requests for information.

**SUSPENSIONS**

On August 9, 1990, Harold R. Stephens was suspended for one month for violating Canon 6, DR 6-101(A)(3), Canon 7, DR 7-101(A)(2) and Canon 1, DR 1-102(A)(4) of the Revised Rules of Professional Conduct of the Utah State Bar and Rule 1.3 and Rule 1.4(a) of the Rules of Professional Conduct of the Utah State Bar. Respondent was also ordered to pay restitution in the amounts of $75 and $600 and reimburse the Office of Bar Counsel for costs for prosecution of the matter, as conditions of reinstatement. Mr. Stephens' suspension was based on complaints by two separate clients. Mr. Stephens agreed to represent one client in a divorce matter and subsequently failed to contact his client or respond to her request for information for approximately one year. After the divorce was finally granted, Mr. Stephens failed to prepare the Findings of Fact and Conclusions of Law and the Decree of Divorce. Regarding the second complaint, Mr. Stephens agreed to represent a client in an attempt to increase child support. The opposing party was willing to stipulate to the increase in child support. Mr. Stephens failed to prepare the stipulation or contact his client or return the client's numerous requests for information. The sanction was aggravated in that the clients were unsophisticated legal consumers and that Mr. Stephens' conduct exhibited a pattern of misconduct.

**DISBARMENTS**

On July 11, 1990, Richard J. Calder was disbarred from the practice of law in the state of Utah. This disbarment was based on two separate disciplinary complaints. In an attempt to resolve one of the Bar complaints, Mr. Calder agreed to amend the bankruptcy schedules for his client and file a motion to reopen the client's case. Mr. Calder failed to follow through with his agreement. In a subsequent malpractice action in the Third District Court brought by the client, Mr. Calder knowingly and intentionally made several misrepresentations and false statements to the court. Mr. Calder subsequently filed for bankruptcy protection and failed to list the client as a creditor or to notify the client of the bankruptcy for a period of approximately two years after the original filing. Regarding the second complaint, a client filed a malpractice lawsuit against Mr. Calder who failed to amend his personal bankruptcy to include this client as a creditor. Mr. Calder reopened the client's bankruptcy solely for the purpose of harassing the client and made several false and misleading statements in his motion to reopen. Mr. Calder also made several misstatements to the Court in the malpractice action. After the Judge rendered his oral opinion in the malpractice action and prior to the formal entry of the judgment, Mr. Calder transferred a substantial portion of his property to his wife and brother. Mr. Calder subsequently filed for protection under the bankruptcy laws in bad faith for the purpose of frustrating the claims of his clients.

# Teaching the Bill of Rights to Elementary Students

Looking for another way to have fun practicing law? Need to lift your spirits? Want to be a hero?

Phi Alpha Delta Law Fraternity International (PAD), to which more than 400 distinguished Utah judges and attorneys belong, will conduct a three-hour training session on Teaching the Bill of Rights to Elementary and Junior High Students on Friday, November 9, 1990, from 2:00 to 5:00 p.m. at the University of Utah College of Law Sutherland Moot Courtroom. Roger L. Goldman, constitutional law professor at Saint Louis University School of Law, will lead participants through the newly published PAD Bicentennial Guide. Professor Goldman will be assisted by attorneys affiliated with the Utah State Bar's nationally recognized Law-Related Education Committee and the Law-Related Education & Citizenship Project of the Utah State Office of Education. Elementary students from Lowell School in Salt Lake City will volunteer as guinea pigs.

Participating attorneys and law students will be matched with one (or more) K through 8 school classrooms in their locale to teach those students about the Bill of Rights. Participants will work out the time(s) and date(s) with the classroom teacher with whom they are matched.

Participation will be limited to 150 attorneys and law students. If you would like to participate, please call or return the form below to: Virginia C. Lee, Marsden, Orton, Cahoon & Gottfredson, 68 S. Main Street, Fifth Floor, Salt Lake City, UT 84101, (801) 521-3800.

**TEACHING THE BILL OF RIGHTS—REGISTRATION FORM**

Name _____

Firm _____

Address _____

_____

Phone _____

I am ☐ am not ☐ a member of Phi Alpha Delta

develop recommendations for the Bar Commission on the issue of pre-emptory challenge rule options. Matter also referred to the Courts and Judges Committee.

8. Received the monthly Admissions report, approved the reinstatement petition of Daniel Stringham, denying a petition to transfer an MBE score for lack of authority, approving February Bar examination applicants and approving Character and Fitness report. Received an appeal and appointed a panel to hear the appeal of an applicant. Appointed a committee to draft policies for the implementation of the proposed amendments to the admission rules. Approved final changes in the proposed admission rules for submission to the Supreme Court. Voted to request that the judicial council appoint a committee of appropriate persons to study whether the pro hav vice rule should be revised. Referred the issue of foreign attorney admission rule proposal to the Admission Rules Committee for study.

9. Received a report and appearance on behalf of Utah Legal Services by Anne Milne and Ken Bresin. Approved nominations to the Legal Services Board and approved a process by which future nominations might be more efficiently determined.

10. Received the monthly report of the Office of Bar Counsel, approving or reviewing disciplinary matters as are otherwise reported in the *Bar Journal*. Received and approved an annual discipline report and approved the filing of an annual discipline report with the Utah Supreme Court.

11. Received a report and appearance on behalf of the Lawyer Referral Service by Marcella Keck. Reviewed the purposes and operations of the Lawyer Referral Service and requested specific programmatic recommendations from the committee for future consideration.

12. Received a monthly Budget and Finance report. Approved amendments to the FY90 budget. Discussed FY91-94 projections. Authorized Budget and Finance Committee to finalize dues increase proposals for review at the next meeting. Authorized a letter to be sent to the Bar members to provide current information of the financial status of the Bar.

13. Received a report on the upcoming ABA Mid-Year meeting from State Bar Delegate Reed Martineau.

14. Discussed pending litigation matters with counsel.

15. Received report of the Young Lawyers Section including an invitation to the Legal Information Fair and approving an authorization for the section's solicitation of funds for dinner for the homeless.

16. Received an Unauthorized Practice of Law Committee report and authorized the filing of a lawsuit.

A full copy of the minutes of these and other meetings of the Board of Bar Commissioners is available for inspection by the members of the Bar and the public.

# Discipline Corner

**ADMONITION**

1. An attorney was admonished for violating Rule 1.4(a) for failing to communicate with his client. The attorney was retained in May 1987 and the attorney/client relationship ended in 1989. No written correspondence was indicated by the file.

**SUSPENSION**

1. On January 4, 1990, Douglas M. Brady was suspended from the practice of law for two years with eighteen months stayed pending successful completion of a two-year period of probation. Mr. Brady violated Rules 1.13(b), 8.4(b) and 8.4(c) of the Rules of Professional Conduct of the Utah State Bar by converting funds from his client's trust account to his own use. The sanction was mitigated by Mr. Brady's cooperation with the Lawyers Helping Lawyers Committee and that committee's recommendation of Mr. Brady's likelihood of rehabilitation. The sanction was aggravated by Mr. Brady's prior disciplinary history, the fact that the trust account monies were not repaid until after the discipline proceedings began and Mr. Brady's failure to comply with a previous disciplinary order.

# Notice to Bar Members

**FIRST AND THIRD DIVISIONS**

Pursuant to the Rules of Integration and Management of the Utah State Bar, nominations to the office of Bar Commission are hereby solicited for three members from the Third Division and one member from the First Division. Two three-year terms and one one-year term are to be filled in the Third Division. The nominee receiving the third highest number of votes in the Third Division election shall be the commissioner with the one-year term, with those receiving the highest and second highest numbers of votes being commissioners with three-year terms.

Applicants must be nominated by written petition of 10 or more members of the State Bar in good standing and residing in their respective Division. Nominating petitions may be obtained from the Bar Office on or after March 15 and completed petitions must be received no later than April 12. Ballots will be mailed on or about May 3 with balloting to be completed and ballots received by the Bar Office by 5:00 p.m. on May 31.

If you have questions concerning this procedure, please contact Barbara Bassett, Associate Director, at the Bar Office (531-9077).

# Bar Commission Highlights

At its March 16 meeting, the Board of Bar Commissioners received the following reports and took the actions indicated:

1. Approved Rules and Regulations for the New Lawyer CLE program, subject to final comment prior to March 23 meeting.
2. Reviewed proposed changes in the Lawyer Referral Service.
3. Reviewed proposed rules for the Client Security Fund Committee.
4. Received the Discipline Report, acting on pending public and private discipline matters as reported elsewhere in this issue. Authorized litigation in an unauthorized practice of law matter.
5. Received the Admissions Report, acting on routine petitions.
6. Received the report of the Budget and Finance Committee, acting to approve certain budget reductions. Authorized renewal of line of credit. Approved adoption of new dues schedule subject to Supreme Court approval. Approved response to complaint concerning the Client Security Fund.
7. Approved the minutes of the February 16 meeting.
8. Approved Joint Occupancy, Use and Services Agreement between the Bar and the Utah Law and Justice Center, Inc.
9. Authorized fund-raising by Young Lawyers Section in conjunction with Bill of Rights Bicentennial Project, and grants for the Pro Bono Project.
10. Reviewed pending litigation.
11. Received management reports from the Executive Director and Associate Director.
12. Received from the Salt Lake County Bar two copies of the new training program for habeas corpus counsel appointees.

At the March 23 special meeting, the Board of Bar Commissioners:

1. Gave final approval for the New Lawyers CLE regulations.
2. Continued reviewing proposed rules for the Client Security Fund Committee.
3. Approved results of the February Bar Examination.
4. Discussed the arrangements for member comment and input regarding the dues increase petition.

The full text of the minutes of these and other meetings of the Bar Commission are available for inspection at the office of the Executive Director.

# Discipline Corner

### ADMONITIONS

1. An attorney was admonished for violating Rule 1.9(a) by representing one brother in a conservatorship action and subsequently representing another brother seeking the removal of the first as conservator. The conflict was exacerbated by the attorney's later representing the first brother in filing an objection to the second brother's petition to probate the estate.

2. An attorney was admonished for violating Rule 1.9(a) by representing a client in regard to real property transactions and enforcement contracts and five years later representing a second party in negotiations against the prior client in regard to the same real estate transactions and contracts.

### PRIVATE REPRIMANDS

1. An attorney was privately reprimanded for violation of Canon 6, DR 6-101(A)(3) and Canon 1, DR 1-102(A)(5) by failing to respond to inquiries and Orders of the Tenth Circuit Court of Appeals. After having filed a Notice of Appeal, the attorney received notice from the Tenth Circuit Court of Appeals that he was not listed as licensed to practice before that Court. Subsequently, the Court issued a second notice. Respondent failed to respond to either of these inquiries. The Court then issued an Order to Show Cause and again Respondent failed to respond. The Court then appointed another lawyer to represent the client on appeal. The Court ultimately suspended the attorney for sixty (60) days from the practice of law before that Court.

### RULES REVIEW

The Office of Bar Counsel has recently received several inquiries regarding paid attorney referral services. Attorneys are advised to review Rule 7.2(c) of the Rules of Professional Conduct prior to purchasing these services.

# Report of the Legislative Affairs Committee

I. *Introduction.* The Legislative Affairs Committee believes that this report represents a highly successful Legislative Session. The Legislative Committee met regularly, pursued its review of filed legislation with diligence and care and took positions only on matters of overriding concern to the profession.

II. *The following represents a status report on all of those bills upon which the Board of Bar Commissioners had taken a position:*

A. In Opposition

1. Senate Bill No. 32 Pace
Fee Limitation on Trust Deeds—passed the Senate but failed in House rules.

2. Senate Bill No. 77 Leavitt
Contingent Attorneys' Fees—referred to interim study.

3. Senate Bill No. 180 McMullin
Divorced Parent Compliance with Residential Provision Per Child—failed in House.

4. House Bill 150 Frandsen
Review and Modification of Child Support Orders (opposed specific language)—signed 3/13.

5. House Bill 282 Young
Increasing Small Claim Court Limit—died in House rules.

B. In Support

1. Senate Bill No. 64 Cornaby
Judges' Retirement Benefit Enhancements—signed 3/7.

2. Senate Bill No. 150 Finlinson
Uniform Commercial Code-Leases—

# Discipline Corner

## ADMONITIONS

1. An attorney was admonished for violating Rule 4.3(a) and 4.3(b) by speaking with a party regarding pending litigation and failing to disclose to that party that he represented the opposing party.

2. An attorney was admonished for violating Rule 1.4(b) for failing to inform his client of the status of the case by failing to ensure that a settlement proposal from opposing counsel reached his client for a period of four months.

## PRIVATE REPRIMANDS

1. For violating Canon 1, DR 1-102(A)(4) and Canon 1, DR 1-102(A)(6), an attorney was privately reprimanded for maintaining a private practice while acting as a county attorney without first obtaining a waiver from the county attorney's office. The sanction was mitigated by a lack of prior disciplinary history and by a lack of injury to the clients.

## PUBLIC REPRIMANDS

1. On April 4, 1990, Craig S. Cummings was publicly reprimanded for violating Canon 6, DR 6-101(A)(3) by neglecting two separate matters regarding representation of clients in disputes with the IRS. Mr. Cummings accepted a retainer in 1983, and subsequently failed to pursue the client's remedies for the next four years. Mr. Cummings had made several attempts to communicate with the client, by telephone and by letter, advising the client of a recommended course of action. Mr. Cummings agreed to represent a second client against the IRS in 1985, and subsequently failed to move forward on that client's action, whereupon the client began dealing with the IRS pro se. The sanction was mitigated by a lack of prior disciplinary history and the fact that the attorney/client relationship was never clearly formalized between the second client and Mr. Cummings.

2. On April 4, 1990, David O. Black was publicly reprimanded for violating Canon 1, DR 1-102(A)(4) and Canon 1, DR 1-102(A)(6). Mr. Black associated with an outside attorney in several lawsuits while employed by a law firm. Mr. Black personally received a division of the litigants' recovery on a contingent fee basis for services performed while not on the law firm's time, but failed to disclose to the law firm that he was personally receiving compensation from these cases. The sanction was mitigated by a lack of disciplinary history, by Mr. Black's belief that he maintained an independent status with the firm, by conflicting evidence from the law firm and Mr. Black as to the status of Respondent's employment with the firm, and by the fact that the clients suffered no injury. The sanction was aggravated in that the arrangement should have been fully disclosed and discussed with the law firm.

3. On April 17, 1990, George S. Diumenti and William H. Lindsley were publicly reprimanded for violating Canon 1, DR 1-102(A)(5) and Canon 5, DR 1-105(A)(b) and (d). Messrs. Diumenti and Lindsley, while law partners, were contacted by and accepted representation of both the alleged perpetrator and the minor victim of sexual abuse. Messrs. Diumenti and Lindsley never requested nor received informed consent for the representation of the minor from her natural mother, her court appointed guardian ad litem, or her court appointed custodians. Pursuant to the representation of the alleged perpetrator, Messrs. Diumenti and Lindsley caused the felony charges to be reduced to misdemeanor charges, while at the same time attempting to represent the interest of the victim. The sanction was aggravated by Messrs. Diumenti's and Lindsley's failure to acknowledge the wrongfulness of their representation of both the victim and the perpetrator, by the vulnerability of the minor victim and by their substantial experience in the practice of law. The sanction was mitigated in that Mr. Lindsley took the appropriate steps to bring the minor victim into the protection of the juvenile court and that Messrs. Diumenti and Lindsley did not attempt to hide their representation of both parties from the juvenile court or the prosecuting attorney.

## SUSPENSIONS

1. On March 26, 1990, Boyd Fullmer was suspended for two months for violating Canon 9, DR 9-102 (B)(3) and Canon 9, DR 9-102(B)(4). Mr. Fullmer was to receive a one-third (⅓) contingent fee of all sums collected on behalf of his client. Mr. Fullmer received thereafter monthly payments, and remitted to his client two-thirds (⅔) of each of the first seven payments, but failed to forward any monies to the client after the first seven payments. He received $1,900, for which he failed to account. The sanction was aggravated by Mr. Fullmer's failure to resolve the situation prior to the disciplinary process despite opportunities to do so, by Mr. Fullmer's prior disciplinary history and by his substantial experience in the practice of law. The sanction was mitigated by Mr. Fullmer's efforts to curtail his practice in an attempt to resolve this type of problem.

2. On March 30, 1990, Douglas E. Wahlquist was suspended for six months and one day for violating Canon 1, DR 1-102(A)(4), Canon 6, DR 6-101(A)(3), Canon 7, DR 7-101(A)(1), Canon 7, DR 7-101(A)(3) and Rule 1.3, Rule 1.4(a) and Rule 8.4(c). Mr. Wahlquist agreed to represent his client in 1986 on a contingent fee basis and agreed to advance certain costs. Mr. Wahlquist promised to file the client's lawsuit in the Federal District Court within the time frame established by Order of the Federal Appeal Board and later assured the client that the lawsuit had been filed. For a period of approximately one month his client attempted to contact Mr. Wahlquist on numerous occasions without success. Mr. Wahlquist finally admitted that he had failed to file the lawsuit. The opportunity to file the lawsuit is now barred. The sanction was aggravated by Mr. Wahlquist's prior disciplinary history, by his failure to respond to the discipline process, by the vulnerability of the victim, by Mr. Wahlquist's substantial experience in the practice of law and by the client's injury caused by Mr. Walquist's failure to file the lawsuit.

3. On April 6, 1990, Blaine P. McBride was suspended for six months for violating Canon 6, DR 6-101(A)(3), Canon 9, DR 9-102(B)(3), Canon 9, DR 9-102(B)(4) and Rule 1.3, Rule 1.13(b) and Rule 1.4. The suspension was stayed for twenty-four (24) months pending successful completion of probation. The suspension was imposed pursuant to three separate complaints. In representing one client on several different matters, Mr. McBride failed to inform the client adequately that he did not intend to move forward with the client's action until further payment was received, failed to issue and serve a Summons resulting in a dismissal without prejudice, failed to prosecute a case resulting in efforts on the part of the opposing counsel to have cause dismissed for lack of prosecution, and failed to provide adequate status reports to the client. In representing a separate corporate client, Mr. McBride believed that he represented the past president personally and therefore refused to return files to the current president. Pursuant to a complaint by the current president, a Screening Panel of the Ethics Discipline Committee determined that Mr. McBride served as counsel for the corporation rather than the president individually. Mr. McBride subsequently failed to respond to any and all requests by the Screening Panel to return the files to the proper party. Mr. McBride failed to respond to the Office of Bar Counsel and the Screening Panel of Ethics and Discipline Committee throughout the disciplinary process regarding a complaint filed in the Office of Bar Counsel by a separate client. The sanction was aggravated by Mr. McBride's failure to respond to the disciplinary process, but mitigated in that Mr. McBride was suffering from a dysthymic disorder during the period of misconduct, and that he has accepted professional assistance in an attempt to resolve the difficulties.

4. On March 28, 1990, Richard B. Johnson was suspended for six months for violation of the terms of his probation pursuant to a prior disciplinary order by failing to return telephone calls and written correspondence from his clients, failing to appear at court hearings, and failing to provide monthly status reports to the clients.

# Executive Director Resigns

Stephen F. Hutchinson, Executive Director of the Utah State Bar, has resigned his position effective June 30, 1990. The announcement was made by Bar President Hans Q. Chamberlain and Mr. Hutchinson.

Mr. Chamberlain wished Mr. Hutchinson well, and said during his service as Executive Director, the Utah State Bar has dramatically expanded its array of programs and services to Bar members and the public. Highlights include the completion of the Utah Law and Justice Center project, and the Tuesday Night Bar outreach program, both of which have received national acclaim. Also, the Bar has implemented a mandatory continuing legal education program and will initiate an extensive skills development program for new lawyers next fall. Lawyer participation in Bar volunteer activities and programs is at an all-time high.

Mr. Chamberlain said the Executive Committee of the Board of Bar Commissioners will oversee the operations of the Bar until a new director is named. The Utah State Bar is currently inviting applicants for the position of Executive Director to fill the vacancy created by the resignation of Mr. Hutchinson. Bar President Chamberlain said all inquiries should be directed to the Search Committee of the Bar at the Law and Justice Center. They will be kept in strict confidence.

The Executive Director is the chief administrative officer of the Bar. The director is responsible to the respective Boards for the overall management and operations, their programs, services and staff. The director oversees the budgeting process and is responsible for the financial affairs of the Bar.

Applicants must possess proven management ability, and strong financial and communication skills. A college degree is required and a law degree is preferred. Starting salary will be commensurate with experience and qualifications.

Applications should be received at the Bar by July 31 1990. Additional information is available from the Bar Office. The Bar is an equal opportunity employer.

# Utah Bar Examination and Admission Rules Get a New Look

The Utah Supreme Court has approved revised rules for admission to the Utah State Bar effective August 1, 1990. The revisions include significant changes in the admission process and in the Bar examinations required to practice law in Utah. The changes include shortening the Utah Bar Examination from a three-day to a two-day examination. The two-day examination will consist of the Multistate Bar Examination, a multiple choice exam, and one day of essay questions. The Utah Attorney Examination will be offered concurrently with the Utah Bar Examination in February and July rather than quarterly. Under the new rules the Bar Examination will be scored on a point scale and passage will be based on achievement of a combined examination scaled score of 130.

In an ongoing effort to ensure the character and fitness of all applicants to the Bar, investigation efforts will be intensified based on the character and fitness standards published in the new rules.

The Court ordered a 30-day comment period, beginning March 29, 1990, to allow local law students and Bar members an opportunity to review and respond to the revised rules. A public forum was held April 16, 1990, at 12:00 p.m. at the University of Utah law school. Representatives of the Admission Committee and Bar staff briefly outlined implementation of the revised admission rules and New Lawyer Continuing Legal Education and responded to questions.

Copies of the revised rules are available at the Utah State Bar, 645 S. 200 E., Salt Lake City, UT 84111. You may request a copy by calling Michele Roberts, 531-9077. Upon receipt of the $15 initial processing fee, applications are mailed to all student and attorney applicants.

## Discipline Corner

**PRIVATE REPRIMAND**

1. An attorney was privately reprimanded for violating Rule 1.14 of the Rules of Professional Conduct for misrepresenting to the client, on two separate occasions, that his claim was pending before the Industrial Commission and scheduled for a hearing to determine liability in June of 1990 when in fact the liability determination had been made in October of 1989. Further, the attorney failed to submit a medical evaluation to the Industrial Commission which he received in May 1990. The client, subsequent to the termination of the attorney in August 1990, submitted the same medical evaluation to the Industrial Commission and settled the claim.

2. An attorney was privately reprimanded for violating Rule 1.4(a) of the Rules of Professional Conduct for failure to respond to the client's repeated request for information regarding the status of the case during the period March through September 1990. The attorney was also privately reprimanded for violating Rule 1.3 of the Rules of Professional Conduct for failure to exercise reasonable diligence in moving the case forward resulting in the medical bills being assigned for collection causing the client unnecessary stress. Subsequent to the client's filing of the Complaint with the Office of Bar Counsel, the attorney engaged in active negotiation with the insurance provider.

**SUSPENSION**

On June 30, 1991, John M. Bybee was suspended from practice of law for a period of six (6) months for failure to exercise reasonable diligence in representing his client in a guardianship action. Mr. Bybee accepted representation and prepared the guardianship petition, obtained his clients' signatures and the filing fee in March 1990 but failed to file the petition. Further, Mr. Bybee refused to refund the filing fee. Mr. Bybee's conduct violated Rules 1.3, (diligence); 1.13(c), (safekeeping property); and 8.4(c), (misconduct); of the Rules of Professional Conduct.

Mr. Bybee's six (6) month suspension was stayed pending his successful completion of a one (1) year period of probation. Mr. Bybee's sanction was aggravated by a prior two (2) year suspension from the practice of law in the State of Idaho before his move to Utah. As a mitigating factor, the Court took into consideration Idaho Code of Professional DR-9-102(A) which states that "in the appropriate circumstances, lawyer's personal monies and client trust monies may be commingled." Mr. Bybee assumed, incorrectly, that the same rule applied in Utah.

**CORRECTION**

The Office of Bar Counsel previously reported that an attorney was admonished for violating Rule 3.5(a) (decorum) by taping a telephone conversation between himself and a judge without the judges knowledge or consent (August/September 1991). The reason for the admonishment was that the judge objected to the taping of the conversation. We trust this will eliminate any confusion that this inadvertent error may have caused our readers.

**RULE CHANGES**

(Lawyer Helping Lawyers)

The following amendments to the Rules of Professional Conduct should be noted:

1. Rule 1.6 (Confidentiality of Information) is amended by the addition of the following,

(c) Representation of a client includes counseling a lawyer(s) about the need for or availability of treatment for substance abuse or psychological or emotional problems by members of the Utah State Bar serving on the Lawyers Helping Lawyers Committee.

2. Rule 8.3 (Professional Misconduct) is amended by the addition of the following,

(d) This rule does not require disclosure of information provided to or discovered by members of the Utah State Bar during the course of their work on the Lawyers Helping Lawyers Committee, a committee which has as its purpose the counseling of other bar members about substance abuse or psychological or emotional problems.

## Government Law Section

**CLE Luncheon on the 1992 Election**

Pollster Dan Jones of Dan Jones & Associates will speak at a luncheon sponsored by the Government Law Section. He will discuss the 1992 general election: what he sees will likely be the issues, how redistricting will affect the election results, and what trends were revealed by 1991 municipal elections. Fee includes lunch.

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|---|---|
| CLE Credit: | 1 hour will be requested |
| Date: | November 19, 1991 |
| Place: | Utah Law & Justice Center |
| Fee: | $8.00 ($5.00 for Section Members) |
| Time: | Noon to 1:30 p.m. |

**Upcoming Events**

(more details next month)

- December 10, 11 or 12 (tentative): Senator Orrin Hatch on "The Process of Confirming Federal Judges." Luncheon with 1 hour of CLE.
- January 25 (tentative): One-half day seminar on topics of interest for government attorneys and other attorneys. 4 Hours CLE plus lunch.

# Discipline Corner

### ADMONITIONS

An attorney was admonished for violating Rule 1.4. The attorney accepted representation of client who was injured in an automobile accident in 1988 and the attorney failed to file a complaint until February 1991—the date of the client's complaint with the Bar. Further, the attorney failed to respond to client's inquiries regarding the progress of her case.

### PRIVATE REPRIMANDS

**1.** An attorney was privately reprimanded for violating Rule 1.14 of the Rules of Professional Conduct for terminating representation without the Court's approval and to the client's detriment.

**2.** An attorney was privately reprimanded for violating Rule 1.7(b) of the Rules of Professional Conduct by simultaneously representing clients with adverse interest without making full disclosure to the Court and obtaining the consent of the parties.

**3.** An attorney was privately reprimanded for violating Rule 1.3 of the Rules of Professional Conduct by failing to exercise reasonable diligence in his preparation of a Will and Trust. The attorney was retained in July 1988 to prepare the Trust and Will and failed to do so until October 26, 1990.

**4.** An attorney was privately reprimanded for violating Rules 1.3 and 1.4 of the Rules of Professional Conduct by failing to act diligently in representing the client and by failing to keep the client reasonably informed as to the status of the case. The attorney was hired in May of 1984 to represent the client in a joint venture dispute concerning a real property development. The attorney filed the complaint in April 1985, which complaint was dismissed in January 1987 for failure to prosecute. In December of 1987, the attorney filed a motion to have the dismissal set aside and the motion was denied resulting in the client's loss of the cause of action. The attorney executed a promissory note in favor of the client in the amount of $7,000 as consideration for the loss and subsequently defaulted on the note.

**5.** An attorney was privately reprimanded for violating Rules 1.3 and 1.4(a) by failing to exercise reasonable diligence in representing the client in a civil suit. The attorney was hired in February of 1986 and as of March of 1990, the time of the filing of the complaint with the Bar, the attorney had not obtained the information necessary to move the case forward. The attorney had no reasonable explanation for the delay and for the failure to respond to the client's request regarding the status of the action.

**6.** An attorney was privately reprimanded for violating Rules 1.3 and 1.4(a) and (b) of the Rules of Professional Conduct by failing to exercise reasonable diligence in investigation and filing of the medical malpractice suit and thereafter failing to conduct any discovery from March 1986 till April 1988. Subsequent to filing of the complaint the attorney failed to keep the client informed as to the status of the case, and failed to inform the client of the September 1987 pre-litigation hearing panel's findings of a non-meritorious cause of action, and further failed to provide the client with sufficient information enabling the client to make informed decisions.

**7.** An attorney was privately reprimanded for violating Rule 1.3 of the Rules of Professional Conduct by failing to timely file the client's appeal resulting in dismissal of the appeal. The Board of Commissioners considered the attorney's refunding of the retainer fee and other mitigating factors in its decision to impose discipline.

**8.** An attorney was privately reprimanded for violating Rule 1.3 of the Rules of Professional Conduct by failing, even with the granting of the additional time, to file a response to a magistrate's recommendation of dismissal as instructed by the client.

**9.** An attorney was privately reprimanded for violating Rules 1.3 and 1.4(a) and 1.14(d) of the Rules of Professional Conduct. From December 1987 to June 14, 1990, the attorney failed to communicate with the client regarding the status of the case and failed to exercise reasonable diligence in taking appropriate depositions or otherwise moving the case forward.

### SUSPENSION

On June 11, 1991, Bruce Udall was suspended from practice of law for a period of two years for failing to prevent the conversion by co-counsel of certain funds recovered in a personal injury action. The suspension was stayed pending the successful completion of a twenty-four (24) months' probation. To successfully complete his probation, Mr. Udall must perform at least eighty (80) hours of pro bono work for the Salt Lake County Bar and/or Legal Aid. In addition and prior to the expiration of the probationary period, Mr. Udall is required to make restitution to the client.

### DISBARMENT

On July 30, 1991, Brad L. Swaner was disbarred for conversion of trust funds and neglecting other legal matters. Any attempt to be readmitted shall be conditioned upon his making restitution to all clients, and his full compliance with Rule XVIII, Procedures of Discipline.

# Discipline Corner

## ADMONITIONS

**1.** An attorney was admonished for violating Rule 1.14(d) by failing to forward his client's file to the client's new attorney for a period of approximately five months.

**2.** An attorney was admonished for violating Rule 8.4(d) by accepting a $1,500 retainer and describing it as a "flat fee" retained in order to protect it from his client's creditors when the attorney had no intention that the $1,500 would in fact be a fixed fee.

## PRIVATE REPRIMANDS

**1.** An attorney was privately reprimanded for violating Rule 1.3 by failing to commence a lawsuit for approximately two years after the date of retainer. In addition, the complaint was dismissed without prejudice based on the attorney's failure to serve the Defendant within three months of filing the action.

**2.** An attorney was privately reprimanded for violating Canon 6, DR 6-101(A)(3), Rules 1.3, 1.4(a) and 8.1(b) of Rules of Professional Conduct by failing to inform his client that her action had been dismissed based on his failure to appear at a pre-trial. In addition, the attorney failed to respond to the Notice of Complaint issued by the Office of Bar Counsel. The attorney filed the action on behalf of a husband and wife and subsequently the clients divorced. The attorney informed the husband, but failed to inform the wife.

**3.** An attorney was privately reprimanded for violating Rules 1.3, 1.4(a), 1.14(d) and 8.1(b) of the Rules of Professional Conduct, by failing to move forward on his client's divorce action and failing to respond to his client's repeated requests for information. In addition, the attorney failed to respond to the Notice of Complaint issued by the Office of Bar Counsel.

**4.** An attorney was privately reprimanded for violating Rules 1.3, 1.4(a), 1.14(d) and 8.1(b) of the Rules of Professional Conduct, by failing to move forward on his client's action and failing to respond to repeated requests for information from his clients and failing to forward the client file to another attorney after being terminated by his clients. In addition, the attorney failed to respond to a Notice of Complaint issued by the Office of Bar Counsel.

## SUSPENSIONS

**1.** On March 21, 1991, El Ray F. Baird was suspended from the practice of law for a period of one year. Ten months of the suspension is stayed pending successful completion of probation. To complete his probation, Mr. Baird, must work with a supervising attorney who will analyze his case management and office management systems. Mr. Baird must also send monthly status reports to his clients and continue to meet with his counselor. In addition, Mr. Baird must pay the Complainant the sum of $650 as restitution. Mr. Baird had agreed to act as attorney for his client pursuant to her divorce in 1987. Subsequent to filing the complaint, Mr. Baird failed to perform any legal services on her behalf. The Defendant in that action obtained a Decree of Divorce by Default based on Mr. Baird's failure to respond to interrogatories. In addition, Mr. Baird failed to respond to his client's repeated requests for information throughout the period of representation.

This discipline was aggravated by Respondent's pattern of misconduct. Mr. Baird received a public reprimand in 1987 and two private reprimands in 1989 all based on neglect.

**2.** On March 21, 1991, Robert A. Bentley was suspended from the practice of law for a period of one year. Mr. Bentley may apply for reinstatement after three months of the suspension if he is able to find an attorney who will associate with him as co-counsel and provide the Bar evidence from a medical practitioner certifying that he has overcome his depression. In addition, Mr. Bentley is to repay restitution in the amount of $750 to one client and $300 to another client. Mr. Bentley must also repay the Utah State Bar $303 for the cost of prosecuting the matter. One of Mr. Bentley's clients retained him in 1987 and thereafter attempted repeatedly to contact Mr. Bentley without success. Based on the complaint filed with the Office of Bar Counsel, the Screening Panel voted to dismiss the case against Mr. Bentley, based on his representation that he would follow through on her action. Thereafter, Mr. Bentley failed again to act on her behalf.

Another client retained Mr. Bentley in 1987 to act as his attorney in an anti-discrimination suit. Mr. Bentley failed to file the appropriate documents to initiate the suit. For a period of approximately two years, his client attempted to contact him without adequate success.

Mr. Bentley violated Rule 1.4(a) by failing to respond to his client's repeated requests for information and failing to keep his clients apprised of the status of their actions. Mr. Bentley violated Canon 6, DR6-101(A)(3) and Rule 1.3 by failing to file the complaints as he had represented to his clients.

In mitigation, the Hearing Panel, based on information supplied by a medical practitioner, determined that Mr. Bentley suffered from depression and had difficulties with alcoholism during the pertinent time periods.

**3.** On March 21, 1991, A. Paul Schwenke was suspended from the practice of law for a period of one year. As a condition of reinstatement, Mr. Schwenke must complete 15 hours of continuing legal education dealing with criminal and civil procedures, no less than five of these hours must be courses dealing in ethics. In addition, Mr. Schwenke must repay the Office of Bar Counsel the sum of $50 in costs for prosecuting the matter.

On March 19, 1986, Mr. Schwenke agreed to purchase from his client certain real properties. On the same date the sale was consummated, Mr. Schwenke filed Chapter 11 Bankruptcy Petition on behalf of his client. Mr. Schwenke filed the bankruptcy to prevent a foreclosure in an effort to benefit himself and his partner. In addition, during the course of the first meeting of the creditors, Mr. Schwenke misrepresented the ownership of the properties to the bankruptcy court.

Mr. Schwenke violated Canon 1, DR1-102(A)(4) by initiating the bankruptcy on behalf of his client in order to prevent a foreclosure on the sale of the property in an effort to benefit himself and his partner. Mr. Schwenke violated Canon 1, DR1-102(A)(5) by misrepresenting the status of the ownership of those properties to the bankruptcy court. Mr. Schwenke violated Canon 5, DR5-101(A) by purchasing the properties from his client and subsequently filing bankruptcy on behalf of his client to protect his own interest. Mr. Schwenke violated Canon 5, DR5-103(A) by acquiring a property interest in the cause of action. Mr. Schwenke violated Canon 7, DR7-102(A)(3) by misrepresenting the status of the ownership of the properties. Mr. Schwenke violated Canon 7, DR7-102(A)(5) by his misrepresentation of the

status of the ownership of the properties. Mr. Schwenke violated Canon 7, DR7-102(A)(7) by assisting his client in misrepresenting the ownership of the properties. This sanction was aggravated by Mr. Schwenke's prior disciplinary history in that he was suspended from the practice of law at the time the decision was made in this disciplinary matter. The sanction was also aggravated by Mr. Schwenke's self-serving dishonest motive, and his obstruction of the disciplinary process by failing to comply with discovery after numerous requests, motions and orders compelling compliance. In addition, Mr. Schwenke refused to acknowledge the wrongful nature of his conduct. The sanction was partially mitigated, however, in that at the time of the misconduct, Mr. Schwenke had been in practice for only three years and his lack of experience and competence contributed to the misconduct.

**REINSTATEMENTS**

On March 6, 1991, Ray S. Stoddard was reinstated to the practice of law in the State of Utah subject to a six-month period of probation under the direction of a supervising attorney licensed to practice in the State of Utah.

# Request for Comment on Proposed Bar Budget

The Bar staff and officers are currently preparing a proposed budget for the fiscal year which begins July 1, 1991, and ends June 30, 1992. The process being followed includes review by the Commission's Executive Committee, and the Bar's Budget and Finance Committee, prior to adoption of the final budget by the Bar Commission at its July 1991 meeting.

The Commission is interested in assuring that the process include as much feedback by as many members as possible. A copy of the proposed budget, in its most current permutation, will be available for inspection and comment at the Law and Justice Center after May 20, 1991. You may pick up a copy from the receptionist.

Please call or write John Baldwin at the Bar office with your questions or comments.

# Sun Valley

## Utah State Bar 61st Annual Meeting

July 3 to 6, 1991
*Sun Valley, Idaho*
*Business Meeting - Thursday, July 4, 1991*
*8:30 - 9:30 A.M.*

*Approved for 13 Hours of CLE Credit*
*This Includes Four Hours in Ethics*

The 1991 Annual Meeting of the Utah State Bar will once again take place in the beautiful resort of Sun Valley, Idaho. The planning committee has spent considerable time, hoping to create a program that will be both educational and fun. We have been fortunate in arranging very knowledgeable and interesting speakers involving a variety of timely and, we believe, intriguing issues. Keynote speakers for the meeting include Hon. J. Clifford Wallace, United States Ninth Circuit Court of Appeals, and Jack Anderson, syndicated columnist. Judge Wallace will be speaking on "Challenges Facing the Courts in the '90s" and will be appearing on a panel to further discuss the future of the courts and our justice system. Mr. Anderson will be speaking at a luncheon on "Freedom of the Press and the Bill of Rights." He will share his wealth of experience and charged opinions with you in a dynamic fashion.

Along with our keynote speakers, we will have many other distinguished speakers discussing a number of interesting topics such as: How to Manage the Small Firm, Litigation Tactics, Truth, Justice and Professional Responsibility, a Family Law Judicial Panel, Corporate Criminal Liability, Director and Officer Liability, Pre-Trial Practice and a two-hour Ethics Workshop. These exciting topics offer an informative and entertaining way for you to meet your mandatory CLE requirements.

In addition to the variety of CLE courses, the Annual Meeting is designed to catch the attention of spouses and/or significant others. This includes a program designed to simplify wills and trusts, tennis clinics and an art gallery tour. You won't want to miss the social events either. We have also attempted to include a variety of activities for children and day-care is also available.

Those of you who are golfers should take special note of the prizes that will be awarded. There are other activities such as tennis, fly fishing, croquet and other sports so that everyone can participate and enjoy the beautiful scenic Sun Valley area.

We have already seen a considerable demand for reservations for this meeting. We believe that you should plan early in order to obtain suitable accommodations.

Don't miss this fun and exciting opportunity to meet your CLE requirements in a warm, relaxing atmosphere.

*See you in Sun Valley.*

# New Address or Phone?

Please contact the Utah State Bar when your address or phone number changes. This will ensure accurate information for Bar records and for the Annual Bar Directory.

Call (801) 531-9077 or use this coupon and mail.

Name _____
Bar Number _____
Old Telephone _____
New Telephone _____
Old Address _____
_____
New Address _____
_____

Mail to: The Utah State Bar, 645 S. 200 E., Salt Lake City, UT 84111

# Notice to Bar Members

## THIRD, FOURTH AND FIFTH DIVISIONS

Pursuant to the Rules of Integration and Management of the Utah State Bar, nominations to the office of Bar Commission are hereby solicited for two members from the Third Division, one three-year term and one one-year term to fill the unexpired term of president Greenwood, one member from the Fourth Division for a three year term and one member from the Fifth Division.

Applicants must be nominated by written petition of 10 or more members of the State Bar in good standing and residing in their respective Division. Nominating petitions may be obtained from the Bar Office on or after March 15 and completed petitions must be received no later than April 12. Ballots will be mailed on or about May 3 with balloting to be completed and ballots received by the Bar Office by 5:00 p.m. on May 31.

If you have questions concerning this procedure, please contact John C. Baldwin at the Bar Office (531-9077).

# Discipline Corner

### ADMONITIONS

1. An attorney was admonished for violating Rules 1.1 and 1.3 by failing to pursue a Temporary Restraining Order against his client's ex-husband's wasting of marital assets. The attorney had also failed to respond to his client's numerous requests for information in violation of Rule 1.4.

2. An attorney was admonished for violating Canon 6, DR 6-101(A)(3) by failing to timely respond to his client's requests for information regarding a recommendation from the Domestic Relations Commissioner. The attorney failed to respond to the client's daily telephone calls for approximately one month.

3. An attorney was admonished for violating Rule 1.4(a) by failing to respond to his client's numerous telephone calls regarding the status of the action. The Screening Panel found that the attorney had failed to adequately respond to his client for a period of two years.

4. An attorney was admonished for violating Rule 1.4(a) by failing to respond to his client's numerous requests for information and failing to inform his client of the cancellation of court dates and failing to explain clearly the fee agreement. The attorney failed to respond to his client's requests for information for a period of approximately three months.

5. An attorney was admonished for violating Canon 9, DR 9-102(b)(1), (3) and (4) and Rule 1.13(b) by failing to remit to his client sums held in his trust account for a period of six months. The attorney failed to timely return approximately $280 which was the remainder of the settlement of a lawsuit.

### SUSPENSIONS

On September 5, 1990, Kenn Martin Hanson was suspended for 15 months for violating Rules 1.3, 1.4(a), 1.13(b), 1.14(d) and 8.1(b). In addition, Mr. Hanson is required to complete six hours of continuing education in ethics and pay the sum of $8,000 in restitution to another attorney for completing Mr. Hanson's cases. In June 1988, Mr. Hanson relocated to the state of Arizona. He failed to apprise several of his active clients that he was leaving his practice in Utah. Mr. Hanson "assigned" several of his active clients' cases to other attorneys without advising or consulting the clients. He had accepted lump sum fees from several clients for whom he failed to complete the matter and failed thereafter to return the legal fees. Further, Mr. Hanson applied for membership in the Arizona State Bar and failed to disclose certain required information to the Arizona Bar authorities pursuant to his application.

# Scott M. Matheson Award

The Law-Related Education and Law Day Committee of the Utah State Bar is accepting applications and nominations for the First Annual Scott M. Matheson Award to be presented on Law Day, May 1, 1991.

PURPOSE:

To recognize those lawyers and law firms who have made an outstanding contribution to law-related education in the state of Utah.

CRITERIA:

Nominations and applications will be accepted on behalf of individuals or law firms who have:

1. Made significant contributions to law-related education in the state of Utah which are recognized at local and/or state levels.
2. Voluntarily given their time and resources in support of law-related education, such as serving on planning committees, reviewing or participating in the development of materials and programs, and participating in law-related education programs such as the Mentor/Mid-Mentor Program, Mock Trial Program, Volunteer Outreach, Judge for a Day, or other court or classroom programs.
3. Participated in activities which encourage effective law-related education programs in Utah schools and communities and which have increased communication and understanding between students, educators and those involved professionally in the legal system.

APPLICATION PROCESS:

Applications and/or nominations may be submitted to the:

Scott M. Matheson Award
Law-Related Education Committee
Utah Law and Justice Center
Box A
645 S. 200 E.
Salt Lake City, UT 84111

Included in the nomination should be a cover letter, a one-page resume and a one-page summary of the nominee's law-related activities. The nominee may also submit other related materials which demonstrate the nominee's contributions in the law-related education field. This material may include a bibliography of law- related education materials written by the nominee, copies of news items, resolutions or other citations which document the nominee's contribution or a maximum of two letters of recommendation. All materials submitted should be in a form which will allow for their easy reproduction for dissemination to members of the selection committee. Nominations must be postmarked no later than April 15, 1991.

# Discipline Corner
## MAY 1991

### ADMONITIONS

An attorney was admonished for violating Rule 1.14(a) by failing to respond to his client's requests for information concerning the status of the action. The attorney was retained to pursue collection and failed to respond to his client's inquiries for a period of approximately two months.

### PROBATIONS

On March 29, 1991, Richard A. Higgins was placed on probation for a period of thirty-six (36) months on condition that he pay $315,430 as restitution, that he not sell unregistered securities and that he not violate any other state or federal securities laws. On May 17, 1988, Mr. Higgins pled guilty to three counts of the offer for sale of an unregistered security in violation of 61-1- 7 U.C.A. Mr. Higgins was placed on probation under the supervision of the Adult Probation and Parole Department of the State of Utah on May 17, 1988, for a period of thirty-six (36) months. The disciplinary probation runs concurrent with that of the criminal probation. The offense was mitigated in that all of the securities work was performed by a law firm in Denver, Colorado, which was experienced in securities law. Mr. Higgins relied upon the legal opinion of that firm which declared that the securities in question could be sold without violating Utah law. Because Mr. Higgins was an attorney and president of the company, however, it was contended that he should have known that the sale of the securities was wrongful. The offense was considered more in the nature of absolute civil liability rather than a criminal offense. Further, in accepting Mr. Higgins' guilty plea, the Court ordered that the probation order should not be construed to interfere with, or cause to be revoked, Mr. Higgins' license to practice law. In addition, the events occurred in 1981 and 1982 and Respondent has no prior or subsequent discipline history.

# Alternate Trial Court Judicial Nominating Commission Applicants Sought

The Board of Bar Commissioners is seeking applications from Bar members for the Bar appointments of two alternate commissioners to the Trial Court Judicial Nominating Commissions for each geographical division of the trial courts. Alternate commissioners were added to the Judicial Nominating Commissions in the 1991 legislative session, and will serve in the place of commissioners appointed by the Bar of the same political party who may become unable to serve as a result of disability, disqualification or otherwise.

Alternate commissioners shall be residents of the geographic division served by the Trial Court Nominating Commission to which they are appointed.

These nominating commissions are for the district courts, juvenile courts and the circuit courts within their geographical division. Bar appointees must be of different political parties.

Bar members who wish to be considered for these appointments must submit a letter of application, including resume and designation of political affiliation. Applications are to be mailed to John C. Baldwin, Executive Director, Utah State Bar, 645 S. 200 E., Salt Lake City, UT 84111, and must be received no later than 5:00 p.m. on August 1, 1991.

# 1991 Judicial Conference Of The Tenth Circuit

Come to the 1991 Judicial Conference of the Tenth Circuit in beautiful Sedona, Arizona, on July 17, 18 and 19, 1991, at the Los Abrigados Hotel. The first general session is at 1:30 p.m. on Wednesday, July 17, and the last event is a dinner dance on Friday evening, July 19, with optional tours to Grand Canyon on the following day.

The Bill of Rights and the Quality of Life of Lawyers are the two themes of the Conference. Justices Byron R. White and Sandra Day O'Connor, best-selling author Rabbi Harold Kushner *(When Bad Things Happen to Good People) and (When All You Ever Wanted Isn't Enough)*, Clarence Darrow (with actor James Lawless), Solicitor General Kenneth Starr, and leading scholars, deans and judges will capture your imagination and attention. Besides, you will receive a minimum of 10 hours of CLE credits, including ethics credits.

Bring the whole family for a vacation. Enjoy the spectacular sights of Arizona (Grand Canyon, Lake Powell, Canyon de Chelly, Petrified Forest). En route go through Utah (Bryce Canyon, Zion National Park), Colorado (Mesa Verde, Black Canyon of the Gunnison, Great Rocky Mountain National Park), New Mexico (Santa Fe, Albuquerque, Indian pueblos), continue to Las Vegas, Disneyland or San Diego's Sea World and Zoo.

A newly-featured Children's Program on Thursday morning, July 18, begins with a continental breakfast followed by a 2-hour participatory learning program on the Bill of Rights adapted for various age groups (3 to 6, 7 to 11, 12 to 17) and coordinated by experts in adolescent and children's peer interactive learning.

Lawyers and their spouses will enjoy the Wednesday evening casual outdoor reception under the trees along Oak Creek, followed by "The Art of Sedona" (brief talks and a display by local artists and galleries) a few steps away in the Las Abrigados ballroom. Thursday brings the Spouses' Breakfast at the Creek featuring a colorful account of the unique features and history of Sedona, the Conference Luncheon featuring Justice O'Connor, and a free afternoon and evening for golf, tennis and recreation. Friday's State Luncheons give you a chance to break bread with the lawyers and federal judges of your state. Climax of the Conference is the reception and dinner dance featuring a presentation by the famous Clarence Darrow and a broad array of danceable music.

Don't miss this opportunity in a single trip to combine legal learning, CLE credit, travel beauty, family togetherness, fun for your youngsters, culture, relaxation, mixing with your friends and peers and meeting new friends, and meeting and hearing from two Supreme Court Justices and some of the nation's top deans, law professors, and federal and state judges.

# Discipline Corner

**ADMONITIONS:**
(formerly known as
"PRIVATE REPRIMANDS")

On September 30, 1993, an attorney entered into a Discipline by Consent and received an Admonition for violating Rule 1.3, DILIGENCE, of the Rules of Professional Conduct of the Utah State Bar. The attorney was retained in April of 1990 to represent a client in a divorce action. On March 26, 1991, the divorce was granted effective upon entry. The attorney was ordered to prepare the Findings of Fact, Conclusions of Law and the Decree of Divorce. The attorney failed to submit the final pleadings until September 24, 1992. In Mitigation the Ethics and Discipline Committee considered the fact that the delay, at least in part, may have been attributable to the client's request that the attorney withhold the filing of the pleadings pending the satisfactory resolution of the division of the personal property.

**SUSPENSION:**

On September 17, 1993, attorney Grant G. Orton was placed on a one (1) year suspension effective immediately for violating Rules 1.13(b) SAFEKEEPING PROPERTY; and 8.4(c), MISREPRESENTATION. The suspension stemmed from Mr. Orton's failure to disclose in a "Commitment" letter to his principal, Attorney Title Guaranty Fund, certain judgment liens of record encumbering title to certain real estate prior to the Fidelity National Title Insurance Company's issuance of a title insurance policy on the property on behalf of Attorney Title Guaranty Fund. In the same transaction, Mr. Orton collected a premium of $1,012.50 for the title insurance policy but failed to remit the required thirty percent (30%) or any portion thereof to Attorney Title Guaranty Fund. Upon recording of the transaction, Cottonwood Mall, one of the judgment creditors that Mr. Orton failed to list in the Commitment, executed on the new owner's interest in the property. Security Pacific National Bank, the Successor-in-interest to ICA Mortgage Co., the original mortgagee, sued Attorney Title and Fidelity National based on their issuance of a title insurance policy. The law suit was ultimately settled for $14,000.00 to be paid to Cottonwood Mall. The attorney's fees and costs of litigation were $28,006.91. The Attorney Title Guarantee Fund paid $25,430.00 of these costs and fees. As a condition precedent to his reinstatement, Mr. Orton is required to pay restitution to both the Attorney Title Guarantee Fund in the amount of $25,430.00 and to Fidelity National Title Insurance Company in the amount of $16,576.91, which includes the $14,000.00 settlement amount. Further, as a condition precedent to his reinstatement, Mr. Orton is ordered to attend and successfully complete the six (6) hour Utah State Bar Ethics School.

**RECIPROCAL DISCIPLINE:**

On September 21, 1993, the Supreme Court of Utah entered an order of reciprocal discipline pursuant to discipline imposed by the California Supreme Court, placing attorney Donald R. Sherer on a two (2) year suspension, effective upon entry, for trust account violations. Upon reinstatement, Mr. Sherer will be placed on supervised probation for a period of four (4) years. As a condition precedent to his reinstatement, Mr. Sherer is ordered to take and pass the Utah Professional Responsibility Examination and pay restitution in the amount of $500.00 to his former clients Lloyd and Anne Lessenger.

**RESIGNATION WITH DISCIPLINE PENDING:**

On September 17, 1993, the Utah Supreme Court entered an order of Resignation with Discipline Pending under Rule VII(k), Procedures of Discipline, in the matter of discipline of attorney Scott W. Clark for violating Rules 1.3, DILIGENCE; and 1.4, COMMUNICATION, of the Rules of Professional Conduct. Mr. Clark's resignation stems from the fact that in November of 1989 he was retained to collect on an out of state judgment in the amount of $24,075.25 against a property located in the state of Utah. Mr. Clark had not been involved in the proceedings which resulted in the judgment in favor of his client. Mr. Clark failed to promptly record the judgment in Utah. Thereafter, in January of 1990, another creditor obtained judgment against the same debtor for $468,000.00 and immediately recorded it, thereby subordinating his client's priority and effectively making the judgment uncollectible.

# ANNOUNCEMENT

## From U.S. Court of Appeals, Tenth Circuit

The United States Court of Appeals for the Tenth Circuit has implemented an electronic bulletin board, EDOS (Electronic Dissemination of Opinions). Court opinions, as well as orders and judgments, will be put on EDOS at the close of business on the day filed and will be retained thereon for 90 days. Other Court records available on EDOS include dockets, calendar and panel information, and rules of practice.

EDOS operates on a 386 PC running under the SCO Unix operating system and xbbs bulletin board software, which provides a logical menu-driven interface for locating, viewing and retrieving information. EDOS is accessible by anyone with a personal computer or terminal, a modem (9600, 2400, or 1200 baud), and communications or terminal emulation software, configured for full duplex, 8 data bits, no parity, and 1 stop bit. EDOS may be accessed 24 hours a day, 7 days a week by calling (303) 844-3222.

Instructions for using EDOS may be viewed on-line and downloaded or printed copies of instructions may be obtained by calling the clerk of court, (303) 844-3157.

# MCLE Reminder

Attorneys who are required to comply with the odd year compliance cycle, will be required to submit a "Certificate of Compliance" with the Utah State Board of Continuing Legal Education by December 31, 1993. In general the MCLE requirements are as follows: 24 hours of CLE credit per two year period plus 3 hours in ETHICS, for a combined 27 hour total. Be advised that attorneys are required to maintain their own records as to the number of hours accumulated. Your "Certificate of Compliance" should list all programs that you have attended that satisfy the CLE requirements, unless you are exempt from MCLE requirements. A Certificate of Compliance for your use is included in this issue. If you have any questions concerning the MCLE requirements, please contact Sydnie Kuhre, Mandatory CLE Administrator at (801) 531-9077.

## Discipline Corner

**ADMONITION: (under new rules)**

1. On August 11, 1993, the Chair of the Ethics and Discipline Committee entered an Order of Discipline pursuant to the terms of a Discipline by Consent wherein an attorney received an Admonition for failing to take timely action to prosecute a criminal appeal. Effective July 1, 1993, an Admonition replaces the Private Reprimand. In this instance the client was convicted in February 1991, the Notice of Appeal was timely filed, however, the Appeal Brief was not filed until May 1993.

**PRIVATE REPRIMANDS: (under old rules)**

2. An attorney received a Private Reprimand for violating Rule 4.4 (Respect for Rights of Third Persons) of the Rules of Professional Conduct of the Utah State Bar. In a custody dispute, the Domestic Relation's Commissioner recommended that the Division of Family Services (DFS) conduct a custody evaluation pursuant to the Utah Code Ann. §62A-4-509. Upon completion, the evaluation report was filed with the court. Thereafter, the attorney, dissatisfied with the evaluation results contacted DFS, alleging the evaluation was performed in absence of a court order. The attorney successfully demanded the retraction of the report. The evaluator's report was ultimately resubmitted. In mitigation, the Screening Panel considered the fact that the attorney had no prior discipline history.

3. On June 24, 1993, the Board of Bar Commissioners upheld the decision of a Screening Panel of the Ethics and Discipline Committee privately reprimanding an attorney for violating Rule 1.1 COMPETENCE, Rule 1.3 DILIGENCE and Rule 1.5(a) FEES. The attorney violated these Rules by failing to prepare a personalized, relevant Qualified Domestic Relations Order from the date of the divorce, January 14, 1991, through the attorney's withdrawal on July 28, 1992. In addition, the attorney attempted to charge the client for the preparation of the QDRO.

**PUBLIC REPRIMANDS:**

4. On June 28, 1993, Thomas R. Blonquist was publicly reprimanded by the Utah Supreme Court pursuant to a Discipline by Consent for violating DR 7-101(A) ZEALOUS REPRESENTATION. The basis of this action involved Mr. Blonquist's failure to adequately review and verify information for inclusion in a Proxy Statement prepared by Mr. Blonquist in January of 1984 and distributed in March of 1984.

5. On June 29, 1993, Donald E. Elkins was publicly reprimanded by the Utah Supreme Court pursuant to the terms of a Discipline by Consent. Mr. Elkins was retained in December 1990 to assist clients with bankruptcy and accepted a fee of $200.00. Thereafter, he failed to provide any meaningful legal services. He failed to attend any of the four hearings that were set in the case. Instead, he sent an associate to ask for a continuance. On January 14, 1992, the case was dismissed for lack of prosecution. Mr. Elkins agreed to make restitution of $1,200.00 to his clients which included compensation for an automobile that was repossessed when the bankruptcy was dismissed.

**SUSPENSIONS:**

6. On September 2, 1993, the Third District Court entered an Order of Interim Suspension against Nick H. Porterfield. The Order suspends Mr. Porterfield from the practice of law until all pending disciplinary matters are resolved. Mr. Porterfield was suspended for multiple violations of Rule 1.3 DILIGENCE, Rule 1.4 COMMUNICATION, Rule 1.5 FEES, Rule 1.13 SAFEKEEPING PROPERTY, Rule 1.14 DECLINING OR TERMINATING REPRESENTATION, and Rule 8.4(a), (b), (c) and (d) MISCONDUCT. Mr. Porterfield effectively abandoned his practice and clients by leaving the state, without notice to clients or the Courts, and failing to provide alternative counsel. This occurred on May 26, 1993. As a result of his departure, he was locked out of his office and made no attempt to contact clients or the Courts regarding pending matters. The Office of Attorney Discipline has received more than fifty-five complaints against Mr. Porterfield from clients, colleagues, former employees and others. While many complaints arose out of Mr. Porterfield's actions on and subsequent to May 26, 1993, just as many arose out of conduct prior to May 26, 1993.

7. In August 10, 1993, the Utah Supreme Court suspended Doyle Buchanan from the practice of law for three months for accepting a fee of $600.00 to represent a client in a criminal matter and failing to provide any legal services. Mr. Buchanan cannot be reinstated to practice law until the client or the Client Security Fund is reimbursed for this unearned fee. The Court also directed that he be placed on supervisory probation for a period of six months following reinstatement.

**NOTICE OF PETITION FOR REINSTATEMENT**

On or about August 17, 1993, John R. Bucher filed a Petition for Reinstatement to practice law. Mr. Bucher was suspended on May 19, 1992, for a period of not less than six months pursuant to Rule XIX, Disability, of the Procedures of Discipline of the Utah State Bar. Individuals objecting to or concurring in Mr. Bucher's reinstatement to practice law should file their opposition or concurrence with the Third Judicial District Court within 30 days of the date of this publication.

**NOTICE**

It is the attorney's responsibility to notify the Bar, in writing, as soon as an address has changed. Send all changes to:

Utah State Bar
ATTN: Arnold Birrell
645 South 200 East #310
Salt Lake City
Utah 84111

**NOTICE**

# Discipline Corner

## PRIVATE REPRIMAND

1. An attorney was privately reprimanded on February 12, 1993, for violating Rule 1.3, Diligence. The attorney was retained in January 1983 to represent the client in the original divorce action which provided for joint custody of the parties' minor child, with no provision for child support by either party to the other. In September 1983, pursuant to the client's request, the attorney filed a petition to modify the Decree of Divorce and further requested child support. However, the parties agreed to trade assets in lieu of child support for the first five (5) years with monthly support commencing in October 1988. Thereafter, the attorney failed to prepare and file the order reflecting the parties' stipulation.

Upon failure to receive the stated child support in October 1988, the client contacted the court and learned, for the first time, that the attorney had not filed the order with the court. Thereafter, the client contacted the attorney and was assured that the order would be filed. From October 1988 until January 1992, the attorney failed to prepare and file the order modifying the Decree. On February 7, 1992, the client notified the Bar Counsel's Office. On February 12, 1992, the attorney filed the order modifying the Decree of Divorce. In mitigation, the Screening Panel considered the fact that the attorney ultimately completed the work. Further, due to the lapse of time and the long periods of non-communication, a greater sanction seemed unwarranted. In aggravation, the Screening Panel considered the attorney's misrepresentation to the client concerning the filing of the order.

2. An attorney was privately reprimanded on March 8, 1993, for violating Rules 1.3, Diligence, and 1.4(a), Communication. The attorney accepted a $590.00 retainer on February 20, 1991 to represent a client in a divorce action. The attorney filed the complaint for divorce on or about February 21, 1991. Thereafter, the attorney failed to prepare and file a motion for temporary relief or prepare a stipulation as directed by the client. Further, the attorney failed to return the client's numerous telephone messages or otherwise communicate the status of the case to the client. Ultimately, on March 11, 1992, the client retained substitute counsel and learned, for the first time, that there had been an Order to Show Cause hearing on February 11, 1992, for dismissal of the action for failure to prosecute.

3. An attorney was privately reprimanded on March 24, 1993, and placed on one (1) year supervised probation for violating Rules 1.1, Competence; 1.2(a), Scope of Representation; 1.4(a), Communication; 1.14(d), Declining or Terminating Representation; and 8.1(b), Bar Admission and Disciplinary Matters. In January 1992 the attorney accepted a $600.00 retainer to represent the clients in a landlord-tenant dispute. The tenants sued for "Quiet Enjoyment." The attorney filed a Counterclaim for Unlawful Detainer and scheduled a hearing without giving the required five (5) day notice to the opposing counsel in violation of the Rules of Civil Procedure. The opposing counsel moved for the dismissal of the Counterclaim and sanctions. The attorney moved to amend the Counterclaim. The matter was set for a hearing for March 17, 1992. The attorney failed to appear until the client contacted her. The attorney ultimately did appear, unprepared, one and a half hours later. The client was sanctioned and ordered to pay $100.00 in attorney fees to the opposing party. The attorney, in court and on the record, accepted the liability for the sanction and subsequently failed to pay the $100.00 which failure resulted in a lien being placed on the client's property. Upon receipt of the Bar complaint, the Office of the Bar Counsel contacted the attorney who failed to respond to the Bar Counsel's request for information.

In aggravation, the Screening Panel considered the attorney's discipline history and failure to follow through with the Panel's earlier recommendation and to take adequate measures to become familiar with the Utah Rules of Civil Procedure. In mitigation, the Panel considered the attorney's lack of experience; the attorney has been in practice for five (5) years as a solo practitioner.

4. An attorney was privately reprimanded on March 24, 1993, and placed on one (1) year supervised probation for violating Rules 1.1, Competence; 1.3, Diligence and 8.1(b), Bar Admission and Disciplinary Matters. In July 1990, the attorney accepted a $400.00 retainer fee to draft a "sales agreement" which among other provisions was intended to protect the client (seller) in the event the buyer defaulted on the construction loan and hold the buyer responsible for the attorney fees and costs related to the enforcement of the sales agreement. The sales agreement which the attorney drafted failed to comport with the client's objectives. Thereafter, the buyer defaulted, the client paid the attorney an additional $500.00 to commence a civil action against the buyer. With the exception of a demand letter, the attorney failed to provide any meaningful legal service to the client. The client then hired substitute counsel and eventually prevailed in the civil suit. However, because the sales agreement did not provide for attorney's fees, the client was unable to recover the $11,000.00 fees and costs incurred in the enforcement of the sales agreement. Upon retaining substitute counsel, the client asked for a refund of the unused portion of the $500.00 or in the alternative asked the attorney to draft a simple will. The attorney failed to prepare the will or refund the unused portion of the $500.00 retainer. Upon receipt of the Bar complaint, the Office of Bar Counsel contacted the attorney who failed to respond to the Bar Counsel's request for information.

In aggravation, the Screening Panel considered the attorney's discipline history, failure to follow through with the Panel's earlier recommendation. In mitigation, the Panel considered the attorney's lack of experience; the attorney has been in practice for five (5) years as a solo practitioner.

5. An attorney was privately reprimanded on March 24, 1993, and placed on one (1) year supervised probation for violating Rules 1.3, Diligence and 1.13(b), Safekeeping Property. In May of 1991 the client, whose pro se workers compensation action had been dismissed, retained the attorney to pursue the matter. On June 19, 1991, the attorney, in a letter, asked the treating physician for a diagnostic report and agreed to pay for the costs related thereto. The attorney received the diagnostic report and a statement for $110.00 representing the cost of providing the requested information. Thereafter, the attorney received monthly billings from the Physician's Billing Services for the outstanding bill of $110.00. The attorney failed to pay the bill. In November 1991 the Billing Services notified the client of the unpaid balance and made threats to take legal action against the client. In

August 1992 the client paid the unpaid balance and filed a Bar complaint. On November 4, 1992, four months after the Bar complaint was filed, the attorney paid the $110.00.

6. On March 8, 1993, the Board of Bar Commissioners approved a private reprimand for violating Rule 1.3 of the Rules of Professional Conduct. The attorney was retained to represent a client in the United States District Court of California in a civil rights action. The attorney drafted and filed a Complaint that was subsequently dismissed for failing to state a claim upon which relief could be granted and for failing to timely respond to a defense Motion to Dismiss. The attorney drafted and filed First and Second Amended complaints which were likewise dismissed for failure to state a claim upon which relief could be granted. During the course of this litigation the attorney filed a complaint on behalf of this same client in a domestic relations matter and failed to appear at the scheduled hearing. The private reprimand for this conduct was recommended by a Screening Panel of the Ethics and Discipline Committee.

7. On March 27, 1993, the Board of Bar Commissioners approved a private reprimand, and restitution in the amount of $1,500.00, for an attorney who accepted a fee for legal services on or about October 14, 1987, and failed thereafter to provide all of the legal services for which the fee was paid. On that date, the attorney received $3,500.00, a portion of which was for attorney's fees and the remainder was to be used to negotiate a settlement with the opposing party. No settlement was negotiated, however, the complainant agreed that the value of the services provided by the attorney was approximately $2,000.00. This discipline was entered pursuant to agreement between the attorney and the Office of Bar Counsel.

**SUSPENSION**

8. On March 1, 1993, the Utah Supreme Court entered an Order placing Ray S. Stoddard on suspension from the practice of law for a period of one (1) year. Thereafter, Mr. Stoddard will be placed on supervised probation for six (6) months. This action was based upon Mr. Stoddard's failure to comply with a prior order of discipline entered on April 18, 1988 which suspended him from the practice of law for six (6) months, the suspension being stayed with Mr. Stoddard placed on a nine (9) month supervised probation. Thereafter, Mr. Stoddard failed to cooperate with the supervising attorney. The Office of Bar Counsel moved for the revocation of the probation and the reinstatement of the original suspension. Upon completion of the six month suspension, Mr. Stoddard was reinstated pursuant to motion and placed under six months supervised probation. Again, Mr. Stoddard failed to cooperate with the supervising attorney. The Office of Bar Counsel filed a Motion for Order to Show Cause. The matter came before the Special Master, the Honorable Dean Conder presiding. Judge Conder's alternate recommendation was approved by the Supreme Court placing Mr. Stoddard on a one (1) year suspension. Upon reinstatement, Mr. Stoddard will again be on supervised probation for six months with the same conditions as stated in the Order of Reinstatement dated March 6, 1991.

# Judicial Council Seeks Attorneys to Serve onAlternative Dispute Resolution Committee

The Judicial Council is seeking qualified applicants to serve on a committee to study and propose rules and legislation to implement alternative dispute resolution procedures in this state. The committee will report to the Judicial Council and the Utah Supreme Court. Interested attorneys should submit a letter indicating their interest and outlining their qualifications to: Alternative Dispute Resolution Committee, c/o Administrative Office of the Courts, 230 South 500 East #300, Salt Lake City, Utah 84102. Letters of interest must be received no later than May 28, 1993. Questions regarding committee service may be directed to Colin R. Winchester at (801) 578-3800.

# Beehive Chapter of ALA Elects New Officers

The Beehive Chapter of the Association of Legal Administrators (ALA) recently elected new officers to serve during the Chapter's 1993-1994 fiscal year.

The officers elected include Julie A. Carlisle, Office Administrator for Moyle & Draper, P.C., as President; Suzanne P. Wadsworth, Branch Office Administrator for Holme, Roberts & Owen, as Vice-President; Michael J. Easton, Firm Administrator for Callister Duncan & Nebeker, as Secretary/Treasurer; and Debbie H. Stone, Director of Personnel for Show Christensen & Martineau as Program Director. The outgoing President of the Chapter is C. Peyton Smith, Manager for Human Resources and Facilities for VanCott, Bagley, Cornwall and McCarthy.

The primary purpose of the Chapter is to promote the exchange of information regarding the administrative and management problems relating to legal organizations including not only private law firms but also corporate legal departments, government legal and judicial organizations, and public service legal groups.

In support of its purpose, the Chapter holds monthly meetings during which speakers address topics relating to law firm management. The Chapter also sponsors educational courses from time to time and annually conducts a salary and benefits survey relating to law firm staff employees.

While regular members of the organization must be law firm administrators or equivalent, associate membership is available for practicing lawyers involved in law firm management, and both full-time teachers and students at institutions of higher learning.

Further information about the Chapter and its activities can be obtained by contacting Julie A. Carlisle at 521-0250.

## Discipline Corner

**SUSPENSIONS**

On December 14, 1992, the Utah Supreme Court placed Clayne I. Corey on Interim Suspension pending a final determination of pending disciplinary proceedings. The interim suspension was based upon allegations from various clients that Mr. Corey accepted fees and failed to provide any meaningful legal services.

On January 7, 1993, Gary J. Anderson was suspended from the practice of law for one year effective September 18, 1992. In addition to the period of suspension Mr. Anderson agreed to make restitution to the affected clients as a condition precedent to reinstatement to practice law. This action was taken pursuant to a Discipline by Consent wherein Mr. Anderson admitted that he had violated Rule 1.3, DILIGENCE, Rule 1.4, COMMUNICATION, Rule 1.5, FEES, Rule 5.3, SUPERVISING NON ATTORNEY ASSISTANTS, and Rule 5.5, AIDING THE UNAUTHORIZED PRACTICE OF LAW.

Mr. Anderson stipulated that he had undertaken to represent a large number of clients, that the clients were not adequately represented, that he failed to return phone calls and keep his clients informed as to the status of their cases, and that his firm accepted fees for which no meaningful legal services were provided.

Mr. Anderson further stipulated that a suspended attorney employed in his law firm was not properly supervised and that he acquiesced in this attorney's unauthorized practice of law.

Stronger sanctions were not imposed due to the evidence submitted by Mr. Anderson that he was suffering from depression following the death of his father and was unable to cope with the problems associated with the management of his law practice.

Upon completion of the conditions of his suspension, and upon being reinstated to practice law, Mr. Anderson will be placed on supervised probation for a period of two years and shall perform 200 hours per year of pro bono legal services.

## Scott M. Matheson Award

The Law-Related Education and Law Day Committee of the Utah State Bar presented the first annual Scott M. Matheson Award to Greg Skordas and the law firm of Van Cott, Bagley, Cornwall & McCarthy. The second annual award went to Barry Gombert and the law firm of Fabian & Clendenan. Currently, the committee is accepting applications and nominations for the third annual Scott M. Matheson Award to be presented on Law Day, May 1, 1993.

PURPOSE: To recognize those lawyers and law firms who have made an outstanding contribution to law-related education in the State of Utah.

CRITERIA: Nominations and applications will be accepted on behalf of individuals or law firms who have:

1. Made significant contributions to law-related education in the State of Utah which are recognized at local and/or state levels.

2. Voluntarily given their time and resources in support of law-related education, such as serving on planning committees, reviewing or participating in the development of materials and programs and participating in law-related education programs such as the Mentor/Mid-Mentor Program, Mock Trial Program, Volunteer Outreach, Judge for a Day, or other court or classroom programs.

3. Participated in activities which encouraged effective law-related education programs in Utah schools and communities and which have increased communication and understanding between students, educators, and those involved professionally in the legal system.

APPLICATION PROCESS: Applications and/or nominations may be submitted to the:

Scott M. Matheson Award
Law-Related Education Committee
Utah Law and Justice Center
Box S-10
645 South 200 East
Salt Lake City, UT 84111

Included in the nomination should be a cover letter, a one page resume and a one page summary of the nominee's law-related activities. The nominee may also submit other related materials which demonstrate the nominee's contributions in the law-related education field. These materials may include a bibliography of law-related education materials written by the nominee, copies of news items, resolutions, or other citations which document the nominee's contribution or a maximum of two letters of recommendation. All materials submitted should be in a form which will allow for their easy reproduction for dissemination to members of the selection committee. Nominations must be postmarked no later than April 15, 1993.

## State and Local Government Conference

On Friday, March 26, 1993 the J. Reuben Clark Law School Government and Politics Legal Society will hold its Eleventh Annual State and Local Government Conference at the Excelsior Hotel in Provo, Utah.

You will probably receive a registration form for this conference in the mail. If you do not receive a registration form or if you have questions, please call Carolyn Stewart at 378-6384.

The conference will consist of Civil, Criminal, and Political sections, with panels and speakers addressing issues of importance in these areas of law.

CLE and Ethics credit will be available.

## ATTENTION: New CLE Tracking Procedure!

Beginning January 1, 1993, the Utah State Bar modified the membership base to provide tracking of Continuing Legal Education (CLE) hours attended for all members of the Utah State Bar. The Utah State Bar and Utah State Board of CLE will track CLE hours for programs which have been previously approved and reported to the Utah State Board of CLE. Thereafter, on a quarterly basis, the Utah State Bar will be printing CLE information on the mailing labels affixed to the Bar Journals. This information will also be accessible by contacting the Utah State Board of CLE, located at the Utah Law & Justice Center.

# Discipline Corner

## ADMONITIONS

1. On August 24, 1994, the Ethics and Discipline Committee of the Utah State Bar admonished an attorney for conduct unbecoming a member of the Utah State Bar. The admonition was issued for a violation of Rule 4.2, Communication With Person Represented By Counsel. In about 1983, the attorney was hired by a firm as an "associate attorney and consultant" for specific litigation. When this litigation was apparently concluded, the law firm representing the defendant, (a governmental entity) filed a lawsuit against the defendant regarding a fee dispute. Subsequently, the defendant filed a counterclaim against the law firm, the attorney, the attorney's wife, and others. The attorney, on behalf of himself and in a capacity where the attorney appeared to be representing his wife, corresponded directly with the defendant's governing body. The defendant, and, therefore, the members of the governing body, were represented by counsel. The letter concerned matters that were part of the ongoing litigation.

2. An attorney was Admonished by a Screening Panel of the Ethics and Discipline Committee for lack of diligence in resolving a dispute on behalf of a client regarding the amount of a medical lien. The client's personal injury case was settled in July, 1992. Between July, 1992, and February, 1993, the attorney failed to negotiate a settlement of the medical lien. During this time the attorney did not respond to phone calls or requests for information from the client. The Panel found that the attorney violated Rule 1.3, Diligence and Rule 1.4(a)(b), Communication, of the Rules of Professional Conduct.

3. On May 24, 1994, the Chair of the Ethics and Discipline Committee Admonished an attorney pursuant to the terms of a Discipline by Consent for violating Rule 1.4(b), Communication, of the Rules of Professional Conduct. The attorney was retained in 1981 to assist a client with a Worker's Compensation claim. The case took a number of years to conclude due to the client's youth and his desire to return to work. Consequently, there were periods of time when the case was in abeyance while the client made attempts at rehabilitation. There was no evidence that the attorney communicated with the client between 1986 and 1989. It was during this period of time that it was determined the client could not return to work. An Admonition was deemed appropriate since the client was drawing social security benefits during this period of time and suffered no financial harm.

4. On February 24, 1994, a Consent Award of Arbitrator was entered wherein an attorney was ordered to pay $5,000.00 to a client as part of the Bar disciplinary process. The attorney violated Rule 1.3, Diligence, of the Rules of Professional Conduct by failing to timely designate experts in a civil action wherein the attorney's clients were defendants. Consequently, the court granted a motion for summary judgment against the clients. The Bar complaint was resolved with a Discipline by Consent wherein the attorney was admonished and agreed to make restitution to the clients in the amount determined by arbitration.

5. On June 28, 1994, the Chair of the Ethics and Discipline Committee approved a recommendation of a Screening Panel that an attorney be Admonished for violating Rule 1.1, Competence, and Rule 1.4(a)(b), Communication, of the Rules of Professional Conduct. The attorney was retained in 1990 to represent a client in a medical malpractice action. In July, 1991, the attorney failed to appear at a scheduling conference and in October, 1991, failed to appear at the client's deposition. In December, 1991, summary judgment was entered against the client when the attorney failed to present expert testimony. Additionally, between July, 1990 and July, 1991, the attorney did not keep the client reasonably informed as to the status of the case.

6. On August 24, 1994, an attorney was admonished for violating Rules 1.1, Competence and 1.7(b), Conflicts, of the Rules of Professional Conduct of the Utah State Bar. The Respondent represented both the complainants and the natural grandmother of a minor child the complainants were seeking to adopt, during the adoption proceeding. The interests of the complainants and the grandmother were adverse, and became even more adverse when the grandmother tried to prevent the adoption. Respondent also failed to file the adoption proceeding in the proper county, and failed to follow the Utah Code in obtaining the natural mother's relinquishment of her parental rights. In the process, Respondent gave the complainants incorrect advice regarding the natural grandmother's rights with regard to the minor child. It was only when complainants retained substitute counsel that the conflict was resolved and the adoption was finalized.

## SUSPENSIONS:

1. On July 5, 1994, Virginius Dabney was suspended from the practice of law for thirty days, ordered to complete 160 hours of pro bono legal services prior to December 31, 1994, to attend the Utah State Bar Ethics School within one (1) year, to teach one (1) hour of ethics as a seminar for Worker's Compensation attorneys within one (1) year of the date of the entry of the Order of Discipline and to pay the costs of the disciplinary action. This action was taken pursuant to a discipline by consent for violating Rules 1.3, Diligence, 1.14(d), Terminating Representation, and 8.4(c), Misrepresentation of the Rules of Professional Conduct. This sanction was deemed appropriate in view of the fact that it could not be established that the client had suffered any harm.

The complaint stemmed from a fee dispute wherein a client alleged Mr. Dabney had agreed to represent him in a Worker's Compensation case on a pro bono basis. Mr. Dabney disputed this allegation. However, an Administrative Law Judge found in favor of the client. The Judge further found that Dabney had submitted a signature page, previously signed by the client, on a proposed settlement document providing for attorney's fees, that Dabney had made misrepresentations to his client regarding the status of the case, and had threatened to withdraw from the case at a critical point unless the client agreed to pay a fee.

2. On September 13, 1994, Fred Wasilewski was suspended from the practice of law for one year.

Mr. Wasilewski abandoned two clients when he relocated to Sacramento, California in November of 1991. Both clients retained Mr. Wasilewski to commence wrongful termination cases, one paying a $2500 retainer and the other a $1500 retainer. After leaving the State of Utah, Mr. Wasilewski failed to protect his clients' interest and failed to refund the retainers.

As part of a Discipline By Consent, accepted by the Third District Court, Mr.

Wasilewski refunded the retainers in full and admitted to violating Rules 1.13(b), Safekeeping Property and 1.14(d), Terminating Representation.

3. On October 4, 1994, D. John Musselman was suspended for three years from all appellate practice, publicly reprimanded, ordered to attend the Utah State Bar Ethics School and pay costs.

Mr. Musselman was charged with neglecting eight appeals from April of 1991 through July of 1992 and Interim Suspension from appellate practice on August 6, 1992. Summary Judgment was entered on the underlying charges by the Third District Court for violating Rule 1.3, Diligence, of the Rules of Professional Conduct.

Thereafter a Sanctions Hearing was held and the district court issued a Memorandum Decision on September 16, 1994. In mitigation the Court considered the heavy caseload of Mr. Musselman due to the disintegration of the firm that was awarded the public defender contract for the Fourth Judicial District. Accordingly, Mr. Musselman was given credit for the time served on Interim Suspension with the balance to be served upon entry of the order.

**DISBARMENTS:**

1. On July 13, 1994, the Third Judicial District Court disbarred William R. Shupe from the practice of law for violating Rule 8.4(b), Committing a Criminal Act, of the Rules of Professional Conduct. This was based upon his conviction in the United States District Court for the District of Utah on January 15, 1993, of violating 18 U.S.C. 1014 by knowingly providing false credit information and false income information in a credit application to the University of Utah Credit Union, on or about January 1990, for the purpose of influencing the actions of this federally insured financial institution. Mr. Shupe was convicted upon his plea of guilty. His sentence included two years probation, four months in a halfway house in California, restitution of $10,288.00 to the University of Utah, restitution to the Bank of Delaware in the amount of $4,347.00, and he is required to perform 150 hours of community service.

2. On September 17, 1994, Douglas M. Brady was disbarred from the practice of law pursuant to an order entered by the Second Judicial District Court on August 18, 1994. Mr. Brady was disbarred for violating Rules Rule 1.1, Competence, Rule 1.3, Diligence, Rule 1.4(a), Communication, Rule 1.14(d), Declining or Terminating Representation, Rule 8.1(b), Failing to Respond to a Lawful Demand for Information From a Disciplinary Authority, and Rule 8.4(c), Misrepresentation, of the Rules of Professional Conduct of the Utah State Bar. On or about September 25, 1991, Respondent was retained to represent a client in a personal injury case arising from a auto accident. Thereafter, he provided no meaningful legal services. Mr. Brady misrepresented to his client that he was actively working on her case when in fact he was not. His client's case was subsequently dismissed for failure to prosecute and could not be refiled. Mr. Brady was admitted to practice law in 1981. In aggravation the Court considered six Formal Complaints that had issued against him since his admission, three of which resulted in prior suspensions from the practice of law for conduct similar to that for which he was disbarred.

# Women Lawyers 1994 Autumn Retreat

A congenial and convivial time was had by nearly 70 women lawyers at the Women Lawyers of Utah 1994 Annual Autumn retreat, which was held on September 30 – October 1, 1994 at the Cliff Lodge at Snowbird. On Friday evening, following a social hour and dinner, Kayleen Simmons of The Simmons Group spoke about a pilot program she began a year ago called "People Helping People," a mentorship program aimed at getting women off welfare through mentoring by volunteer working women. She then presented an exercise used in the mentor workshop on overcoming attitudes that limit success, focusing on the context of providing legal service.

Saturday morning began with an early-morning nature walk to Alta led by Elizabeth King. Dr. Kate Lahey, the WLU 1994 Woman Lawyer of the Year, gave the keynote speech at breakfast, drawing on her own experience in discussing mentor relationships.

*Kate Lahey, Woman Lawyer of the Year*

The final presentation was a seminar on "The Power of Self: The Utilization of Knowledge of Personality to Communicate." Dr. Emily Rosten, a psychologist and counselor, used the Myers-Briggs Type Indicator test in the seminar. After taking the test, each participant was given the unique opportunity of being placed in a group with other individuals having the same personality and asked to solve a problem. A spokeswoman for each group reported to the whole on her group's solution and the process the group implemented in arriving at that solution.

The WLU retreat was organized by Elizabeth Conley, Lisa Davis, Jennifer Falk, Elizabeth Jones, Monica Pace, Laura Scott, and Shannon Stewart. WLU sincerely thanks the following firms and company for their contribution and support in making the WLU 1994 Annual Autumn Retreat a thorough success:

Parsons Behle & Latimer
Kimball, Parr, Waddoups, Brown & Gee
LeBoeuf, Lamb, Leiby & Macrae
Ray, Quinney & Nebeker
Van Cott, Bagley, Cornwall & McCarthy
Sinclair Oil
Giauque, Crockett, Bendinger & Peterson
Jones, Waldo, Holbrook & McDonough
Janove & Associates
Wood Spendlove & Quinn
Prince, Yeates & Geldzahler

tive Affairs Committee to support the concept of HB53 "Criminal Expungement Revisions."

(D) The Board voted to accept the recommendation of the committee to support SB91 "Amendments to the Utah Exemptions Act."

(E) The Board voted to accept the committee's recommendation to allow the Bar Commission to go ahead with whatever they are going to do towards a compromise between all parties regarding court consolidation.

(F) The Board voted to accept the recommendation of the committee to authorize the Family Law Section to lobby against HB83 "Revision of Alimony Standards."

(G) The Board voted to accept the recommendation of the committee to oppose HB144 "Payment of Attorneys fees in a Lawsuit."

(H) The Board voted to accept the recommendation of the Legislative Affairs Committee to oppose HB153 "Payment of Medical Malpractice Legal Fees."

(I) The Board voted to accept the recommendation of the Legislative Affairs Committee to authorize the Family Law Section to lobby for SB49 "Emancipation of Minors."

(J) The Board voted to accept the recommendation of the committee to authorize the Family Law Section to lobby against SHB71 "Mandatory Divorce counseling for Children."

(K) The Board voted to accept the recommendations of the Legislative Affairs Committee and the Family Law Section to oppose HB81 "Enforcement of Visitation Order."

(L) The Board deferred taking action on HJR5 "Resolution Amending Rule of Evidence Regarding Mental Health Practice Privilege" which amends Rule 506 of the Rules of Evidence.

(M) The Board voted to not accept the recommendation of the Legislative Affairs Committee to oppose HJR7 "Appointment of Attorney General Resolution" but to take no position on the bill.

(N) The Board voted to accept the recommendation of the Legislative Affairs Committee to support SB73 "Juvenile Court Judgeship" which would appropriate $176,000 for an additional juvenile court judge in the Fourth District.

(O) The Board voted to defer taking action on a bill regarding Juvenile Sentencing Authority and decided to review the bill at the March Commission meeting.

19. The Board voted to appoint Timothy Allen, Michael G. Wilkins, David Gee, Rusty Vetter, Gary R. Heward, Robert H. Henderson, Glen T. Hale, Larry A. Kirkham, and Liz King to the Bar Examiners Committee.
20. John Baldwin referred to the report on hours of continuing legal education offered for the two-year cycle, 1992-93, and indicated that 718 hours including 94.5 in ethics were provided.
21. The Board voted to accept a policy proposed by the CLE Committee promoting variety and presenters for CLE seminars.
22. The Board voted to approve the creation of an Appellate Practice Section of the Bar.
23. Ray Westergard referred to the financial reports and reported on the recent Budget & Finance Committee meeting.
24. J. Michael Hansen reported on the last Judicial Council meeting and indicated that judicial performance evaluations have been completed.

During a special conference call meeting on February 22, 1994, the Board of Bar Commissioners received the following reports and took the actions indicated.

1. Dennis Haslam explained the actions which took place in the Senate during the week of February 14. He indicated that modifications were completed on the bill to amend the judicial nominating commissions and the Bar had decided to endorse the governor's amendments.
2. Jim Clegg led a discussion regarding proposed changes in court consolidation including proposed amendments to §78-3-14 in HB372.
3. After significant discussion, the Board voted to reject the compromise language of HB372 and stay with its prior position to oppose early consolidation.

A full text of the minutes of these and other meetings of the Bar Commission is available for inspection at the office of the Executive Director.

## *Discipline Corner*

### ADMONITIONS

An attorney was admonished and required to attend ethics school for engaging in a physical altercation outside the courthouse with an opposing party in violation of Rule 8.4(d) of the Rules of Professional Conduct. The attorney was the defendant in a small claims case. After the trial, the attorney and the husband of the plaintiff got into an argument that continued out into the parking lot. The argument escalated and the attorney struck the plaintiff's husband.

### SUSPENSIONS

On March 31, 1994, the Utah Supreme Court suspended Duane Smith from the practice of law for one year. This action was based upon his misdemeanor conviction in 1990 of attempted recording of a false or forged instrument. The conviction arose out of a situation where Mr. Smith confessed to forging his wife's signature, and the signature of a notary, on an Acceptance of Service and Waiver which he used to obtain his own bogus divorce in the Third Judicial District. Subsequently, Mr. Smith admitted his misconduct to the court and had the divorce set aside. There were a number of mitigating circumstances presented to the court including his absence of prior disciplinary record, personal and emotional problems, a timely good faith effort to rectify the consequences of his misconduct, and full and free disclosure to the disciplinary board, a cooperative attitude toward the proceedings, and remorse.

On January 27, 1994, the Third Judicial District Court entered an Order placing C. Dean Larsen on Interim Suspension from the practice of law pending final resolution of a disciplinary action filed against him by the Office of Attorney Discipline. The Complaint in the disciplinary action is

based upon his felony theft conviction on January 23, 1993. Subsequent to the filing of the initial action, the Utah Supreme Court upheld Mr. Larsen's conviction on eighteen counts of securities fraud. The Office of Attorney Discipline has obtained leave to include this additional conviction in the pending disciplinary action.

Anthony M. Thurber was placed on Interim Suspension by the Third Judicial District Court on March 20, 1994. Mr. Thurber stipulated to his suspension on the advice of his physician. A complaint has been filed in the Third District Court charging Mr. Thurber with several counts of misappropriation of client funds.

**REINSTATEMENT**

On February 17, 1994, the Fourth Judicial District Court reinstated Gary J. Anderson to practice law subject to the following conditions: Supervised probation for a period of two years, during which he is to perform 200 hours per year of pro bono legal services, and is to resolve disputed claims with former clients through arbitration. Mr. Anderson's supervising attorney is Douglas Baxter.

# Request for Comment on Proposed Bar Budget

The Bar staff and officers are currently preparing a proposed budget for the fiscal year which begins July 1, 1994, and ends June 30, 1995. The process being followed includes review by the Commission's Executive Committee and the Bar's Budget & Finance Committee, prior to adoption of the final budget by the Bar Commission at its June 29, 1994 meeting.

The Commission is interested in assuring that the process includes as much feedback by as many members as possible. A copy of the proposed budget, in its most current permutation, will be available for inspection and comment at the Law & Justice Center after May 26, 1994. You may pick up a copy from the receptionist.

Please call or write John Baldwin at the Bar office with your questions or comments.

# Supreme Court Seeks Attorneys to Serve on MCLE Board

The Utah Supreme Court is seeking applications from Bar members for appointments to serve five three-year terms on the Utah State Board of Continuing Legal Education. Interested Bar members who wish to be considered for appointment must submit a letter of application including a resume. Applications are to be mailed to Sydnie W. Kuhre, MCLE Board Administrator, Utah State Board of Continuing Legal Education, 645 South 200 East, Salt Lake City, UT 84111. Applications must be received no later than 5:00 p.m. on **May 31, 1994.**

# Notice of Availability of Membership List

Current Bar policies and procedures provide that the Bar's membership list may be sold to third parties who wish to communicate via mail with members of the Bar about products, services, causes or other matters. Any Bar member may have his or her name removed from the membership list which is sold to third parties, by submitting a written request to Arnold Birrell, Utah State Bar, 645 South 200 East, Salt Lake City, UT 84111.

# 4th Annual Utah Gang Conference
## May 23 and 24, 1994

**Salt Lake Hilton**
**150 West 500 South • Salt Lake City, Utah**

Instructors include those who work in the "trenches" and on the street with gangs and youth.

Registration Fee: $65.00 (CLE approval pending, additional fee required)

Registration fee includes 1994 Gang Training Manual and lunch both days. Manual has in-depth articles, photos and graphs on local gangs, recruitment, activity, and community and law enforcement response.

Pre-register: Salt Lake Area Gang Project
315 East 200 South
Salt Lake City, Utah 84111
(801) 799-GANG

# POSITION AVAILABLE FOR CIRCUIT EXECUTIVE, TENTH CIRCUIT COURT

**CIRCUIT EXECUTIVE,** United States Court of Appeals for the Tenth Circuit, Denver, Colorado. Responsible for providing administrative support to the Chief Judge, Judicial Council, and the courts of the circuit. Duties are substantially described in 28 U.S.C. 332 (e), but include coordination of the Court of Appeals budget, supervision of a circuitwide computer network, space and facilities planning, providing staff support to the Judicial Council, and acting as liaison to other courts and the Administrative Office. Must possess a minimum of ten years of progressively responsible administrative or legal experience, demonstrating an understanding of management and organization, including at least five years in a position of substantial responsibility; experience in a federal or state court is preferred. A law degree is desirable. Must possess strong analytical, communications, and interpersonal skills. Salary range to $120,953 (max. equiv. to S.E.S. Level IV). **Send resume and letter of application to be received no later than Friday, May 13, 1994**, to Stephanie K. Seymour, Chief Judge, Tenth Circuit Court of Appeals, 333 West Fourth Street, Room 4-562 U.S. Courthouse, Tulsa, OK 74103 (918) 581-7416.

## Discipline Corner

**ADMONITIONS**

On April 14, 1994, based upon a Discipline by Consent, the District Court entered an Order which admonished an attorney for the attorney's failure to diligently pursue the Client's interest, RULE 1.3, and for failing to obtain a written waiver of a conflict of interest, RULE 1.7. It was determined that the attorney's conduct was negligent and not intentional. The attorney was also ordered to pay restitution to the Client and attend Ethics School.

**SUSPENSION:**

In March 4, 1994, an order of Interim Suspension was entered by a Third District Court Judge against Ronald V. Thurman based upon his plea of guilty to a felony charge involving moral turpitude filed in the State of Texas.

# Kate Lahey Named Woman Lawyer of the Year

Women Lawyers of Utah has selected Kate Lahey as the 1994 Woman Lawyer of the Year. The purpose of the Woman Lawyer of the Year Award is to recognize those attorneys who have demonstrated professional excellence and integrity while working to create new opportunities for women in the legal profession.

Lahey is an associate adjunct professor at the University of Utah College of Law, where she directs the Legal Writing Program. Prior to joining the law school faculty in 1988, Professor Lahey was a shareholder with the Salt Lake City law firm of Van Cott, Bagley, Cornwall & McCarthy, where her emphasis was in media law and natural resources law.

Lahey has been active in professional and community activities. She has served as the President and as an Executive Committee Member for Women Lawyers of Utah, and is currently an ex-officio member of the Utah State Bar Commission, where she represents the interests of women attorneys. Lahey is also an officer of the Board of Directors for the Salt Lake City Public Library, and has served as the president of both the Valley Mental Health Board and of Writers at Work.

The Utah Chapter of the Society of Professional Journalists has awarded Lahey its Freedom of Information Award twice — in 1986 and in 1992 — for her work in promoting public access to government records and government meetings.

Lahey graduated with honors from the University of Utah College of Law in 1979. She was a staff member of the Utah Law Review. She received a B.A. in English and Mass Communication, magna cum laude, from the University of Utah in 1975.

Women Lawyers of Utah is a professional organization of women and men dedicated to supporting the contributions of Utah's women attorneys. Past recipients of the Woman Lawyer of the Year Award have included Justice Christine M. Durham of the Utah Supreme Court and Utah Attorney General Jan Graham.

# Attorneys Needed to Assist the Elderly

## Needs of the Elderly Committee Senior Center Legal Clinics

Attorneys are needed to contribute two hours during the next 12 months to assist elderly persons in a legal clinic setting. The clinics provide elderly persons with the opportunity to ask questions about their legal and quasi-legal problems in the familiar and easily accessible surroundings of a Senior Center. Attorneys direct the person to appropriate legal or other services.

The Needs of the Elderly Committee supports the participating attorneys by, among other things, providing information on the various legal and other services available to the elderly. Since the attorney serves primarily a referral function, the attorney need not have a background in elder law. Participating attorneys are not expected to provide continuing legal representation to the elderly persons with whom they meet and are being asked to provide only two hours of time during the next 12 months.

The Needs of the Elderly Committee instituted the Senior Center Legal Clinics program to address the elderly's acute need for attorney help in locating available resources for resolving their legal or quasi-legal problems. Without this assistance, the elderly often unnecessarily endure confusion and anxiety over problems which an attorney could quickly address by simply directing the elderly person to the proper governmental agency or pro bono/low cost provider of legal services. Attorneys participating in the clinics are able to provide substantial comfort to the elderly, with only a two hour time commitment.

The Committee has conducted a number of these legal clinics during the last several months. Through these clinics, the Committee has obtained the experience to support participating attorneys in helping the elderly. Attorneys participating in these clinics have not needed specialized knowledge in elder law to provide real assistance.

To make these clinics a permanent service of the Bar, participation from individual Bar members is essential. Any attorneys interested in participating in this rewarding, yet truly worthwhile, program are encouraged to contact: John J. Borsos or Lisa Christensen, 370 East South Temple, Suite 500, Salt Lake City, Utah, 84111, (801) 533-8883; or Joseph T. Dunbeck, Jr., Parsons, Davies, Kinghorn & Peters, 310 South Main Street, Suite 1100, Salt Lake City, Utah, 84101, (801) 363-4300.

approved by the Judicial Council which will be presented to the legislature at the upcoming session.

19. ABA Delegate James B. Lee reported on recent ABA actions.

A full text of minutes of this and other meetings of the Bar Commission is available for inspection at the office of the Executive Director.


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## *Discipline Corner*

### DISBARMENT

On July 11, 1996, the Hon. J. Philip Eves, Fifth District Court Judge, entered a Stipulated Order of Discipline Disbarring Stephen R. Madsen ("Madsen") from the practice of law in the State of Utah, effective November 7, 1994, the date of interim suspension.

In 1994, Madsen was indicted on eleven (11) counts of willfully and unlawfully causing to be transported, in foreign commerce, securities or money of the value of $5,000 or more, knowing the same to have been stolen or taken by fraud. He was also indicted on two (2) counts of filing false tax returns. On or about May 16, 1995, Madsen pled guilty to one Count of Aiding and Abetting, in violation of 18 U.S.C. §2(b), one Count of Causing the Transportation of Funds Stolen, Converted or taken by Fraud, in violation of 18 U.S.C. §2314 and one Count of Filing a False Income Tax Return, 26 U.S.C. §7206(1). A judgment of guilty was entered by the United States District Court, District of Utah on or about November 17, 1995.

Madsen admitted the criminal misconduct and also violated Rules 8.4(b) Misconduct, and Rule 1.15(a) & (b) (formerly Rule 1.13(a) & (b)) Safekeeping Property, of the Rules of Professional Conduct of the Utah State Bar.

Mitigating circumstances in the matter included: (1) Respondent cooperated with the Bar and reported the allegations to the Bar; (2) Respondent entered guilty pleas in the criminal action; and (3) Respondent suffers from significant medical disabilities.

The circumstances aggravating the matter included: (1) Respondent had substantial experience in the practice of law including expertise in international business transactions and taxation; (2) The Complainant was vulnerable to Respondent's actions based upon a fiduciary relationship between Respondent, Complainant, and corporations that Respondent established to benefit Complainant; and (3) The Respondent obtained funds from the corporations established for Complainant's benefit through dishonest and deceitful means and through a pattern of misconduct.

### DISBARMENT: RECIPROCAL DISCIPLINE

On October 3, 1996, the Hon. Sandra Peuler approved a Stipulation for Reciprocal Discipline and entered a Judgment of Disbarment and Costs disbarring Ronald V. Thurman from the practice of law in the State of Utah. Reciprocal discipline was based on an order entered by the Texas Supreme Court accepting Thurman's Resignation from the practice of law in the state of Texas Pending Discipline for allegations of professional misconduct arising out of a felony conviction in the State of Texas involving moral turpitude.

### ORDER OF INTERIM SUSPENSION

On October 23, 1996, the Hon. William Bohling entered an order placing Earl S. Spafford ("Spafford") on interim suspension pending the outcome of an attorney discipline action.

The Court found, by clear and convincing evidence, that Spafford participated in, supervised or directed Spafford Firm's routine business practice of misappropriating and converting client funds. The Court found that Spafford was a signatory on the Spafford Firm's trust account and had a strict non-delegable duty to safeguard client funds, and that a lawyer cannot shift responsibility to employees or a co-signatory by claiming lack of knowledge regarding mishandling of client funds. "[A] lawyer cannot turn a blind eye to the obvious, cause serious injury and loss to clients and then blame others for the lawyer's failure to comply with the basic duty of protecting client funds."

The Court further found that: (1) Spafford directly participated in misleading clients about receipt of personal injury settlement funds; (2) failed to account to clients about settlement funds received for or on behalf of clients; (3) assisted his son, Lynn Spafford, in the unauthorized practice of law; and (4) attempted to obstruct the Bar's investigation by making false statements to Screening Panels regarding ownership and management of the Spafford Firm.

The Court found that Spafford posed a substantial threat of irreparable harm to the public and should be suspended from the practice of law pending the outcome of the action. The Court appointed a Trustee to ensure that clients are not prejudiced by Spafford's suspension in accordance with Rule 27, Rules of Lawyer Discipline and Disability. Spafford was also enjoined from acting as a paralegal, non-lawyer assistant or working as a consultant, agent or employee of any law firm or lawyer, except that Spafford shall be allowed to consult with successor counsel to the extent necessary to transfer his files.

### ADMONITION

On or about July 25, 1996, an Attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violating Rule 1.1, Competence, Rule 1.2(a), Scope of Representation, Rule 1.3, Diligence, Rule 1.4(a) and (b), Communication, Rule 1.13(b), Safekeeping of Property, and Rule 1.14(d), Declining or Terminating Representation, of the Rules of Professional Conduct.

The Attorney was retained to represent a client in a domestic matter to enforce a child visitation order. The Attorney filed a Motion and Order to Show Cause and a hearing was held on or about March 21, 1993. The Order ultimately entered by the Court failed to specify travel arrangements and timing of summer visitation. The visitation continued to be a problem and the client contacted the attorney requesting that the problem be corrected. The Attorney agreed to pursue a change of custody if the client sent an additional $350.00. The client sent the requested retainer, but the attorney withdrew from the case two days later.

The Screening Panel offered the Attorney the opportunity to resolve the complaint by making restitution to the complainant. The Attorney refused to make restitution and made no attempt to mitigate the matter.

## Discipline Corner

### ADMONITION

On January 22, 1996, the Chair of the Ethics and Discipline Committee Admonished two attorneys for violating Rule 1.10, Imputed Disqualification: General Rule, of the Rules of Professional Conduct of the Utah State Bar. The Respondents undertook representation of a client in a civil suit against a former client of the law firm, without the knowledge or consent of the former client. The Screening Panel concluded that the Respondent represented a client adverse to a former client of an associate in the law firm in violation of the Imputed Disqualification Rule of the Rules of Professional Conduct. The Panel recommended the Respondents be admonished and placed on one (1) year Probation, attend Ethics School, and submit a written policy/procedure detailing how initial conflicts checks are done in the law practice.

### INTERIM SUSPENSION

On January 16, 1996, F. Kim Walpole was placed on Interim Suspension from the practice of law by Judge Michael Lyon of the Second District Court of Weber County. Judge Lyon ordered that Mr. Walpole be immediately suspended until permanent discipline is imposed at a Sanctions Hearing on February 26, 1996. Commencing in September 1990, Respondent began a continuing pattern of misconduct that spanned almost five years in which he misappropriated clients' funds or commingled clients' funds with his personal money. The Court found that during that time, he commingled, misappropriated, or diverted a total of $113,000.00 from his clients or his law firm.

# Park City Bar

Yes, there is such a thing as the "Park City Bar," which is not to be confused with one of the many local establishments open for the consumption of alcoholic beverages.

Considering the prolific growth in Park City and the surrounding areas, it is not surprising that there has also been a significant increase in the number of practicing attorneys in the Park City area. (As a matter of fact, rumor has it that there is now one lawyer for every ten realtors in town). With so many lawyers in the vicinity, the Park City Bar Association was formed to address the needs and interests of the expanding number of local law practitioners who do not commute to Salt Lake City every day.

Initially, Park City Bar events were definitely informal and primarily social: it seemed like a good idea to get to know the attorneys in the area, many of whom had recently opened offices in Park City. Although the Park City Bar Association continues to be informal, the Association decided that something more than just socializing was needed. For example, it also seemed like a good idea to provide some continuing legal education on the east side of the Wasatch Front, and to establish a line of communication with judges, and particularly with judges sitting in Summit County. Thus, the purposes of the Park City Bar Association include providing continuing legal education in the Park City area, promoting communication among local lawyers, facilitating communication between lawyers and judges, as well as engaging in law-related or other activities that will serve and benefit the community.

The Park City Bar Association is committed to having its members work on several civic projects. The Association wants to be able to offer support services to the Peace House, which is a shelter in Park City for victims of domestic violence. In addition, the Association is organizing volunteers to spend a day doing (menial) construction tasks for the Habitat for Humanity project. The Association believes that hammering nails on that project will provide a valuable community service, as well as the potential for stress reduction for those who participate.

The Park City Bar Association holds monthly brown-bag CLE programs with both live and video presentations, as well as special CLE programs. To date, the Honorable Frank G. Noel, the Honorable Michael R. Murphy and the Honorable Glenn Iwasaki have spoken to the Park City Bar, and a number of seminars have been provided, including a half-day seminar on alternative dispute resolution and an ethics program featuring Chief Justice Michael D. Zimmerman.

Last year's ethics program (also known as "CLE and Ski") was so well-received, it will now be an annual event. The Second Annual Chief Justice's Ethics Symposium will be held at Deer Valley Resort on March 15, 1996. There will be a keynote address by Lawrence J. Fox, Esq., who is the Chair of the ABA Litigation Section and a member of the ABA Standing Committee on Ethics, followed by a panel discussion moderated by the Chief Justice. The ethics program will be followed by lunch, an afternoon of skiing at Deer Valley, and a reception in the late afternoon. Cost is $100.00 for members, $125.00 for non-members. Three hours of ethics CLE, a continental breakfast, lunch, lift ticket and the reception are included.

Believing that someday the snow will melt, and being committed to the idea that CLE can and should be combined with fun (or vice versa), the Association is currently making plans to organize the first Park City "Wet" Bar: a three day river trip or a Lake Powell house boat adventure and CLE (around a campfire?), tentatively scheduled for late spring or summer. Other similar events will be forthcoming.

Membership in the Park City Bar Association and enrollment in its functions are open to any lawyer, paralegal, law student or other interested individual who wishes to join or to attend. Membership dues are $25 per year for lawyers, $10 per year for non-lawyers. For information on the Park City Bar Association, please call Joe Tesch, President, Park City Bar Association, (801) 649-0077.

regarding court consolidation. Ron Gibson indicated that the legislature just passed the final court consolidation plan which included legislation on the management of judicial calendars.

5. John Baldwin reported on the Youth Education Project and reviewed the list of schools who have responded. He indicated staff would be following up with those schools who have not responded.
6. The Board voted to reject a petition from a Foreign Legal Consultant applicant to waive the MPRE requirement or change the rule to require the applicant to only successfully complete the Bar's Ethics School.
7. The Board voted to have a petition drafted to allow inactive attorneys to provide pro bono legal services.
8. John Baldwin took this opportunity to remind the Bar Commission that Reed Martineau is Chancellor this year of the Jack Rabbit Bar Meeting and Utah will host the meeting at the Stein Eriksen Lodge on June 7-8, 1996. ABA leaders are expected to be attending and Sen. Hatch has been invited to talk about the Senate Judiciary Committee.
9. John Baldwin reviewed the Bar department reports and indicated that 120 applicants are scheduled to take the February Bar examination. He indicated that since the new telephone system was installed on January 12 and until March 4, 29,000 calls came into the Law & Justice Center and 99% of those were picked up in 5 seconds and the balance were picked up in 30 seconds.
10. Baldwin reported that Speakers Bureau brochures were mailed to approximately 335 clubs and civic groups in the state advertising the Bar's Speakers Bureau. He also noted that approximately 270 attorneys are signed up as volunteers on the Speakers Bureau and that these volunteer speakers will be utilized in the Youth Education Project.
11. Baldwin summarized the Bar's liability insurance endorsement. Haslam noted that approximately 1,000 lawyers (25 percent of active) are insured with Coregis Insurance Company and that the Bar had chosen to endorse Coregis last year following a review of 5-6 insurance carriers by the Professional Liability Insurance Committee. The Board voted to have the Executive Committee proceed to select an insurance broker.
12. Chief Disciplinary Counsel Steve Cochell reported on department statistics for the months of January and February and noted that 44 complaints were dismissed in January and 32 in February.
13. Baldwin reviewed the financial reports for the month of January and indicated that expenses were less than budgeted and income higher than budgeted. He reported that budget forecasting will begin in March. The proposed budget would be presented to the Board at the May meeting and copies of the budget would be made available to interested Bar members.
14. Legislative Affairs Committee Chair Dave Bird presented a final report on the recent legislative session.
15. Paul Moxley reported that the Committee on Professionalism, consisting of Debra Moore, Charles Brown and himself, has met several times in the past few months and is putting together a list of recommendations for Bar Commission approval. The Committee has been looking at the following ideas: (1) activate the mentor program. It could be difficult to certify mentors, but volunteers could be used as they are in the Stewart Hansen Society; (2) institute a bridge-the-gap program similar to South Dakota's but broaden to include 50 hours and make it mandatory for new admittees. Moxley indicated he would be talking with the Litigation Section about seminars that could be part of the bridge-the-gap program; and (3) study models of professionalism courses which other law schools have in place.
16. Paul Moxley reported on the Centennial Committee and indicated that the centennial play performance is scheduled for September 19 at Kingsbury Hall. Tickets will be available at the Sun Valley meeting.
17. Steve Kaufman distributed a copy of Client Security Fund Committee Chair David Hamilton's February 28, 1996 letter which outlined the committee's recommendations following their February 23rd meeting. Considering meeting time constraints, the Board voted to pay Claim No. 2 and to present the balance of the claims for the Board's review at the next meeting.

A full text of the minutes of these and other meetings of the Bar Commission is available for inspection at the office of the Executive Director.

## *Discipline Corner*

### PUBLIC REPRIMAND

On or about April 25, 1996, the Honorable Leslie Lewis Third District Judge entered an order publicly reprimanding attorney Larry Long. The court also placed Mr. Long on six months' probation, ordered him to attend the next available Ethics School presented by the Office of Attorney Discipline and to issue written apologies to Judge Joanne L. Rigby and client Peggy Sue McHenry. This discipline arises out of Mr. Long's use of an *undated* letter that terminated his services. Mr. Long had clients sign these letters at the time of the initial intake in case he needed to withdraw and could not locate the client.

In this case, Mr. Long presented the termination letter signed by Peggy Sue McHenry to Judge Rigby in order to withdraw from Ms. McHenry's case. Trial had been set in the matter, but with the presentation of the termination letter, Judge Rigby allowed Mr. Long to withdraw. Mr. Long presented the termination letter along with an ex parte motion and order of withdrawal of counsel. This caused the court to believe that Ms. McHenry had just terminated Respondent's counsel. It was determined that Mr. Long did not intentionally mislead the court, but that his actions negligently allowed the court to believe that the termination had recently taken place. This matter was resolved through a discipline by consent and Mr. Long agreed to stop using undated termination letters. Mr. Long stipulated to negligent violations of Rule 1.16(b) (formerly Rule 1.14(b)) Declining or Termination Representation and Rule 3.3(a), Candor Toward the Tribunal.

### ADMONITION

On or about April 25, 1996, the Chair of The Ethics and Discipline Committee of the Utah State Bar signed an order admonishing an attorney for the attorney's failure to act with reasonable diligence and promptness in settling a Worker's Compen-

sation matter. The attorney failed to deliver stipulations in a timely manner and, when challenged by opposing counsel, failed to make revisions or produce medical records within deadlines. This extended the time for resolving the matter substantially. Ultimately, the Client was forced to obtain another attorney. The Attorney was admonished for violating Rule 1.3 (Diligence), Rules of Professional Conduct of the Utah State Bar.

**ADMONITION**

On April 25, 1996, the Chair of the Ethics and Discipline Committee issued an Admonition to an attorney upon the recommendation of a Screening Panel.

The attorney was retained on January 11, 1995, and paid a fee of $300.00 to modify the amount of child support due a client. Thereafter, the attorney failed to provide any meaningful legal services and failed to refund the unearned fee upon request. Subsequently, the client filed a complaint with the Bar, however, the attorney failed to respond to two letters from the Office of Attorney Discipline requesting information about the complaint. The attorney was admonished for violating Rule 1.2(a), Scope of Representation; Rule 1.3, Diligence; Rule 1.4(b), Communication; and Rule 8.1(b), Failure to Cooperate with the Office of Attorney Discipline.

## United States Bankruptcy Appellate Panel of the Tenth Circuit
## Position Announcement

**Position:** Part-time law clerk to Tenth Circuit Bankruptcy Appellate Panel Judges Glen E. Clark and Judith A. Boulden.
**Location:** Salt Lake City, Utah.
**Starting Date:** July 1996.
**Starting Salary:** $29,119 (JSP 12) to $53,195 (JSP 14), depending on qualifications.

The Judicial Council of the Tenth Circuit has approved implementation of bankruptcy appellate panels (BAP) for an initial three-year period commencing July 1, 1996, and ending June 30, 1999. Each BAP judge is authorized to employ a one-third time law clerk. Judges Clark and Boulden intend to employ the same law clerk thereby enabling the court to employ one person to serve and be compensated at the level of two-thirds of a full-time law clerk.

**POSITION DESCRIPTION:** The Tenth Circuit Bankruptcy Appellate Panel will hear and determine appeals originating from appealable judgments, decrees, and orders of bankruptcy courts. The law clerk will be responsible for assisting the judges in all of their duties as panel members. Some travel within the Court will be required.

**QUALIFICATIONS:** Graduation with a Juris Doctor degree from an accredited law school and admission to practice before the highest court of a state, territory, commonwealth, or possession of the United States. The following qualifications may affect the selection of an applicant as well as determine the starting salary: progressively responsible experience in the practice of bankruptcy law, experience as a law clerk for a bankruptcy judge or as a law clerk or staff attorney for an appellate court.

**APPLICATION PROCEDURE:** Qualified persons are invited to submit a current comprehensive resume. The position is open until filled. **Applications will be considered beginning May 20, 1996.** ***Duplicate*** *applications should be directed to the Honorable Glen E. Clark, Chief Judge, United States Bankruptcy Court, Room 365 Frank E. Moss United States Courthouse, 350 South Main Street, Salt Lake City, Utah 84101.* Applicants selected for an interview will be notified.

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## Discipline Corner

**ADMONITION:**

On April 8, 1993, a Screening Panel of the Ethics and Discipline Committee voted to Admonish an attorney who was convicted of the misdemeanor of obstructing a public official. The attorney blocked or attempted to block a public official's vehicle as the official was exiting a narrow roadway near the attorney's property in the course of his official duties. It was also the decision of the Screening Panel that the attorney attend the Utah State Bar Ethics School which is a one day course in ethics taught by the Office of Bar Counsel.

**PUBLIC REPRIMAND:**

On April 9, 1993, the Utah Supreme Court entered an Order of Public Reprimand pursuant to a Discipline by Consent reached between the Office of Bar Counsel and attorney Loren Martin for violation of Rules 5.3(c), Responsibilities Regarding Nonlawyer Assistants; 5.5(b), Unauthorized Practice of Law; and 7.3, Direct Contact with Prospective Clients. In 1991, Mr. Martin consented to the use of his name in promotional materials prepared and disseminated by an organization titled "Plan Master" subsequently changed to "Plan Right" concerning estate planning and preparation of living trusts. Mr. Martin's association with these organizations continued until February 1992. In March 1992 the Screening Panel of the Ethics and Discipline Committee voted that a Formal Complaint be issued and served on Mr. Martin. Thereafter, Mr. Martin consented to a Public Reprimand. In mitigation, the Bar Counsel considered the confusion created by a 1989 letter of dismissal sent to Mr. Martin by the Office of Bar Counsel for substantially related conduct.

**SUSPENSION/PROBATION:**

1. On April 9, 1993, the Utah Supreme Court entered an Order placing attorney Kirk C. Bennett on Disability Suspension for a minimum period of two (2) years for violating Rules 1.3, Diligence; 1.4(a), Communication; and 1.5(a), Fees. Mr. Bennett suffers from chronic depression aggravated by Post Traumatic Stress Syndrome incident to his combat service in Vietnam. His inability to practice law was brought to the Bar Counsel's attention in three (3) separate complaints filed with the Office of Bar Counsel in 1992. In all three instances, Mr. Bennett, after receiving a retainer and accepting representation, failed to communicate with his clients, to provide any meaningful legal service or, in the alternative, refund the retainer fees.

As a condition precedent to his reinstatement, Mr. Bennett is required to make restitution payments to his former clients in the amount of $15,000.00.

2. On April 27, 1993, the Utah Supreme Court entered an Order suspending attorney Gerald R. Hansen from the practice of law for a period of one (1) year for violating Rules 1.3, Diligence; 1.4(a), Communications; and 8.4(c), Misconduct in two matters entrusted to him. In the first case Mr. Hansen was retained in April 1987 to represent a client in an adversary proceeding before the Bankruptcy Court. Mr. Hansen filed an answer and subsequently appeared at hearing for summary judgment filed by the adversary, however he failed to file a memorandum or an affidavit in response to the motion. In the second case Mr. Hansen accepted $180.00 as a retainer to file a petition for a guardianship for the mentally disabled child of the client. Thereafter, he failed to file the guardianship petition, failed to communicate with his client and failed to refund the retainer fee. Subsequently, the client obtained a judgment through the Small Claims Court for the $180.00 plus interest and costs but has been unable to satisfy the judgment.

The Court stayed the entire period of suspension on the condition that Mr. Hansen, within thirty (30) days from the effective date of the Order, associate with another attorney who would agree to act as the supervising attorney and who will accept the responsibility for the delivery of legal service to the clients for whom Mr. Hansen performs legal services. Further, Mr. Hansen was ordered to file monthly reports with the Office of Bar Counsel detailing the nature of the work performed, the type and extent of supervision being given. Mr. Hansen was also ordered to make restitution payments in the amount of $219.00 to his former client and reimburse the Office of Bar Counsel for its costs.

**DISBARMENTS:**

1. On April 21, 1993, the Utah Supreme Court disbarred Galen J. Ross based on his conviction on May 28, 1987, in the United States District Court for the District of Wyoming, of mail fraud and conspiracy to commit mail fraud.

Following his conviction Mr. Ross was placed on interim suspension from the practice of law pending the appeal of his conviction. On July 30, 1992, Respondent's appeal of his criminal conviction was upheld by the Tenth Circuit Court of Appeals.

The mail fraud and conspiracy convictions were based upon a Notice of Stockholders Meeting that was executed by Mr. Ross on behalf of Classic Mining Corporation and mailed to the shareholders of that corporation. A second count was based upon a letter from Classic Mining Corporation signed by Mr. Ross to shareholders of that corporation which discussed that additional drilling was going to take place in the Overland Oil Field. The jury in the United States District Court found that the contents of these letters, although not false or containing any factual misrepresentations, contained certain material omissions that had the effect of lulling the shareholders into inaction. The overt acts of signing and mailing these deficient letters constituted mail fraud.

Mail fraud is a crime involving moral turpitude. Rule 23 of the Rules for Integration and Management of the Utah State Bar provides that, except for good cause shown, upon conviction of a crime involving moral turpitude by any court, the Utah Supreme Court will enter Judgment of Disbarment.

2. On April 22, 1993, the Utah Supreme Court disbarred Douglas E. Wahlquist for misappropriation of $22,500.00 he held in trust for his client's insurance company. Mr. Wahlquist's client was involved in an auto accident in 1988. In or about February 1989, Mr. Wahlquist settled the personal injury case for $75,000.00. Of this amount $25,000.00 went to Mr. Wahlquist's client, $25,000.00 went to

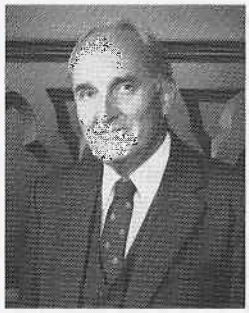
Wahlquist for attorney's fees, and $25,000.00 was to go the client's insurance company as reimbursement for medical expenses. Mr. Wahlquist paid the insurance company $2,500.00, however, the check written on his trust account for the balance was returned for insufficient funds. The funds have not yet been paid to the insurance company. A Hearing Panel of the Ethics and Discipline Committee recommended that Mr. Wahlquist be suspended for a period of two years. However, the Board of Bar Commissioners and the Utah Supreme Court determined that disbarment was appropriate due to Mr. Wahlquist's prior disciplinary record which included suspension from the practice of law in 1989 for six months for commingling funds from his trust account. On the prior occasion he put approximately $14,000.00 from his trust account into a personal savings account to use as collateral for a home loan. These funds were repaid approximately 21 months later. Additionally, Mr. Wahlquist was ordered to make restitution and he is currently paying $100.00/month to meet this obligation.

## MCLE Reminder

Attorneys who are required to comply with the odd year compliance cycle, will be required to submit a "Certificate of Compliance" with the Utah State Board of Continuing Legal Education by December 31, 1993. In general the MCLE requirements are as follows: 24 hours of CLE credit per two year period plus 3 hours in ETHICS, for a combined 27 hour total. Be advised that attorneys are required to maintain their own records as the the number of hours accumulated. Your "Certificate of Compliance" should list all programs that you have attended that satisfy the CLE requirements, unless you are exempt from MCLE requirements. A Certificate of Compliance for your use is included in this issue. If you have any questions concerning the MCLE requirements, please contact Sydnie Kuhre, Mandatory CLE Administrator at (801) 531-9077.

# Sidney G. Baucom Named U. College of Law Alumnus of the Year

## Mary Jane Carter Due also Honored at Annual Alumni Event



Sidney G. Baucom, retired executive vice president and general counsel of Utah Power and Light, was named the University of Utah College of Law Alumnus of the Year. Mary Jane Carter Due, a U. law school alum and noted Utah political activist before her death, was posthumously honored along with Mr. Baucom at the Thirteenth Annual College of Law Alumni Event held April 29 at the Marriott Hotel.

The Alumnus of the Year award is presented annually to a respected and distinguished graduate of the College of Law whose support of the law school's programs and students brings honor to the school. Mr Baucom, a former alumni trustee of the College of Law, "has been an enthusiastic supporter of and participant in the law school's programs. In particular, Sid has served as a student mentor and Legal Career Services student advisor, providing an informed and insightful perspective to students interested in a corporate counsel career," said Anne Milne, president of the College of Law Alumni Board of Trustees.

Mr. Baucom earned his J.D. degree from the University of Utah College of Law in 1953. He was employed by Utah Power and Light for thirty three years. Since retiring from U P & L in 1989, Mr. Baucom has been of counsel with the law firm of Jones, Waldo, Holbrook and McDonough and is active in several professional and civic organizations.

Ms. Due in whose memory the law school donated aspen trees to the Mary Jane C. Due Memorial Aspen Grove at the Wasatch Hollow Park, began taking classes at the U. College of Law in 1952 at night and during her lunch hours while working as a secretary for the federal district court in Salt Lake. After she received her law degree in 1956, she spent 10 years as an attorney-advisor for the Office of the Regional Solicitor, U. S. Department of the Interior before she moved to Washington D.C. to become counsel and chief clerk for the Senate Committee on Aeronautical and Space Sciences. She retired in 1987 after working for Senators Moss and Metzenbaum and was active in civic and democratic organizations after her retirement until she died in October 1991.

"Mary Jane was a source of enduring support, good judgment, and integrity. Despite her Washington connections, she retained her strong local political and social connections and was an emeritus member of our Alumni Board of Trustees," said Lee Teitelbaum, dean of the College of Law.

# NOTICE OF CORRECTION:

It has recently been brought to the attention of the Utah Bar Journal by Mr. James E. Ellsworth that the article "Suing the Sovereign", published in the December 1990 issue of the Utah Bar Journal (Vol 3, No. 10), did not include a citation to United States Claims Court, A Deskbook for Practitioners (1987) (published by the Claims Court Bar Association), an important resource to Mr. Ellsworth's article. Although the Utah Bar Journal believed that there was no legal reason to publish a notice of correction at this time, Mr. Ellsworth desired that credit be given where it may be due and therefore requested that this notice be printed.

# Discipline Corner

## SUSPENSION

On October 2, 1997, the Honorable Boyd Bunnell, specially assigned and sitting in the Fourth District Court, entered an Order of Suspension suspending D. John Musselman from the practice of law. The Order was based on a stipulation between Musselman and the Office of Attorney Discipline.

Musselman stipulated to violations of Rules 1.3 (Diligence), 1.4 (Communication), and 8.4(c) (Misconduct) in his representation of three clients. Mussleman also stipulated to violations of Rules 1.1 (Competence), 1.2 (Scope of Representation), 1.3 (Diligence), 1.4 (Communication), and 1.5 (Fees) in the representation of other clients.

Musselman stipulated to the existence of the following aggravating factors:

(a) prior record of discipline;
(b) a pattern of misconduct;
(c) multiple offenses;
(d) obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary authority;
(e) refusal to acknowledge the wrongful nature of the misconduct involved, either to the client or to the disciplinary authority;
(f) vulnerability of victim;
(g) substantial experience in the practice of law;
(h) lack of good faith effort to make restitution or to rectify the consequences of the misconduct involved.

The Court ordered that Musselman be suspended from the practice of law for two years, with the suspension stayed to four months. After the initial four months of suspension, Musselman will be allowed to practice law once again, but will be on probation for the remaining twenty months of the stayed suspension. During that time, Musselman's law practice will be supervised by a supervising attorney to whom Musselman will report periodically regarding the status of his cases. Musselman was further ordered to attend ethics school for two years and to take, in addition to his standard CLE requirements, eighteen hours of office management.

If during the two years suspension/probationary period a complaint is filed against Musselman and a Screening Panel determines that the allegations in the complaint warrant a vote to take formal action in the District Court, then Musselman will serve the entire two year suspension, and he will be removed from the practice of law for that two year period.

## INTERIM SUSPENSION

On September 16, 1997, the Honorable Frank G. Noel, Third District Court, executed an Order of Interim Suspension suspending Robert A. Bentley from the practice of law pending the outcome of an attorney discipline action arising out of Mr. Bentley's failure to obey a court order, his failure to diligently represent and communicate with his clients, and his failure to cooperate with the Bar.

## ADMONITION

On September 18, 1997, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violating Rules 1.3 (Diligence) and 1.4 (Communication) of the Rules of Professional Conduct. The Order was entered pursuant to a Discipline by Consent.

The two complaints filed against the attorney alleged that the attorney was not diligent in the representation of two different clients in family law matters concerning child custody. The complaints further alleged that the attorney failed to communicate with the clients regarding the status of their cases.

The attorney agreed to stipulate to an admonition for the violation of Rules 1.3 and 1.4 and agreed to attend ethics school. The attorney further established that the attorney refunded fees to the clients.

## ADMONITION

On September 29, 1997, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violating Rules 1.2(a) (Scope of Representation), 1.3 (Diligence), 1.4(a) and (b) (Communication), and 1.5(a) (Fees) of the Rules of Professional Conduct.

During 1993, the attorney was retained to represent a client in a Workers' Compensation claim. The attorney received $200 from the client in February 1994. The attorney intended to charge the client an additional 1/3 contingency fee. The contingency fee violated Industrial Commission Rule R568-1-7, which sets attorney's fees to a maximum of 30% if litigated before the Supreme Court. The normal contingency fee allowed is approximately 15%, depending on the amount of recovery, if any. In September 1994, the attorney contacted the client to secure a power of attorney so that he could obtain records from the client's former employer. This was the first work performed by the attorney on the Workers' Compensation claim. The attorney ultimately did not secure any records from the client's ex-employer, and returned the file to the client in March 1995, informing the client that he could no longer pursue the matter.

On December 14, 1995, a Screening Panel of the Ethics and Discipline Committee found that the attorney's conduct violated Rules 1.2(a) (Scope of Representation), 1.3 (Diligence), 1.4(a) and1.4(b) (Communication) and 1.5(a) (Fees) of the Utah Rules of Professional Conduct by failing to provide the client with any meaningful legal services, failing to maintain adequate contact with the client, and charging a prohibited fee.

## ADMONITION/ RECIPROCAL DISCIPLINE

On September 26, 1997, an attorney, admitted to practice in Utah and California, was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violating Rule 1.7 (Conflict of Interest) of the Rules of Professional Conduct.

In September 1986, the attorney's client was injured at work. His employer referred him to the attorney, who had previously handled legal work for the employer. The client unsuccessfully sued the manufacturer of the defective equipment that was responsible for the employee's injury. No suit was pursued against the client's employer. The attorney alleges he orally informed the client that the attorney had a conflict of interest. Nevertheless, the attorney failed to obtain a written waiver, required in the State of California.

On November 12, 1996, the attorney was privately reproved by the State Bar of California for failing to obtain a written waiver of a conflict of interest stemming from the attorney's previous relationship with the client's employer.

## Discipline Corner

### RESIGNATION

On August 19, 1997, the Honorable Michael D. Zimmerman, Chief Justice, Supreme Court, executed an Order Accepting a Petition for Resignation Pending Discipline in the matter of Daniel Marcum.

On January 5, 1995, Mr. Marcum pled guilty to Unlawful Dealing with Property by a Fiduciary, a second degree felony, in violation of the Utah Code Ann. §76-6-513, amended. As a result of his conviction, Mr. Marcum was sentenced to serve one to fifteen years in the Utah State Prison, with such prison sentence stayed in favor of a three-year period of probation.

In consideration of the fact that Mr. Marcum was willing to resign, which is tantamount to disbarment, and considering the aggravating and mitigating circumstances, the OAD consented to the Petition for Resignation Pending Discipline.

### SUSPENSION

On July 29, 1997, the Honorable J. Dennis Frederick, Third District Court, executed an Order suspending Stanford V. Nielson from the practice of law for one (1) year effective June 30, 1997.

On or about August 7, 1995, Judge Frederick accepted a stipulation whereby Mr. Nielson consented to entry of a Discipline by Consent which placed him on a two (2) year supervised probation with a further proviso that an immediate one (1) year suspension be implemented if a Screening Panel of the Bar's Ethics and Discipline Committee voted a Formal Complaint against him for misconduct occurring on or after the date of the Court's Discipline during the two year probation.

On or about June 30, 1997, a Screening Panel of the Bar's Ethics and Discipline Committee, ordered that a Formal Complaint be filed against Mr. Nielson for violation of Rules 5.5(a) (Unauthorized Practice of Law) and 8.1(b) (Failure to Cooperate in Office of Attorney Discipline Investigation), Rules of Professional Conduct. On July 9, 1997, the Office of Attorney Discipline ("OAD"), Utah State Bar, filed a Motion to Suspend Respondent Under Terms of the Previous Order of Discipline.

There were no aggravating or mitigating factors considered.

### SUSPENSION

On July 31, 1997, the Honorable J. Dennis Frederick, Third District Court, executed an Order suspending Byron L. Stubbs from the practice of law for three (3) years effective July 31, 1997.

On July 26, 1996, Mr. Stubbs pled guilty to one count of Communications Fraud, a Class A Misdemeanor, pursuant to Utah Code Ann. §76-10-1801, as amended. In support of his guilty plea, Mr. Stubbs admitted that he participated in a scheme to defraud by means of participating in the preparation of a letter addressed to the State which contained untrue information, which Mr. Stubbs knew to be untrue, and which he knew was intended to be communicated by mail by his client to the State for the purpose of furthering the scheme.

The fraud committed by Mr. Stubbs and his client caused potentially serious injury to the public when it delayed the proper treatment and disposal of contaminated soil removed from a ditch, thus creating a health hazard for both children and the general public.

The Court considered and relied upon aggravating and mitigating circumstances.

The Bar has filed an appeal of the court's Order of Suspension, and seek the respondent's disbarment.

### ADMONITION

On July 15, 1997, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violating Rule 1.2(a) (Scope of Representation), 1.3 (Diligence), Rule 1.4 (Communication), and Rule 3.2 (Expediting Litigation) of the Rules of Professional Conduct. In addition to the admonishment, the attorney is required to attend and successfully complete the Utah State Bar Ethics School within one (1) year.

The attorney was retained in or about March of 1991 to represent a client in a personal injury matter. Thereafter, although the attorney sent the complainant to various medical providers for evaluation and filed a complaint on her behalf in District Court the day before the statute of limitations ran, he failed to take any further action on her behalf. The attorney later advised the complainant that he did not wish to represent her and would not continue to do so. The attorney did not file a Withdrawal of Counsel with the District Court, but remained the attorney of record. The attorney failed to communicate with his client and failed to make reasonable efforts to expedite litigation consistent with the interests of his client.

There were no aggravating factors.

In mitigation, the attorney was candid and cooperative in the proceedings before the Screening Panel. Further, as the Screening Panel required, the attorney paid the outstanding bill of the medical provider who had performed tests on the complainant at the request of the attorney.

### ADMONITION

On August 7, 1997, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violating Rule 8.4(d) (Misconduct) of the Rules of Professional Conduct and the Rule 21(e) (Duties of Attorneys and Counselors) of the Rules of Integration and Management of the Utah State Bar.

During the course of an acrimonious deposition where the attorney's client (who was also his wife) was being deposed, the attorney asked where the opposing counsel, who was Jewish, was from. At a later point during the deposition the opposing counsel replied that he was from Connecticut. The attorney then stated that there were lots of people who ate "bagels and lox" in Connecticut. The attorney's comment was unprofessional, inappropriate and displayed a dangerous level of insensitivity which could be interpreted as anti-Semitic.

There were no aggravating or mitigating factors.

## Discipline Corner

### RESIGNATION

On August 19, 1997, the Honorable Michael D. Zimmerman, Chief Justice, Supreme Court, executed an Order Accepting a Petition for Resignation Pending Discipline in the matter of Daniel Marcum.

On January 5, 1995, Mr. Marcum pled guilty to Unlawful Dealing with Property by a Fiduciary, a second degree felony, in violation of the Utah Code Ann. §76-6-513, amended. As a result of his conviction, Mr. Marcum was sentenced to serve one to fifteen years in the Utah State Prison, with such prison sentence stayed in favor of a three-year period of probation.

In consideration of the fact that Mr. Marcum was willing to resign, which is tantamount to disbarment, and considering the aggravating and mitigating circumstances, the OAD consented to the Petition for Resignation Pending Discipline.

### SUSPENSION

On July 29, 1997, the Honorable J. Dennis Frederick, Third District Court, executed an Order suspending Stanford V. Nielson from the practice of law for one (1) year effective June 30, 1997.

On or about August 7, 1995, Judge Frederick accepted a stipulation whereby Mr. Nielson consented to entry of a Discipline by Consent which placed him on a two (2) year supervised probation with a further proviso that an immediate one (1) year suspension be implemented if a Screening Panel of the Bar's Ethics and Discipline Committee voted a Formal Complaint against him for misconduct occurring on or after the date of the Court's Discipline during the two year probation.

On or about June 30, 1997, a Screening Panel of the Bar's Ethics and Discipline Committee, ordered that a Formal Complaint be filed against Mr. Nielson for violation of Rules 5.5(a) (Unauthorized Practice of Law) and 8.1(b) (Failure to Cooperate in Office of Attorney Discipline Investigation), Rules of Professional Conduct. On July 9, 1997, the Office of Attorney Discipline ("OAD"), Utah State Bar, filed a Motion to Suspend Respondent Under Terms of the Previous Order of Discipline.

There were no aggravating or mitigating factors considered.

### SUSPENSION

On July 31, 1997, the Honorable J. Dennis Frederick, Third District Court, executed an Order suspending Byron L. Stubbs from the practice of law for three (3) years effective July 31, 1997.

On July 26, 1996, Mr. Stubbs pled guilty to one count of Communications Fraud, a Class A Misdemeanor, pursuant to Utah Code Ann. §76-10-1801, as amended. In support of his guilty plea, Mr. Stubbs admitted that he participated in a scheme to defraud by means of participating in the preparation of a letter addressed to the State which contained untrue information, which Mr. Stubbs knew to be untrue, and which he knew was intended to be communicated by mail by his client to the State for the purpose of furthering the scheme.

The fraud committed by Mr. Stubbs and his client caused potentially serious injury to the public when it delayed the proper treatment and disposal of contaminated soil removed from a ditch, thus creating a health hazard for both children and the general public.

The Court considered and relied upon aggravating and mitigating circumstances.

The Bar has filed an appeal of the court's Order of Suspension, and seek the respondent's disbarment.

### ADMONITION

On July 15, 1997, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violating Rule 1.2(a) (Scope of Representation), 1.3 (Diligence), Rule 1.4 (Communication), and Rule 3.2 (Expediting Litigation) of the Rules of Professional Conduct. In addition to the admonishment, the attorney is required to attend and successfully complete the Utah State Bar Ethics School within one (1) year.

The attorney was retained in or about March of 1991 to represent a client in a personal injury matter. Thereafter, although the attorney sent the complainant to various medical providers for evaluation and filed a complaint on her behalf in District Court the day before the statute of limitations ran, he failed to take any further action on her behalf. The attorney later advised the complainant that he did not wish to represent her and would not continue to do so. The attorney did not file a Withdrawal of Counsel with the District Court, but remained the attorney of record. The attorney failed to communicate with his client and failed to make reasonable efforts to expedite litigation consistent with the interests of his client.

There were no aggravating factors.

In mitigation, the attorney was candid and cooperative in the proceedings before the Screening Panel. Further, as the Screening Panel required, the attorney paid the outstanding bill of the medical provider who had performed tests on the complainant at the request of the attorney.

### ADMONITION

On August 7, 1997, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violating Rule 8.4(d) (Misconduct) of the Rules of Professional Conduct and the Rule 21(e) (Duties of Attorneys and Counselors) of the Rules of Integration and Management of the Utah State Bar.

During the course of an acrimonious deposition where the attorney's client (who was also his wife) was being deposed, the attorney asked where the opposing counsel, who was Jewish, was from. At a later point during the deposition the opposing counsel replied that he was from Connecticut. The attorney then stated that there were lots of people who ate "bagels and lox" in Connecticut. The attorney's comment was unprofessional, inappropriate and displayed a dangerous level of insensitivity which could be interpreted as anti-Semitic.

There were no aggravating or mitigating factors.

## Discipline Corner

**DISBARMENT**

On March 14, 1997, the Honorable Sandra Peuler entered an Order of Disbarment disbarring Edward T. Wells from the practice of law for misappropriation of client funds and funds from his law firm, which had previously paid restitution to clients.

Wells engaged in misappropriation or failed to account for client funds and funds belonging to his law firm in thirty-five personal injury matters over a period spanning two years. From February, 1994 through summer, 1996, Wells engaged in a pattern of charging the law firm directly, and thus the personal injury clients indirectly, for airfare at full price when, in fact, he canceled the full fare tickets, used frequent flyer mileage or obtained lower air fares for the same or similar travel and pocketed the difference. Upon discovery of the misappropriation of client funds, the law firm conducted a full audit and reported the matter to the Office of Attorney Discipline.

Pursuant to a Consent Discipline, Wells admitted that he violated Rule 1.5, Excessive Fees, Rule 1.15, Safeguarding Property and Rule 8.4, Misconduct and further stipulated to disbarment and had paid restitution at the time of entry of the Order of Disbarment. Mitigating factors also included Wells lack of a prior disciplinary record, Wells' expression of remorse, and cooperation with the Bar's investigation. The Bar acknowledged that Wells' consent to discipline was a substantial step toward rehabilitation. Wells is eligible to apply for readmission in March, 2002.

**ADMONITION**

On March 20, 1997, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violating Rules 1.3 (Diligence) and 1.4(a) (Communication) of the Rules of Professional Conduct of the Utah State Bar.

The respondent was hired by another attorney to work on immigration cases solicited by a non-lawyer who operated a company that purported to assist immigrants by obtaining "green-cards" or permanent residence status.

In November 1994, the complainant and her husband retained the company to file an application for immigration and naturalization on behalf of the complainant's husband. The complainant and her husband understood the respondent to be their attorney. The respondent told the complainant and her husband that he would file the application with the INS the following day. In February 1995, the complainant and her husband discovered that the respondent had not filed the application, despite his promise to do so in November 1994. The respondent failed to act with reasonable diligence and promptness in representing the complainant and her husband during the proceedings before the INS, which are still pending more than two years after the complainant and her husband initially retained counsel.

There were no aggravating circumstances. Mitigating circumstances were that the respondent agreed to continue representing the complainant and her husband without charge, and the respondent was young and inexperienced in the practice of law at the time of the violations.

**ADMONITION**

On or about March 20, 1997, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violating Rule 1.7(a), (Conflict of Interest) of the Rules of Professional Conduct of the Utah State Bar.

The attorney was retained to represent a party in a dissolution of marriage and to pursue a paternity matter against a third party. Thereafter, the attorney undertook representation of the third party's wife in a dissolution matter at the same time he was representing the first client in the paternity action against the third party. Although respondent disclosed a potential conflict of interest to his first client, he failed to obtain her consent after consultation as required under the Rules of Professional Conduct.

# 1997-98 Licensing Forms

The 1997-98 licensing renewal forms will be mailed during the first week in June. Please note the return address on the printed form. **If you have not received your form by June 15 contact the Bar immediately.**

License fees are due regardless of whether you receive a form. Any Client Security Fund assessment must be paid with your license fees. Payments received without the Client Security Fund assessment will not be processed.

License fees are due July 1, 1997. Payments will be accepted through July 31, 1997 without a late fee. A late fee of $50 will be assessed if your payment is not **received** by 5:00 p.m., July 31, 1997. Payments **received** without the late fee will not be processed until the late fee is paid.

If your license fees and any other assessments are not **received** by 5:00 p.m., August 29, 1997 you will be suspended for non-payment of fees. A reinstatement fee of $100 will be assessed to those who have been suspended and wish to reinstate their license.

**If you are aware of an attorney who has moved and has not changed his or her address with the Bar or if you have not changed your address with the Bar, please do so now. Changes must be made in writing and should be submitted to Arnold Birrell. The fact you have moved and not changed your address with the Bar or notified another department of the Bar either in writing or verbally will not relieve you from late fees and/or suspension.**

## Discipline Corner

**RESIGNATION PENDING DISCIPLINE**

On April 2, 1997, the Utah Supreme Court entered an Order Accepting the Petition of Richard S. Landerman for Resignation Pending Discipline. Under the terms of the Order, Richard S. Landerman ("Landerman") was enjoined from holding himself out as an attorney at law or providing legal services for a minimum period of five years and until such time as he is readmitted to the Bar.

On November 30, 1990, Landerman was convicted of Conspiracy in violation of 18 U.S.C. §371, Assisting in the Preparation of a False Tax Return in violation of 26 U.S.C. §7206(2) and Filing a False Tax Return in violation of 26 U.S.C. §7206(1). As a result of his conviction, Landerman was sentenced to two years imprisonment and five years probation. Landerman was placed on interim suspension by the Court on February 13, 1992. Pursuant to Rule 25, Rules of Lawyers Discipline and Disability, Landerman receives credit from the date of his interim suspension and is eligible to apply to the Bar for readmission.

**INTERIM SUSPENSION**

On April 15, 1997, the Hon. Timothy Hansen entered an Order Imposing Interim Suspension suspending Loren D. Israelson ("Israelson") from the practice of law pending the outcome of an attorney discipline action arising out of Israelson's conviction for Conspiracy to Defraud the United States on October 11, 1996.

**SUSPENSION**

On March 31, 1997, the Honorable Glen R. Dawson entered an Order of Discipline by Consent suspending Phillip D. Judd from the practice of law, the suspension to be held in abeyance and Judd placed on a term of supervised probation for a period of two years. Judd was also ordered to attend Ethics School and to make restitution. The discipline is being imposed for violations of Rule 1.2 (Scope of Representation), 1.3 (Diligence), 1.4 (Communication), 1.5 (Fees), and 3.2 (Expediting Litigation) of the Rules of Professional Conduct.

The attorney discipline case arose from Judd's failure to act with reasonable diligence and promptness in representing his clients, his failure to keep his clients reasonably informed about the status of their matters, and his failure to promptly comply with his client's reasonable requests for information.

Mitigating circumstances included Judd's lack of a dishonest or selfish motive in his dealings with clients, Judd's good faith effort to make restitution and to rectify the consequences of the misconduct involved, and Judd's cooperative attitude toward the disciplinary proceedings since December 1996. Aggravating circumstances include Judd's prior record of discipline, a pattern of professional misconduct, the fact that there were multiple offenses, and Judd's substantial experience in the practice of law.

**ADMONITION**

On March 12, 1997, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violating Rule 1.15 (Safekeeping Property), for negligently handling client funds resulting in temporary loss of the funds to the client. In April, 1996, the respondent received a $500 retainer from a client and, pursuant to an office practice followed by other attorneys in the respondent's law firm, left cash funds unattended on the desk of his law firm's bookkeeper without delivering the funds directly to the bookkeeper for deposit. The funds were taken by person(s) unknown and lost to the client.

In mitigation, the attorney had no prior record of discipline, voluntarily made restitution to the clients, was fully cooperative with the OAD's investigation, and expressed remorse for the mishandling of client funds. The attorney will attend the Utah State Bar's Ethics School.

# NOTICE
# Consumer Assistance Hotline Position

The Utah State Bar is seeking applications to fill a position which will staff a newly-created Consumer Assistance Hotline. The telephone hotline will assist clients in communicating with their particular attorneys and will respond to requests, inquiries and less serious complaints involving fee disputes, ethical concerns, pro bono projects, and the client security fund. The hotline will (1) provide clients with an outlet and/or solution for problems with their attorneys; (2) improve the current disciplinary system by resolving less serious complaints more quickly without the involvement of the Office of Attorney Discipline; (3) save time and effort of attorneys in responding to these less serious complaints; (4) provide assistance to attorneys having difficulty communicating with their clients. The hotline is patterned after similar programs in other states which have seen successes in facilitating communications between attorneys and clients and resolving disputes before they escalate into disciplinary complaints.

The position requires a law degree, at least five years of practice, and an active Utah State Bar license. The position also requires the ability to help clients identify problems over the phone, focus on solutions and resolve those concerns with attorneys. The hotline may be staffed from an applicant's home, but the position is not intended for someone otherwise engaging in private practice or soliciting outside legal work. The time required to perform this work will take twenty hours per week. Salary negotiable. Equal opportunity employer. Submit resume to John C. Baldwin, Executive Director, 645 South 200 East, Salt Lake City, UT 84111, by June 30, 1997.

## *Discipline Corner*

**DISBARMENT**

On March 30, 1998, the Honorable J. Dennis Frederick, Third Judicial District Court, entered a Judgment of Disbarment, disbarring Mark R. Madsen from the practice of law for violation of Rules 1.3 (Diligence), 1.4 (Communication), 1.5 (Fees), 1.15 (Safekeeping Property), 1.16 (Declining or Terminating Representation), 8.1 (Bar Admission and Disciplinary Matters), and 8.4 (Misconduct) of the Rules of Professional Conduct. Madsen was also ordered to submit to binding fee arbitration on any fee disputes or claims arising from any other matters abandoned by him, cooperate in resolving any further complaints, attend the Utah State Bar Ethics School, and pay restitution to the Client Security Fund for any amount(s) paid to his clients as a result of professional misconduct. The Order was based on a Discipline By Consent and Settlement Agreement entered into by Madsen and the Office of Professional Conduct.

In January 1997, Madsen abandoned his law practice. Because of Madsen's abandonment of his law practice, the Bar was forced to seek the imposition of a trusteeship over Madsen's practice for the purpose of contacting Madsen's clients, advising them to seek substitute counsel, and distributing the files. Madsen misappropriated client funds totaling approximately $165,000 for his own use and benefit.

**INTERIM SUSPENSION**

On March 9, 1998, the Honorable Guy R. Burningham, Fourth Judicial District Court, entered on Order of Interim Suspension, suspending Mark K. Stringer from the practice of law on an interim basis effective March 1, 1998. The Order was based on a Stipulation to Interim Suspension entered into by Stringer and the Office of Professional Conduct. Stringer will remain on interim suspension until the conclusion of disciplinary proceedings.

The Office of Professional Conduct has received several informal complaints alleging numerous instances of professional misconduct on Stringer's part. If proved by a preponderance of the evidence, the allegations raised in these informal complaints constitute numerous serious violations of the Rules of Professional Conduct, including: Rule 1.1 (Competence), Rule 1.2(a) (Scope of Representation), Rule 1.3 (Diligence), Rule 1.4(a) and (b) (Communication), Rule 1.5(a) (Fees), Rule 1.7(b) (Conflict of Interest: General Rule), Rule 1.15(a), (b), (c) (Safekeeping Property), Rule 1.16(a), (d) (Declining or Terminating Representation), Rule 3.1 (Meritorious Claims and Contentions), Rule 3.2 (Expediting Litigation), Rule 3.4(c) (Fairness to Opposing Party and Counsel), Rule 3.5(d) (Impartiality and Decorum of the Tribunal), Rule 4.2 (Communication With Person Represented By Counsel), Rule 4.4 (Respect for Rights of Third Persons), Rule 7.5(d) (Firm Names and Letterheads), Rule 8.1(b) (Bar Admission and Disciplinary Matters), and Rule 8.4(a), (c), (d) (Misconduct).

**ADMONITION**

On February 20, 1998, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violating Rule 1.8(a) (Conflict of Interest: Prohibited Transactions) of the Rules of Professional Conduct.

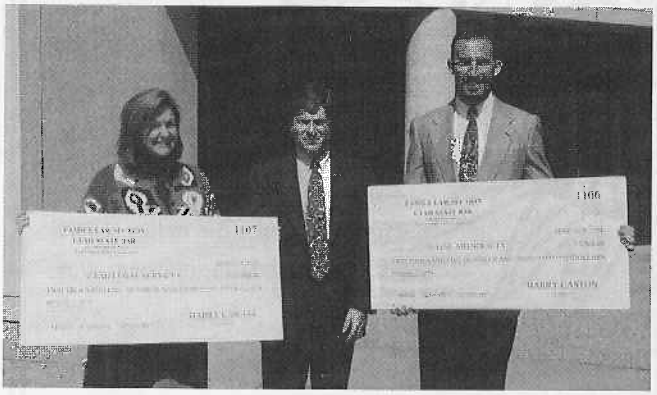
On November 18, 1991, the attorney negotiated a business relationship with a client, her spouse, and their company that gave the attorney's law firm an equity position of five percent of the outstanding stock, along with an exclusive and irrevocable license to develop, manufacture, and market certain patent technologies in Mexico and Latin America. The fee agreement between the attorney's law firm and the clients included a provision whereby the clients would retain the attorney's law firm's legal services for not less than twenty years. The clients claimed that the business relationship with the attorney's law firm was negotiated without the attorney's recommending that they seek independent counsel before entering into the agreement. The attorney has denied this claim. The attorney produced a letter from his law firm to the clients dated November 11, 1991, that directed the clients to review the fee agreement with independent counsel "to make sure that it is fair and that there are no problems with it . . . ." The fee agreement between the attorney's law firm and the clients contained no disclosures similar to those contained in the letter dated November 11, 1991. The client denied receiving the letter dated November 11, 1991, from the attorney's law firm.

**THANK YOU**

In the last year, the Office of Professional Conduct requested pro-bono assistance from paralegals to review more than 150

boxes of client files in connection with the trusteeship imposed over an abandoned law practice. Many people volunteered and the OPC would like to thank them. Their assistance allowed this office to return a vast number of the client files. The OPC would like to extend a special thanks to Mary Mark and the Salt Lake Community College Paralegal Studies Program for their assistance in reviewing more than 100 of the boxes.

## *Legal Aid Society Receives $2,500 from the Family Law Section of the Utah State Bar*



*L-R: Anne Milne, Executive Director of Utah Legal Services; Harry Caston, Chairman, Family Law Section; Stewart Ralphs, Executive Director of Legal Aid Society*

The Family Law Section of the Utah State Bar generously donated $2,500 to Legal Aid Society of Salt Lake.

"The $2,500 donation from the Family Law Section means a great deal to us" states Executive Director, Stewart Ralphs. "It's nice to know that our own section of the Bar appreciates and contributes to what we do."

A formal check presentation was made to Legal Aid Society on March 18, 1998 at the last Family Law Section meeting.

Legal Aid Society provides no-cost legal representation to low-income individuals with divorces, child custody and support, visitation, guardianship and modification of orders. Legal Aid Society also assists adults and children who are victims of domestic violence in obtaining protective orders from the court, regardless of the victims' income. It does not accept criminal cases.

During 1997, Legal Aid Society assisted more than 2,500 clients with domestic relations cases and 3,000 victims of domestic violence.

## *1998-99 Licensing Forms*

The 1998-99 licensing renewal forms will be mailed during the first week in June. Please note the return address on the printed form. **If you have not received your form by June 15 contact the Bar immediately.**

License fees are due regardless of whether you receive a form. Any Client Security Fund assessment must be paid with your license fees. Payments received without the Client Security Fund assessment will not be processed.

License fees are due July 1, 1998. Payments will be accepted through July 31, 1998 without a late fee. A late fee of $50 will be assessed if your payment is not ***received*** by 5:00 p.m., July 31, 1998. Payments received without the late fee will not be processed until the late fee is paid.

If your license fees and any other assessments are not ***received*** by 5:00 p.m., August 31, 1998 you will be suspended for non-payment of fees. A reinstatement fee of $100 will be assessed to those who have been suspended and wish to reinstate their license.

**Due to the volume of forms to be processed you need to allow two-three weeks for processing. This is important to those that need to serve clients in the jails and prison since you are required to have an active sticker to enter the facilities.**

**If you are aware of an attorney who has moved and has not changed his or her address with the Bar of if you have not changed your address with the Bar, please do so now. Changes must be made *in writing* and should be submitted to Arnold Birrell. The fact you have moved and not changed your address with the Bar or notified another department of the Bar either in writing or verbally will not relieve you from late fees and/or suspension.**

## *Discipline Corner*

**DISBARMENT**

On July 30, 1998, the Honorable Dennis M. Fuchs, Third Judicial District Court, entered a Judgment of Disbarment disbarring N. Brett Jones from the practice of law for violation of Rules 1.15 (Safekeeping Property), and 8.4(a), (b) and (c) (Misconduct) of the Rules of Professional Conduct. The Order was based on a Discipline by Consent entered into by Jones and the Office of Professional Conduct.

A client retained Jones to represent the client in a class action suit. On January 14, 1998, the defendant in the class action suit issued a check made payable to the client and the attorney's firm in the amount of $20,000 as the client's share of settlement of the suit. Thereafter Jones misappropriated the client's settlement monies for his own use and benefit.

On June 23, 1997, August 27, 1997, September 3 1997, and September 8, 1997, the OPC received Non-Sufficient Funds Notices totaling $7314.89 from a bank on Jones's IOLTA Account. The OPC investigation indicated that the NSFs resulted from negligent bookkeeping.

**DISBARMENT**

On August 11, 1998, the Honorable Pat B. Brian, Third Judicial District Court, entered an Order of Discipline disbarring Michael Lee from the practice of law for violation of Rules 1.5 (Safekeeping Property), and 8.4(a), (b) and (c) (Misconduct) of the Rules of Professional Conduct. The Order was based on a Stipulation entered into by Lee and the Office of Professional Conduct.

On January 4, 1996, the United States Attorney's Office filed a Felony Information charging Lee with one felony count of engaging in a scheme and artifice to defraud, a violation of 18 U.S.C. §1344(2). Lee forged the signature of a payee on a check, opened an account in the name of the payee and deposited the check into the newly opened account. Lee later transferred $109,712.58 from this account into an account at another institution, which was under his control. Lee pled guilty to the felony count on March 13, 1996, and was sentenced to twelve months and one day in prison and a three-year suspended release upon conditions, including restitution of $109.712.58.

**SUSPENSION**

On July 17, 1998, the Honorable Leon A. Dever, Third Judicial District Court, entered an Order of Suspension suspending Frank J. Falk from the practice of law for one year effective December 22, 1998, for violation of Rules 1.15(a) (Safekeeping Property) and 8.4(a) (Misconduct) of the Rules of Professional Conduct. The suspension was stayed and Falk was placed on a one-year supervised probation. The Order was based on a Discipline by Consent and Settlement Agreement entered into by Falk and the Office of Professional Conduct.

In December of 1996, a client's father gave Falk $2,000 for a custody evaluation. Thereafter, Falk failed to maintain these monies in trust, but applied these funds to his fees. After the fact, Falk requested his client's permission to apply the monies to fees. When the client requested the return of the monies, Falk returned the money to the client's father.

**SUSPENSION**

On July 22, 1998, the Honorable Stephen L. Henriod, Third Judicial District Court, entered an Order of Discipline: Suspension suspending William H. Adams from the practice of law for one year for violation of Rule 8.4 (Misconduct) of the Rules of Professional Conduct. The suspension was stayed and Adams was placed on a one-year probation. The Order was based on a Discipline by Consent and Settlement Agreement entered into by Adams and the Office of Professional Conduct.

On March 4, 1996, the Honorable Stephen Henriod, Third District Court, filed Amended Findings of Fact and Conclusions of Law in the civil matter *Jackson v. Adams*, Case No. 940012270CV. Among the Findings of Fact were findings that Jeanne Jackson, Adam's then mother-in-law, transferred $10,000 to Adams in January 1979. Adams understood at the time he received the $10,000 from Jackson that the money was not a loan and was not a gift, but nevertheless treated the money as though it was a loan. Although Jackson transferred the monies to Adams in 1979, no request for return of the money or accounting of the investment of the money was made prior to litigation involving Adams and his former spouse. The District Court entered a judgment against Adams who timely paid all amounts due Jackson under the judgment.

There were extenuating mitigating factors which warranted a suspension held in abeyance in this matter.

**VIOLATION OF INTERIM SUSPENSION ORDER**

On July 29, 1998, the Honorable Frank G. Noel, Third Judicial District Court, ordered Robert A. Bentley incarcerated for thirty days for violation of the court's previous Order of Interim Suspension. Bentley was ordered to serve two days in the county jail, and twenty-eight days were suspended on the condition that Bentley refrain from the practice of law. Bentley also was ordered to perform twenty-five hours of community service.

**INTERIM SUSPENSION AFFIRMED**

On August 19, 1998, the Honorable Richard C. Howe, Chief Justice, Utah Supreme Court, entered an Order denying a stay of interim suspension pending interlocutory appeal requested by Gary W. Pendleton.

## *DNA-People's Services Inc. Board of Directors Position Opening:*

The Utah Bar Commission is seeking applicants from the Bar for service on the Board of DNA-People's Legal Services, Inc. Membership to the Board is two years. The term for this member will expire in October, 2000. Board members are compensated for mileage at $.31 per mile, lodging, meals or per diem, and DNA business-related out-of pocket expenses. The Board meets at least four times a year and generally on Saturdays. DNA-People's Legal Services, Inc. ("DNA") is a non-profit corporation that has provided legal services to low-income residents of the Navajo Nation and the Hopi Reservation since 1967. DNA provides comprehensive legal advice and representation in areas which include family law, consumer law, public entitlements, and civil rights with the goal of maintaining some minimal level of decency in the lives of those affected by poverty. Deadline for this position is October 29, 1998. All inquiries should be addressed to John C. Baldwin, Executive Director, Utah State Bar, 645 South 200 East, Salt Lake City, Utah 84111.

## *Litigation Section's Trial Academy 1998 Part V: "Exhibits, Instructions, and Other Things"*

This biennial program of demonstrations and lectures by judges and experienced litigators is a useful introduction for the novice trial lawyer into the mysteries of trial practice. The focus is on practical hands-on information and in giving the answers that cannot be found in the books.

**Wednesday, October 28, 1998**
**6:00 to 8:00 p.m.**
**Utah Law & Justice Center**
(Registration at 5:30)

The fifth session of the six-part Trial Academy will be held on October 28th at the Utah Law & Justice Center. The subject will be "Exhibits, Instructions, and Other Things." The topics to be covered for this session include:

- Getting exhibits into evidence (without fumbling)
- The most-commonly needed foundations
- Using of overheads, blowups, and the like
- The rules on demonstrative evidence
- Making it easier with pretrial stipulations
- Why instructions really matter
- The "gotchas" on instructions that you must know
- Using your instructions to build a closing argument
- The extra challenges facing the female lawyer in trial

It is *not* necessary to have attended the prior sessions of the Trial Academy in order to fully benefit from the program.

Two hours of CLE credit will be granted. (The program qualifies for NLCLE credit for new members) The cost is $25 for Litigation Section members and $35 for non-members.
Pre-registration is recommended. To register, please send your payment to UTAH STATE BAR, CLE DEPT. 645 SOUTH 200 EAST, #310, SLC, UT, 84111 or call Toby Brown at 297-7024.

## *Discipline Corner*

**ADMONITION**

On August 31, 1998, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 1.15 (Safekeeping Property) and 8.4 (Misconduct) of the Rules of Professional Conduct. The attorney was also ordered to attend the Utah State Bar Ethics School.

In settlement of an action, the attorney's clients agreed to pay the opposing counsel's clients $2175. Opposing counsel agreed to accept payment on behalf of his client in the form of a cashier's check. The attorney told opposing counsel that instead of a cashier's check, he would pay the $2175 from his trust account, and personally guarantee payment. The attorney gave opposing counsel a check for $2175 from his trust account. Opposing counsel deposited the check and dispersed $2175 to his client. The check from the attorney's trust account was returned for insufficient funds. Opposing counsel contacted the attorney, who told opposing counsel to redeposit the check. The check was again returned for insufficient funds.

**ADMONITION**

On August 31, 1998, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 1.3 (Diligence), 1.4 (Communication), 1.16 (Declining or Terminating Representation), 8.1 (Bar Admission and Disciplinary Matters), and 8.4 (Misconduct) of the Rules of Professional Conduct. The attorney was also ordered to attend the Utah State Bar Ethics School.

The attorney undertook representation of a client in a collection matter in which he successfully obtained a default judgment in the amount of $48,955. Since obtaining the judgment, the attorney failed to assist the client in obtaining the assistance needed to retain out-of-state counsel to represent her in collecting the judgment. The attorney failed to return numerous telephone calls from the client, failed to protect the client's interests by returning her client file, and failed to respond to the Bar's repeated requests for assistance in its investigation of the complaint.

**ADMONITION**

On August 31, 1998, two attorneys were admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 5.3(a) and (b) (Responsibilities Regarding Non-lawyer Assistants), and 8.4(a) (Misconduct) of the Rules of Professional Conduct. The attorneys were also ordered to attend the Utah State Bar Ethics School. The Order was based on a stipulation entered into by the attorneys and the Office of Professional Conduct.

The attorneys maintained a law practice in Salt Lake City with several satellite offices throughout the state. One satellite office was in Provo, Utah. The attorneys employed a paralegal who worked out of the Provo office. No attorney worked out of the Provo office. Supervision of the paralegal in the Provo office was done by the attorneys out of the Salt Lake office.

In 1997, a client went to the Provo office and employed the attorneys to represent her in a Bankruptcy matter. The client only met with the paralegal in the Provo office. Initially, the client did not meet with the attorneys or any other attorney from their office. During the course of the client's initial representation, the attorneys failed to properly supervise the Provo paralegal. The attorneys subsequently met with the client directly and proceeded with her representation, which was completed to her satisfaction.

**ADMONITION**

On August 31, 1998, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 5.3(b) (Responsibilities Regarding Non-lawyer Assistants), 5.4(a) (Professional Independence of a Lawyer), 5.5(b) (Unauthorized Practice of Law) and 8.4(a) and (d) (Misconduct) of the Rules of Professional Conduct. The attorney was also ordered to attend the Utah State Bar Ethics School. The Order was based on a stipulation entered into by the attorney and the Office of Professional Conduct.

In September of 1993, the attorney opened an off-site satellite office with two non-attorneys. The two non-attorneys serviced personal injury clients, most of whom they brought into the office themselves. The attorney failed to properly supervise the two non-attorneys and by doing so assisted them in the unauthorized practice of law. The attorney paid one non-attorney from personal injury fees on an irregular basis that constituted inappropriate fee splitting, and further, failed to keep adequate records of fees paid to said non-attorney employee.

**ADMONITION**

On September 1, 1998, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 4.2 (Communications With Persons Represented By Counsel) and 8.4(a) (Misconduct) of the Rules of Professional Conduct. The attorney was also ordered to attend six hours of ethics CLE. The Order was based on a stipulation entered into by the attorney and the Office of Professional Conduct.

On November 4, 1997, a party employed an attorney in a marriage dissolution action. On that same date, the attorney sent a Verified Complaint for Divorce and Entry of Appearance, Waiver and Consent to the client's estranged wife. Thereafter, on behalf of the opposing party, the attorney who is the subject of this discipline sent an undated letter regarding the dissolution directly to the petitioner when he knew the petitioner was represented by counsel. In that letter, the attorney referenced the fact that he was a lawyer and sought to dissuade the petitioner from proceeding with the dissolution. On February 26, 1998, the attorney filed an Answer and Counterclaim on the respondent's behalf.

**APPOINTMENT OF TRUSTEE AND TRANSFER TO DISABILITY STATUS**

On September 21, 1998, the Honorable Fred D. Howard, Fourth Judicial District Court, entered an order transferring Jay H. Jolley to disability status and appointing the Utah State Bar and an as yet unnamed co-trustee as trustees pursuant to Rule 27 Rules of Lawyer Discipline and Disability, to protect the interests of Mr. Jolley's clients.

# *NOTICE*

The Bar Commission is soliciting a representative to serve on the Judicial Conference of the United States. The conference is responsible "for the continuous study of the operation and effect of the general rules of practice and procedure . . ." (28 U.S.C. §331), which reviews all proposed changes to the Federal Rules of Practice and Procedure. There are five advisory rules committees that report to the Standing Committee and specifically consider amendments to the Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure and the Evidence Rules.

In accordance with the Rules Enabling Act (28 U.S.C. §§2072-2077) under which it operates, proposed amendments to the rules are subject to public comment. In fulfilling the statutory obligation, those committees rely heavily on the input of the practicing bar.

Interested Bar Members should send a resume to: John C. Baldwin at Utah State Bar, 645 South 200 East, Salt Lake City, 84111 by November 30, 1998.

# *Ethics Opinions Available*

The Ethics Advisory Opinion Committee of the Utah State Bar has compiled a compendium of Utah ethics opinions that are now available to members of the bar for the cost of $20.00. Seventy-two opinions were approved by the Board of Bar Commissioners between January 1, 1988 and October 2, 1998. For an additional $10.00 ($30.00 total) members will be placed on a subscription list to receive new opinions as they become available during 1998.

**ETHICS OPINIONS ORDER FORM**

| Quantity | | Amount Remitted |
|---|---|---|
| _____ | Utah State Bar Ethics Opinions | _____ ($20.00 each set) |
| _____ | Ethics Opinions/ Subscription list | _____ ($30.00 both) |

Please make all check payable to the Utah State Bar
Mail to: Utah State Bar Ethics Opinions, ATTN: Maud Thurman
645 South 200 East #310, Salt Lake City, Utah 84111.

Name _____

Address _____

City _____ State _____ Zip _____

Please allow 2-3 weeks for delivery.

# Discipline Corner

## INTERIM SUSPENSION

On January 16, 1998, the Honorable Boyd Bunnell, Senior District Court Judge, presiding in the Fifth Judicial District Court, entered an Order of Interim Suspension suspending Gary Pendleton from the practice of law pending final disposition of the disciplinary proceeding.

The Court conducted a hearing on January 10, 1998, on the Utah State Bar's Petition for the Interim Suspension of Pendleton From the Practice of Law Until Final Conclusion of the Pending Disciplinary Action. The Court took the matter under advisement and on January 16, 1998, entered an order finding that the evidence clearly showed that Pendleton "was a heavy user of methamphetamine for a considerable period of time."

At the hearing, one of Pendleton's clients stated that he supplied Pendleton with methamphetamine "in rather large quantities from approximately June of 1995 to November of 1996 in the neighborhood of 15 to 17 times." Pendleton "admitted that he was using methamphetamine for approximately 1 1/2 years prior to the filing of the criminal charges against him but denie[d] that he offered or agreed to trade his legal services for drugs. He further state[d] that he had not used the drug for several months." The Court found the "the evidence submitted to the Court clearly demonstrated that Pendleton had a general reputation among the drug culture in and around St. George as an attorney who used drugs and who performed legal services in exchange for cash and methamphetamine."

Three of Pendleton's clients whom he represented in criminal cases stated that Pendleton "agreed to represent them in their respective criminal cases and agreed to take part payment in the form of methamphetamine." Another client, whose statement was introduced into evidence by Pendelton, covered in detail "a time when she was in [Pendelton's] office as his client and he produced methamphetamine and paraphernalia for its use from his desk and that they jointly ingested the drug for over an hour." The Court found that "the fact that [Pendleton] used the drug with his clients at their home and in his office on more than one occasion further substantiates the allegation that he did trade legal services for methamphetamine."

Another client related an instance in which a close companion of Pendleton's "came to him to get a supply of the drug and didn't have cash to pay for it and was told it was for [Pendleton] and that the price would be credited against his legal services' bill." Mr. Pendleton's companion tried for some time to get Pendleton on the telephone, without success, to verify for the client the stated arrangement. The client, "who made and supplied methamphetamine to Pendleton over a period of time, further stated while he was in custody on a criminal charge that [Pendleton], who was his attorney, told him 'They couldn't wait for me to get out, because they're getting this crappy Mexican ephedrine. It's just a low grade. And they can't wait for me to get out.'"

The videotape offered as evidence by the Office of Professional Conduct showed Pendleton and his "close lady friend" ingesting lines of methamphetamine at the home of clients of Mr. Pendleton. The tape was taken by the client without Pendleton's knowledge for the client's purpose of having some insurance that Pendelton would follow through and defend him in court.

The Court found that "[t]he evidence is overwhelming and well substantiated that [Pendleton] offered to and did exchange his legal services for methamphetamine and did so with at least four separate clients. The Court took judicial notice that a jury, on December 12, 1997, found Pendleton guilty of possession and use of a controlled substance, a 3rd degree felony."

Pendleton further admitted at the hearing on the Petition for Interim Suspension that the judge in the criminal case had ordered him to submit to chemical tests to see whether drugs were present in his system. Pendleton admitted that he had never had the tests performed. He stated that he went to the office of the Adult Probation and Parole on two different occasions and they refused to perform the tests without a court order. He further stated that he went to a private laboratory but found that the costs were prohibitive. The Court noted that if Pendleton "was clean of drugs and wanted that fact established his attorney could, with little effort and in one day, obtain the order from Judge Roth by way of fax or telephone." The Court noted that Pendleton "knew the significance of the results of such tests when he is awaiting sentence on a criminal charge and has a disbarment proceeding pending and that the simple effort or the cost to see that the tests were performed would be justified and not prohibitive."

The Court found "by clear and convincing evidence that Pendleton has repeatedly possessed, distributed and accepted a controlled substance in exchange for legal fees: that while defending persons accused of criminal acts, he has participated with those persons in furthering violations of the law and has encouraged those clients to violate the same laws of which they are accused of violating; that by these acts he has violated the Rules of Professional Conduct." The Court further found that he had "demonstrated a callous disregard for the law, his clients and the public and if allowed to continue in the practice of the law he will and does now pose a substantial threat of irreparable harm to the public."

Pursuant to Rule 26 of the Rules of Lawyer Discipline and Disability, Pendleton had thirty days from January 16, 1998 within which to wind-up his practice.

## SUSPENSION

On December 22, 1997, the Honorable Anne M. Stirba, Third Judicial District Court, entered an Order of Discipline: Suspension, suspending Frank J. Falk from the practice of law for violation of Rules 1.1 (Competence), 1.2(a) (Scope of Representation), 1.3 (Diligence), 1.4(a) and (b) (Communication), 1.5(a) and (b) (Fees), 1.16(d) (Declining or Terminating Representation), 3.2 (Expediting Litigation), 8.4(a), (c) and (d) (Misconduct) of the Rules of Professional Conduct. The suspension was held in abeyance, and places Falk on supervised probation for one year. Falk was also ordered to pay restitution. The Order was based on a Discipline By Consent and Settlement Agreement entered into by Falk and the Office of Professional Conduct.

Fifteen clients retained Falk to represent them in various types of matters including representation in divorces, modification of divorce decrees, collection of child support, visitation, paternity actions, protective orders, and one case against the Utah Industrial Commission.

The clients alleged, and Falk agreed, that in many of the cases Falk:

- failed to competently represent the client by using reasonably necessary legal knowledge, skill, thoroughness and preparation;
- failed to diligently pursue the agreed

goals of the clients representation by making timely discovery responses and by consulting with the clients about what response, if any, could be made;
- failed to act with reasonable diligence and promptness in responding to discovery and in promptly informing the clients of the outcome of their proceedings;
- failed to respond to the clients' reasonable requests for information and keep them reasonably and truthfully informed about the status of their matters, and to explain the matters to the extent necessary to enable them to make informed decisions; and
- upon termination of his representation of several clients, he failed to give them notice of his intent to withdraw and failed to provide the clients with a copy of their client files.

In some cases Falk failed to perform services at all and failed to return the retainer to the clients.

**SUSPENSION**

On January 16, 1998, the Honorable John A. Rokich, Third Judicial District Court, entered on Order of Suspension and Probation, suspending Don L. Bybee from the practice of law for eighteen months for violation of Rules 1.3 (Diligence), 1.4 (Communication), 1.16 (Declining or Terminating Representation), 3.3(a)(1) (Candor Toward the Tribunal), 4.2 (Communication with Person Represented by Counsel), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(c) and (d) (Misconduct) of the Rules of Professional Conduct. The suspension was stayed, and places Bybee on supervised probation for eighteen months. Bybee was also ordered to pay costs to the Bar and to attend the next scheduled Ethics School of the Utah State Bar. The Order was based on a Discipline By Consent and Settlement Agreement entered into by Bybee and the Office of Professional Conduct.

The Office of Professional Conduct received five complaints alleging misconduct, which ultimately resulted in the filing of the formal complaint. In the first informal complaint, a client retained Bybee to defend him and file a counterclaim in a Small Claims action. Bybee filed an Answer and Counterclaim, but missed two scheduled hearings and Default was subsequently entered against the client. Later, Bybee filed a Motion to Reconsider the Judgment wherein he alleged that neither he nor his client received notice of one of the hearings. A Supplemental Order hearing was held, and Bybee failed to appear. Bybee then failed to accurately inform the client of the true status of his representation.

In a second matter, Bybee was ordered by Judge pro tem Carlos A. Esqueda to prepare an Order in a matter in which Bybee represented the plaintiff. At that hearing, Judge Esqueda made certain rulings. When Bybee submitted an Order and Judgment, Affidavit of Costs and Attorney Fees, and proposed Findings of Fact and Conclusions of Law, the documents misrepresented Judge Esqueda's rulings. After reviewing the documents filed by Bybee, the Honorable Judith S.H. Atherton, District Judge of the Third Judicial District Court, filed a complaint with the Utah State Bar alleging that Bybee had significantly misrepresented the ruling of the Court, including but not limited to awarding unauthorized attorney fees plus interest to himself, attempting to include an unauthorized dismissal of an underlying judgment against Bybee's client, thus attempting to reinstate without authority, the client's dismissed action.

In a third matter, Bybee was retained to represent a client in a divorce action. During the course of the representation, Bybee, with his client, spoke to the defendant in the matter for several minutes regarding the subject of the representation. Although Bybee placed a call to the defendant's attorney so that she could participate in the conversation, she was not available, Bybee did not have consent to speak to the defendant. Based on Bybee's violation of Rule 4.2 Bybee was disqualified by the Commissioner and the Judge from representing his client. In statements to the Court, Bybee misrepresented what occurred in his conversation with the represented party.

In the fourth matter, Bybee represented a client in an appeal from a small claims action. A hearing was held in the small claims appeal before the Honorable Judith S.H. Atherton. On that day, Bybee raised issues that led Judge Atherton to continue the appeal of the small claims matter so that counsel could provide the Court with information regarding the custody status of a child and other issues concerning the civil liability of Bybee's client for actions committed by her child. Bybee knew and was aware of the continued trial date and failed to appear at the trial. At some point, Bybee prepared a "Notice of Withdrawal." He did not notify his client of the withdrawal, nor did he file the Notice with the Court until March 3, 1997. He dated the document February 6, 1997, and dated his certificate of mailing February 8, 1997. Bybee failed to notify the Court of his withdrawal prior to the trial. Although the certificate of mailing filed with the Court on March 3, 1997, stated that Bybee had given notice to his client of the "Notice of Withdrawal," there had been no notice to the client, and Bybee knew this because he had received the envelope returned to him showing that his client had never received the "Notice of Withdrawal."

In a fifth matter, Bybee represented a client in a civil matter. The dispute in that civil matter became a criminal prosecution in the state of Missouri. Bybee's client was arrested and jailed in Utah based on an arrest warrant issued in the Missouri matter. In March 1994, Bybee filed a Writ of Habeas Corpus to prevent the extradition of his client to Missouri. In April, the Honorable Pat Brian ruled against the State regarding the writ and the client was released. The Office of Professional Conduct dismissed the complaint, but on appeal by the complainant regarding the Chair of Ethics and Discipline Committee at the Utah State Bar, the dismissal was reversed and remanded to the Office of Professional Conduct for further investigation.

**SUSPENSION**

On January 20, 1998, the Honorable Timothy R. Hanson, Third Judicial District Court, entered an Order of Discipline: Suspension, suspending Stanford V. Nielson from the practice of law for violation of Rules 5.5(a) (Unauthorized Practice of Law), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(c) (Misconduct) of the Rules of Professional Conduct. The suspension will commence on July 1, 1998, for a period of thirty days following Nielson's current suspension through June 30, 1998. The Order was based on a Discipline By Consent and Settlement Agreement entered into by Nielson and the Office of Professional Conduct.

In October of 1994, a court reporter performed reporting services for Nielson. Nielson failed to respond to the court reporter's repeated written demands for payment for more than one year, eventually compelling the court reporter to seek and obtain a judgment for her fees through a

Small Claims action. Nielson failed to pay the judgment amount, forcing the court reporter to file further proceedings to obtain partial satisfaction of the judgment, which was not finally satisfied for more than seven months after the court reporter filed a complaint with the Office of Professional Conduct. Nielson failed to respond to repeated requests from the Office of Professional Conduct for information concerning the court reporter's complaint.

Additionally, Nielson was suspended for non-payment of Bar dues, effective September 3, 1996, and notified by the Bar of his suspension on September 5, 1996, but did not pay his delinquent dues until September 30, 1996. During the period of his suspension and while he was aware of the suspension, Nielson practiced law by appearing in court on behalf of a client. Furthermore, Nielson failed to cooperate with the Bar's investigation.

Utah State Bar

# Notice of Amendments to Rules

The following rules have been amended by the Supreme Court or Judicial Council with an effective date of April 1, 1998, unless otherwise indicated. The information is intended to alert Bar members to pending changes that may be of interest and not an inclusive list of all changes made. Further information may be found in the following sources:

- Code-Co. Web Site: http://www.code-co.com/utah/
- *Intermountain Commercial Record* (February 6, 1998)
- Pacific Reporter Advance Sheets
- Utah State Courts Web Site: http://courtlink.utcourts.gov/rules/

## RULES OF CIVIL PROCEDURE

**Rule 10. Form of pleadings and other papers.** Adds requirement that plaintiff file a completed cover sheet with the complaint.

**Rule 17. Parties plaintiff and defendant.** Recognizes change in divorce statute which requires parties to be referred to as "petitioner" and "respondent."

**Rule 60. Relief from judgment or order.** Removes paragraph (b)(4) due to ambiguity and possible conflict with rules permitting service by means other than personal service.

**Rule 64C. Attachment.** Gives court more flexibility in paragraph (b) establishing the amount of the undertaking to provide adequate security to the defendant for all damages and costs.

**Appendix of Forms.** Many new forms have been adopted.

## RULES OF CRIMINAL PROCEDURE

**Rule 8. Appointment of counsel (approved as emergency rule effective July 1, 1997).** Adds provisions governing qualifications for appointment as counsel for post-conviction proceedings in capital cases.

**Rule 12. Motions.** Changes language in Rule 12(b)(2) from "motions concerning the admissibility of evidence" to "motions to suppress evidence."

**Rule 26. Appeals.** Adds provisions for appeal by the prosecution from dismissal of a felony information following a refusal to bind defendant over for trial and from non-final orders dismissing or quashing part of a felony information if the appellate court decides that appeal would be in the interest of justice.

## RULES OF APPELLATE PROCEDURE

**Rule 9. Docketing statement.** Adds motions under Utah Rules of Criminal Procedure 24 and 26 to Rule 9(c)(1).

**Rule 11. The record on appeal.** Requires clerks to number only the cover pages of depositions and transcripts.

**Rule 23B. Motion to remand for determination of ineffective assistance of counsel.** Adds requirements for motions requesting findings of fact from the trial court on a claim of ineffective assistance of counsel. Requires identification of factual issues to be addressed on remand.

**Rule 24. Briefs.** Indicates how references to depositions and transcripts should be made.

**Rule 27. Form of briefs.** Adds proportional spacing and monospacing typeface requirement for briefs, including footnotes.

## RULES OF JUVENILE PROCEDURE

**Rule 7. Warrants for immediate custody of minors; grounds; execution of warrants; search warrants.** Adds provision for telephonic issuance of warrant during non-business hours or under exigent circumstances.

## CODE OF JUDICIAL ADMINISTRATION

**Rule 3-414. Court security (effective May 1, 1998).** Implements recommendations of the Court Security Task Force to 1) require security plans for justice courts; 2) permits local courts to allow designated officials to carry a firearm in a courthouse; and 3) clarify the responsibility for appointment and supervision of bailiffs.

**Rule 4-201. Record of proceedings.** Establishes that an audio recording system may be used to maintain the official verbatim record in small claims cases. Requires one original recording to be made when an audio recording system is used to maintain the official verbatim record.

**Rule 4-510. Alternative dispute resolution.** Amends notice requirements when parties use the ADR process.

*Rule 4-608. Trials de novo of Justice Court proceedings in criminal cases.* Changes the venue provision for the trial de novo of justice court criminal proceedings to the district court of the county nearest the justice court in which the original proceedings were heard.

**Rule 4-803. Trials de novo in small claims cases.** Changes the venue provision for the trial de novo of justice court small claims proceedings to the district court of the county nearest the justice court in which the original proceedings were heard. Changes references in paragraph (2) from "justice court" to "court issuing the judgment."

## OTHER CODE OF JUDICIAL ADMINISTRATION RULES

**Rule 1-205. Standing and ad hoc committees.**

**Rule 3-104. Presiding judges.**

**Rule 4-906. Guardian ad litem program.**

**Rule 4-910. Sanctions for denial of child visitation. (deleted)**

**Rule 9-101. Board of Justice Court Judges.**

## *Discipline Corner*

**DISBARMENT**

On April 10, 1998, the Utah Supreme Court reversed the Third District Court's suspension of Paul R. Ince, and stated that disbarment is the appropriate sanction for his misconduct.

Justice Michael D. Zimmerman summarized the Supreme Court's decision:

> The Utah State Bar ("the Bar") appeals from a district court order rejecting the Bar's request for the disbarment of Paul R. Ince. In its findings of fact, the district court determined that Ince had committed not less than nineteen major acts of misconduct over a fifteen-month period, including misappropriating law firm and client funds for his own use and benefit, forging documents to conceal an illegal transfer of pension funds, and failing to disclose his misconduct to a subsequent employer. Despite finding that the generally appropriate level of discipline fixed by the Standards for Imposing Lawyer Sanctions was disbarment, the court concluded that mitigating factors weighed in favor of suspension. The court then suspended Ince for fifteen months, to be followed by twenty--four months of supervised probation. The Bar appeals, arguing that Ince should be disbarred. We agree and therefore reverse.

The Court found that Ince committed theft and several acts of forgery that, "could have been prosecuted as felonies or misdemeanors and clearly constitute serious criminal conduct for the purposes of rule 4.2(b) [Standards for Imposing Lawyer Sanctions] . . . . These acts seriously adversely reflect on Ince's fitness to practice law, thereby making disbarment the presumptively appropriate sanction." The Court added:

> In *Babilis*, we stated that in the absence of truly compelling mitigating circumstances, the intentional misappropriation of client funds is an act that merits disbarment. 951 P.2d at 217. The Bar urges us to adopt the same posture toward intentional misappropriation of law firm funds, and we do so today. The fact that the majority of the money Ince stole came from his law firm rather than from a client neither changes the essential nature of his conduct nor makes it any less serious. The conduct still falls within the confines of rule 4.2(b) [Standards for Imposing Lawyer Sanctions].

Once a presumptive level of discipline is determined, the trial court may apply Rule 6, Standards for Imposing Lawyer Sanctions, in deciding what sanction should ultimately be imposed. On appeal, the Bar argued that the District Court gave undue weight to insubstantial mitigating factors. The Court noted:

> Although the new Standards are intended to preserve a measure of flexibility in assigning sanctions, the whole basis for their adoption was to avoid the uncertainty that existed under the old rules. Therefore, we offer the following guidance as to the application of aggravating and mitigating circumstances under rule 6.
>
> To justify a departure from the presumptive level of discipline set forth in the Standards, the aggravating and mitigating factors must be significant. In this case, we find that the district court accorded too much weight to mitigating factors which were not particularly compelling. This is especially true given the number of aggravating factors that existed. Thus, the weight of the mitigating factors is at least balanced by the aggravating factors. Under such circumstances, no adjustment to the presumptively appropriate level of discipline is warranted.
>
> To elaborate, the district court found that the following mitigating factors weighed in favor of suspension: Ince (1) had no previous record of discipline; (2) had personal or emotional problems during the relevant time frame; (3) made timely, good faith restitution of the money owed to his employer; (4) enjoyed a good reputation both before and after his misconduct; (5) exhibited remorse and interim reform and did not commit any further misconduct; and (6) demonstrated good work in the Child Protection Division of the Attorney General's office following his resignation from CD&N.
>
> The court also found the following aggravating factors: (1) Ince's conduct demonstrated a dishonest motive (the misconduct was motivated by the desire to support a lifestyle he could not afford); (2) Ince engaged in a pattern of misconduct; (3) Ince committed multiple offenses

– nineteen major acts of misconduct over a fifteen-month period; and (4) the conduct was illegal.

There are a number of general statements which can be made about the mitigating factors the court found to exist in this case and how much weight they should be accorded. First, Ince's restitution should not be given much weight because it was made only after his misconduct had been discovered and he had been confronted by CD&N. After an attorney's misconduct is discovered, restitution can be characterized simply as the "honesty of compulsion" and may be evidence only of the lawyer's ability to raise the money or desire to avoid being disbarred rather than of a sincere desire to rectify the wrongdoing. *In re Wilson*, 409 A.2d 1153, 1156 (N.J. 1979). On the other hand, an attorney who reports his own misconduct prior to discovery and attempts to make restitution even if he lacks the means to do so completely should have those efforts accorded greater weight in the determination of the sanction to be imposed.

The same reasoning applies to Ince's voluntary reporting of his misconduct to the Bar. This disclosure took place only after his misconduct had been discovered by CD&N. At that point, Ince could reasonably anticipate that CD&N would report him to the Bar. Therefore, his disclosure was self-serving. In contrast, an attorney who reports his own misconduct to the Bar prior to discovery, perhaps knowing that the misconduct might not ever be discovered, would certainly be entitled to have this voluntary disclosure weighed heavily as a mitigating factor.

Furthermore, Ince's supposed interim remorse and reform are not compelling. For example, when first confronted by CD&N with evidence of his misconduct, Ince was not forthcoming. He repeatedly admitted to acts of misconduct only when confronted with specific evidence and was never completely willing to admit to undiscovered misconduct.[1] He then failed to disclose the true reason for his resignation from CD&N to the Attorney General. Rather than seeming truly sorry for his conduct and admitting to it, Ince seemed sorry only that he had been caught.

As for reform, Ince's position and reputed good work with the Attorney General's office are not entitled to significant weight. Because his position with the Attorney General did not involve control over client or state funds, Ince has not demonstrated that he would not fall victim to the same temptations if he again encountered financial difficulties at home. The fact that witnesses testified that Ince did good work at the Attorney General's office is similarly unconvincing as these character witnesses were not aware of the full extent of Ince's malfeasance. Without this knowledge, their opinions expressing disapproval of the Bar's efforts to revoke Ince's license were not fully informed.

In the final balance, we must consider all of the circumstances in light of the Standards of Imposing Lawyer Sanctions. The primary purposes promoted by the Standards are to protect the public and the judicial system and to uphold high standards of professionalism. The presumptive sanctions the Standards set forth for various types of misconduct are carefully calculated to further those purposes. None of these purposes would be well-served were we to uphold the decision of the district court and allow an attorney who knowingly violated the [R]ules of [P]rofessional [C]onduct and stole money to support a lifestyle beyond his means to continue practicing in the absence of a significant imbalance of mitigating and aggravating circumstances. Therefore, Ince must be disbarred.

For a full copy of the opinion, *see In the Matter of the Discipline of Paul R. Ince*, No. 04345, filed April 10, 1998, at www.at.state.ut.us/usctx2n.htm.

[1]Although Ince did eventually disclose several incidents of undiscovered misconduct to CD&N, he did so only after significant prodding and was never forthright with respect to his misconduct involving the MSI account.

**INTERIM SUSPENSION STAYED**

On April 20, 1998, the Utah Supreme Court granted Gary W. Pendleton's Motion to Stay his interim suspension from the practice of law.

Pursuant to Rule 18 of the Rules of Lawyer Discipline and Disability, the Utah State Bar sought and was granted an Order of Interim Suspension by the District Court. The Supreme Court ruled that past substance abuse in the form of illegal use of methamphetamine does not necessarily evidence the "substantial threat of irreparable harm to the public" standard required by Rule 18. In this regard, the Court stated that Rule 18 should be reserved for emergency intervention in practices of currently unfit, incompetent, or impaired lawyers where it is clear that the continued representation of clients would pose the threat required by the rule.

**PUBLIC REPRIMAND**

On April 21, 1998, the Honorable Michael J. Glasmann, Second District Court, signed an Order of Discipline: Public Reprimand, reprimanding Randall W. Richards for violation of Rules 1.3 (Diligence), 1.4(a) and (b) (Communication), 1.16(d) (Declining or Terminating Representation), and 3.1 Meritorious Claims and Contentions) of the Rules of Professional Conduct. Richards was also ordered to attend the Utah State Bar Ethics School. The Order was based on a Discipline by Consent entered into by Richards and the Office of Professional Conduct.

Richards agreed to represent a couple in November 1990 in a real estate matter involving their failure to make timely payments and problems discovered in the house they purchased. After initiating litigation on behalf of the clients, Richard's subsequent evaluation of the lawsuit indicated the case had no merit.

Richards failed to act with reasonable diligence and promptness in his representation when he failed to respond to the opposing party's discovery requests, thus allowing requests for admission to be deemed admitted, resulting in summary judgment being entered against the clients. Richards failed to protect his clients' interests when, after determining that they had no cause of action against the defendants, he failed to withdraw from the case and thereby allow the clients to take steps to protect their interests until substitute counsel could be obtained.

**ADMONITION**

On April 11, 1998, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 1.1 (Competence) and 1.3 (Diligence) of the Rules of Professional Conduct. The attorney was also ordered to attend the Utah State Bar Ethics School.

In 1991, a client hired the attorney to represent him in a civil action. After the attorney filed a Notice of Readiness for Trial, defense counsel filed an objection to the notice. Later, defense counsel sent discovery requests to the attorney, who did not respond because he believed that the requests had been improperly served after his notice of readiness for trial. The attorney did not seek a court ruling or protective order regarding the discovery; he simply did not respond and did not inform his client that he was not going to respond.

The defendants filed a Motion to Compel responses to the discovery. The attorney failed to file an opposition to the Motion to Compel. The attorney failed to inform his client that a Motion to Compel had been filed, and that he was not going to oppose it. The Court granted the Motion to Compel and ordered responses to the discovery. A similar motion for another defendant was granted in February 1994. Each order required the client to comply with certain discovery requests within specified times, and stated that the complaint would be dismissed if the client failed to comply. The attorney did not inform the client of these rulings.

On March 4, 1994, the trial court entered orders dismissing the client's complaint with prejudice. Thereafter the attorney filed motions to set aside, but these were denied. The attorney filed an appeal, but the Utah Court of Appeals upheld the trial court's dismissals of the client's action.

The attorney admitted that the dismissal of the client's lawsuit was because of his error and his failure to respond to the defendants' discovery requests. The Court of Appeals concluded that because of the facts in the client's lawsuit, "including the long-standing failure to comply with discovery," the trial court did not abuse its discretion for failure to comply with the court's discovery order.

**ADMONITION**

On March 18, 1998, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 1.1 (Competence), 1.2 (Scope of Representation), 1.3 (Diligence), 1.4 (Communication), and 8.4(a) (Misconduct) of the Rules of Professional Conduct. The attorney was also ordered to attend the Utah State Bar Ethics School. The Order was based on a stipulation entered into by the attorney and the Office of Professional Conduct.

On November 24, 1994, a client employed the attorney to file an appeal of his misdemeanor conviction. The attorney was paid $500 as advance attorney's fees. The attorney failed to perform any meaningful legal services on the client's behalf. The attorney advised his client that he would not need to report to jail to serve his sentence if a certificate of probable cause could be obtained. The client understood this to mean he did not have to report and thereafter, the client was arrested for failure to report to jail to serve his sentence, as no certificate of probable cause had been obtained and the appeal had not been filed. The attorney thereby failed to properly communicate with his client. The attorney has refunded the entire $500 in legal fees to his client.

**REINSTATEMENT**

On February 25, 1998, the Honorable G. Rand Beacham, Fifth District Court, signed an Order of Reinstatement, reinstating Thomas A Blakely to the practice of law effective March 1, 1998. On November 26, 1997, the Honorable G. Rand Beacham, Fifth District Court, entered an Order of suspension, suspending Thomas A. Blakely, from the practice of law for three months for violation of Rules 8.4(a) and (b) (Misconduct) of the Rules of Professional Conduct. Blakely was also ordered to pay the Utah State Bar its costs of prosecution of the matter, to attend the Utah State Bar Ethics School, and to participate in and successfully complete a counseling program for sexual abuse. The Order was based on a Discipline by Consent entered into by Blakely and the Office of Professional Conduct (formerly known as Office of Attorney Discipline).

## *CLE Discussion Groups Sponsored by Solo, Small Firm & Rural Practice Section*

Utah Law & Justice Center – 12:00 to 1:00 p.m.

June 18 – Patents, Trademarks, Name Registration
Reid Russell, Patent Attorney
July 16 – Arbiration & Mediation
Aug 20 – Title Insurance
Sept 17 – Social Security & Elderly Law
Oct 15 – Bankruptcy
Nov 19 – Foreclosure – Judicial & Non-judicial
Dec 17 – Workman's Compensation Claims & Defenses

Reservations in advance to Amy (USB) (801) 297-7033

## *Ethics Advisory Opinion Committee*

**OPINION NO. 98-02**
(Approved April 17, 1998)

*Issue:* May an attorney represent both a county and a city that lies within the jurisdiction of the county as to civil matters?

*Opinion:* The Utah Rules of Professional Conduct do not require a blanket prohibition of an attorney's representation of both a city and county on civil matters. In the event the two entities are directly in conflict as to a particular matter, however, the attorney may not represent both (and perhaps neither) of the parties in that matter or other matters, unless the attorney can comply with the provisions of Rule 1.7(a).

**OPINION NO. 98-03**
(Approved April 17, 1998)

*Issue:* May a lawyer hired by an insurance company to defend an insured in a lawsuit submit billing statements to an outside audit service?

*Opinion:* Before a lawyer may submit billing statements to an outside audit service, the lawyer must have the client's consent. If the lawyer is relying on an insurance agreement for consent, the lawyer must review the agreement with the client to renew the client's consent before sending any billing statements to the outside audit service.

**OPINION NO. 98-04**
(Approved April 17, 1998)

*Issue:* May a private practitioner who has been appointed as special deputy county attorney to investigate and prosecute a single matter continue to represent criminal defendants in any jurisdiction in Utah?

*Opinion:* No. Even assuming such conduct is permitted by Utah statute, Rule 1.7(a) of the Utah Rules of Professional Conduct and the reasoning of Utah Ethics Opinion No. 126 prevent a special deputy county attorney from representing criminal defense claims in any jurisdiction in the State. In addition, Rule 1.10 prohibits any member of the special deputy's law firm from representing criminal defendants in any jurisdiction in the State during the period of the appointment.

**OPINION NO. 98-05**
(Approved April 17, 1998)

*Issue:* Is it unethical for a defense attorney to offer a "full satisfaction" settlement, conditioned upon plaintiff's waiving a claim for attorneys' fees against a defendant?

*Opinion:* It is not unethical for a defense attorney to present an offer of settlement conditioned on waiver of attorneys' fees.

# *Discipline Corner*

**DISBARMENT**

On March 5, 1999, the Honorable Boyd Bunnell (Specially Assigned), Fifth Judicial District Court, entered an order disbarring Gary W. Pendleton from the practice of law for violation of Rule 8.4(b) (Misconduct) of the Rules of Professional Conduct. The effective date of disbarment is July 6, 1998, the date the Interim Suspension began.

The facts as reported by Judge Bunnell in the Memorandum Decision, Findings of Fact & Conclusions of Law and Order of Disbarment indicate the following:

The Court found that the presumptive discipline is disbarment based on Rule 4.2(b) of the Standards for Imposing Sanctions ("Standards"). In this regard, the Court found that when Pendleton asked clients to obtain methamphetamine for him he solicited another to distribute a controlled substance, and when he provided methamphetamine to one client, he distributed methamphetamine.

In the alternative, the Court found that suspension would be the presumptive discipline aggravated up to disbarment. In this regard, the Court found that if the presumptive discipline were suspension under Rule 4.2(b) of the Standards, the Office of Professional Conduct ("OPC") presented evidence consistent with Rule 6.2 of the Standards that established the following aggravating circumstances by a preponderance of evidence:

Rule 6.2(b) Dishonest or Selfish Motive
Rule 6.2(c) Pattern of Misconduct
Rule 6.2(d) Multiple Offenses
Rule 6.2(f) False Statements
Rule 6.2(g) Refusal to Acknowledge the Wrongful Nature of Misconduct Involved
Rule 6.2(h) Vulnerability of Victim
Rule 6.2(i) Substantial Experience in the Practice of Law

In addition to the aggravating circumstances listed above, the Court found the following additional aggravating circumstances:

The Court found by a preponderance of the evidence that the trial judge in the criminal matter found Pendleton violated the terms of his criminal probation for his felony conviction for possession of methamphetamine, by among other things, receiving traffic citations for driving while his driver's license was suspended, failing to report those citations, and being charged with a failure to appear. The trial judge in the criminal matter sentenced Pendleton to 60 days in jail, with two days for one-day good time served.

The Court also found by a preponderance of the evidence that when Pendleton presented himself at the Washington County jail facility on August 8, 1998, he was under the influence of methamphetamine and refused to provide a urine sample in violation of his probation agreement, and in violation of the Administrative Rules of the jail.

The Court stated that Pendleton has shown absolutely no remorse for his criminal conduct, and refuses to acknowledge the harm he has done to the judicial system, the legal profession, or to his clients, whom he invited to join him in committing numerous felonies.

The Court found the only mitigating circumstances was Pendleton's lack of prior record or public discipline.

**INTERIM SUSPENSION AND APPOINTMENT OF TRUSTEE**

On December 14, 1998, the Honorable Sheila K. McCleve, Third Judicial District Court, entered an order placing Isaac B. Morley on Interim Suspension and appointing the Office of Professional Conduct ("OPC") as Trustee to protect Morley's clients' interests. The effective date of the Interim Suspension is June 23, 1998, the date the Court signed a "Disposition Summary" granting the Bar's Petition and Request for Appointment of Trustee.

The Court authorized the OPC to take possession of and inventory Morley's client files, notify them of the suspension, distribute the files to the clients, and the return unearned fees and other funds.

**PUBLIC REPRIMAND**

On March 11, 1989, the Honorable William B. Bohling, Third Judicial District Court, entered an Order of Reprimand reprimanding Martin S. Tanner for violation of Rule 1.5 (Fees) of the Rules of Professional Conduct. Tanner was also ordered to submit to binding fee arbitration.

Tanner represented a couple in various legal matters without a written fee agreement. The couple paid Tanner a $2500 retainer in one of the matters involving a zoning and nuisance issues concerning horses being kept on property near their home. Tanner applied most of the $2500 for the horse representation retainer to the bills he claimed were owed him for legal matters other than the horse matter. Some of the other legal matters on which Tanner represented the couple, and their son, were a home purchase dispute involving home improvements, a DUI matter and domestic matters for their son, and a carpet installation matter.

In the home purchase and improvement matter, Tanner agreed to take the matter on a contingency fee basis; however, he billed the couple on an hourly rate although he received 1/3 of the moneys collected. There was no written fee agreement for the contingency fee representation in the home purchase and improvement matter. Tanner did not maintain accurate billing records or report to the couple for his billings on most of the matters on which he represented them.

The fees Tanner charged for the horse matter and the other matters were excessive. Thus, Tanner violated Rule 1.5 because of the excessive nature of the fees and the failure to have a written fee agreement.

**ADMONITION**

On February 26, 1999, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 5.5(b) (Unauthorized Practice of Law) and 8.4(a) and (d) (Misconduct) of the Rules of Professional Conduct. The attorney was also ordered to attend the Utah State Bar's Ethics School.

The attorney's firm employed a Texas attorney, not admitted to practice law in Utah, to assist the attorneys in the firm. The attorney mistakenly believed the Texas attorney was admitted pro hac vice in a civil matter and unintentionally assisted in the Texas attorney's unauthorized practice of law in Utah by allowing him to file an Answer and Counterclaim in the civil case.

Opposing counsel in the civil case objected to the Texas attorney's pro hac vice application on the basis that the Texas attorney was currently a resident in the State of Utah awaiting his Utah Bar examination results. The attorney, after researching opposing counsel's objection, and upon learning that the rule governing pro hac vice admission had been changed not to allow attorneys residing in Utah but licensed only in another state to appear pro hac vice, caused the application to be immediately withdrawn.

Thereafter, the attorney acknowledged that he had not followed the proper procedures to allow the Texas attorney to make an appearance pro hac vice. The attorney subsequently took the necessary steps to ensure that the Texas attorney was no longer working on the civil case, so that there would be no further issues regarding his improper supervision of a non-attorney.

The attorney's conduct was in violation of Rule 5.5(b), 8.4(a) and (d) of the Rules of Professional Conduct.

**ADMONITION**

On February 10, 1999, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rule 1.9(b) (Conflict of Interest: Former Client) of the Rules of Professional Conduct.

The attorney was retained to represent a client in a personal injury matter. During the representation, the attorney hired the client to work in his law office. Several months later, the client's employment with the attorney terminated. Sometime after the client's employment was terminated, the attorney-client relationship between them also ended. After the attorney-client relationship ended, the attorney wrote a letter to the insurance company involved in the client's personal injury matter. The letter contained disparaging statements about the client. The disparaging statements were based upon information obtained by the attorney during the attorney-client relationship. Thus Rule 1.9(b) was violated when this information was used to the disadvantage of the client.

**ADMONITION**

On February 10, 1999, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rule 1.6 (Confidentiality of Information) of the Rules of Professional Conduct.

The attorney was hired to represent a client in a dissolution. The client subsequently terminated the attorney's representation and filed a complaint against the attorney with the Utah State Bar's office of Professional Conduct ("OPC"). During the course of the OPC investigation, the attorney revealed confidential information relating to his representation of the former client to a third party.

**ADMONITION**

On February 26, 1999, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 1.15(a) (Safekeeping Property) and 8.4(a) (Misconduct) of the Rules of Professional Conduct. The attorney was also ordered to attend the Utah State Bar's Ethics School.

The Office of Professional Conduct ("OPC") received notice that the attorney's trust account was overdrawn. During the course of the ensuing OPC investigation, the attorney admitted that a deposit to cover the check was delivered to his bookkeeper prior to the check being written, but mistakenly was not deposited before the check was presented to the bank for payment. The attorney further admitted that the deposit his

bookkeeper was to have made represented an irrevocable gift to an irrevocable life insurance trust, whose beneficiaries were the attorney's family members, for payment of an annual life insurance premium. Thus, the attorney was commingling funds that benefited his family with client funds in his trust account.

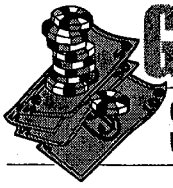
The attorney's conduct was in violation of Rule 1.15(a) and 8.4(a) of the Rules of Professional Conduct.

**ADMONITION**

On March 29, 1999 an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 8.4(b) (Misconduct) of the Rules of Professional Conduct and Rule 21(e) of the Rules for Integration and Management of the Utah State Bar.

A woman went to the attorney's office to return a summons issued to her former husband that had been erroneously delivered to her house. After an acrimonious verbal exchange, the attorney swore at the woman, took her arm, and shoved her. When another summons was served at the woman's house, she returned to the attorney's office to deliver the summons. The woman and the attorney again engaged in an acrimonious verbal exchange, which escalated into the attorney's grabbing the woman's arm, shoving her, and pushing her into a wall. The woman's son witnessed some of the physical assault upon her.


*Las Vegas*



**GAMING SEMINAR**

**June 7, 8 & 9, 1999**

**Bellagio Hotel & Casino, Las Vegas, Nevada**

*Scheduled to appear:*

U. S. Senator Harry Reid • Paul E. Rubelli • William F. Baity
Frank Fahrenkopf • Terri Lanni • Robert D. Faiss
*and many more.*

FOR MORE INFORMATION:

**(702) 387-6011**

Presented by the Clark County Bar Association CLE Committee and the Nevada Gaming Attorneys


**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF UTAH**

## PUBLIC NOTICE

## REAPPOINTMENT OF INCUMBENT FULL-TIME UNITED STATES MAGISTRATE JUDGE

The current term of Chief United States Magistrate Judge Ronald N. Boyce of the United States District Court for the District of Utah will expire on February 6, 2000. The Court is required to establish a panel of citizens to consider the reappointment of the magistrate judge to a new eight-year term as provided by law.

The duties of a full-time magistrate judge include the conduct of preliminary proceedings in criminal cases, the trial and disposition of misdemeanor cases, the handling of civil matters referred by the Court, and the conduct of various pre-trial matters as directed by the Court.

Comments from members of the Bar and the public are invited as to whether incumbent full-time United States Magistrate Judge Ronald Boyce should be recommended by the panel for reappointment by the Court. All comments will be treated confidentially. Comments should be directed to:

Markus B. Zimmer
Clerk of Court
United States District Court
Suite 120
United States Courthouse
350 South Main Street
Salt Lake City, Utah 84101

Comments must be received no later than Friday, June 25, 1999.

# *Discipline Corner*

With this issue of the *Utah Bar Journal*, the Utah State Bar's Office of Professional Conduct resumes its publication of the discipline summaries in the monthly feature denominated the "Discipline Corner." Publication of the Discipline Corner ceased in 1999, pending resolution of a defamation action brought against the Utah State Bar by Gary W. Pendleton. The case was recently resolved in favor of the Bar through an interlocutory appeal to the Utah Supreme Court, and the Discipline Corners will once again be published on a regular basis. *See Pendleton v. Utah State Bar*, 2000 UT. 77.

Members should be aware that the Discipline Corner summaries are intended not only to alert members of the Bar and Bench that a particular lawyer has been disciplined, but also to help educate others as to potentially problematic conduct. The entries are, of necessity, summaries, and readers are cautioned that individual cases differ in their particular details and in the weight accorded aggravating and mitigating circumstances.

**PUBLIC REPRIMAND**

On June 3, 1999, the Honorable J. Dennis Frederick, Third Judicial District Court, entered an Order of Reprimand reprimanding Dwight J. Epperson for violation of Rules 1.1 (Competence), 1.2 (Scope of Representation), 1.4 (Communication), 1.5 (Fees), 1.7 (Conflict of Interest: General Rule), 1.8 (Conflict of Interest: Prohibited Transactions), and 8.4 (Misconduct) of the Rules of Professional Conduct.

Epperson was retained to represent a client in an attempt to have a trustee removed from a trust of which the client was a contingent beneficiary. Epperson was successful in having the trustee removed and was appointed as successor trustee. The trust assets were primarily a house which had been the client's late father's home, and the client lived in the house.

To allow the client to remain in the house, Epperson recommended that the client borrow against the equity in it, so that there would be cash available to pay the client's monthly living expenses. The client could not work and was later determined to be disabled, after which she received social security payments as her only source of income other than monthly payments from the trust.

When there were no liquid assets in the trust and the client's social security income was insufficient for her basic needs, Epperson negotiated a loan for $20,000 at 10% interest per annum. The lenders were Epperson's mother-in-law and father-in-law. The terms of the loan were unfair and not beneficial to the trust, and the sale price was below market value. As part of the loan arrangement, the lenders obtained an option to purchase the house, and after two years, the lenders exercised the option. Epperson did not obtain a written waiver of any conflict of interest regarding the sale of the house to his in-laws, and did not tell the client to seek independent counsel regarding the loan arrangement. After Epperson's in-laws exercised their option, the client was forced to move from the house.

During his tenure as trustee and his continued representation of the client, Epperson also made loans from the trust assets to his family's limited partnership and to other clients for personal and business expenses. The borrowers repaid these loans from the trust with interest ranging from 8% to 12% interest per annum. The interest income on all loans made by Epperson to himself, his friends, and his family never exceeded $600 per year. The Office of Professional Conduct found no evidence indicating that Epperson misappropriated trust assets for personal and business use.

Subsequent to the client filing a Bar complaint and a Screening Panel of the Ethics and Discipline Committee voting that there was probable cause for public discipline in this matter, attorneys for the client and Epperson negotiated a civil settlement which resulted in the sale of the house by Epperson's in-laws. The sale proceeds were given to the client as part of the settlement. Epperson also provided a full accounting of trust assets and his billing for legal services.

Mitigating circumstances include: absence of prior record of discipline; timely good faith effort to make restitution or to rectify the consequences of the misconduct; inexperience in trust management; good character and reputation; imposition of other penalties or sanctions; and remorse.

**ADMONITION**

On June 3, 1999, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 1.1 (Competence), 1.3 (Diligence), and 1.4 (Communication) of the Rules of Professional Conduct.

The attorney was hired to represent a client in a family law matter. Thereafter, the attorney failed to competently perform services on behalf of the client, failed to diligently represent the client, and failed to adequately communicate with the client.

**PUBLIC REPRIMAND**

On June 10, 1999, the Honorable Glenn Iwasaki, Third Judicial District Court, entered an Order of Reprimand reprimanding Kathryn Collard for violation of Rules 3.4(a), (c), (d), and (f) (Fairness to Opposing Party and Counsel), 4.1 (Truthfulness in Statements to Others), and 8.4(d) (Misconduct) of the Rules of Professional Conduct.

Collard represented a client in federal litigation involving the termination of the client's employment. The employer fired the client allegedly because she could not perform her duties as a result of having multiple sclerosis. Collard also represented the client in a medical product liability class action lawsuit. As part of the class action, the client was evaluated by a neurologist, whose report stated that the client was disabled. This report was to establish the client's qualification for a class settlement in the medical product liability case.

In the employment action, Collard and opposing counsel held an attorney's planning meeting pursuant to the Federal Rules of Civil Procedure. Collard stated that she would produce, as part of her required initial disclosures, all medical records pertaining to her client's multiple sclerosis condition. Following the meeting Collard and opposing counsel prepared and filed a report that provided that Collard would produce "medical records from date of plaintiff's last work day for defendant."

Thereafter, Collard failed to produce the neurologist's report. Opposing counsel sent a letter to Collard requesting a supplemental production of her client's current medical records prior to taking the client's deposition, but Collard failed to produce any further medical records. The opposing party issued a subpoena duces tecum requiring Collard's client to produce at the deposition all medical records in her possession or control. At the deposition, the client said she had seen no other doctors for any conditions. Following the client's deposition, opposing counsel served a request for production of documents asking Collard's client to produce all medical records from any source for a specified period of time. Collard filed a response on behalf of her client stating that her client had produced all of the medical records in her possession.

The opposing party discovered that Collard had previously mentioned the neurologist's report to an employee of the opposing party, but Collard had stated the report stated the client was without disability.

After being given notice that opposing counsel had subpoenaed the medical records of the neurologist who treated the client, Collard spoke with the neurologist's secretary and requested that a certain letter from the neurologist to Collard not be produced in response to the subpoena. The opposing party filed a Motion for Sanctions in Federal District Court and the court sanctioned Collard.

Mitigating circumstances include: absence of prior record of discipline; imposition of other penalties or sanctions; and remorse.

**ADMONITION**

On June 30, 1999, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 1.7 (Conflict of Interest: General Rule), 1.8 (Conflict of Interest: Prohibited Transactions), and 3.7 (Lawyer as Witness) of the Rules of Professional Conduct.

The attorney represented a client in litigation involving the development of real property. A dispute arose between the client and another person regarding the real estate development, including whether a partnership existed. The attorney also represented a corporate entity of which his client was an officer and which was a third party defendant in the litigation.

At some point the client needed money to complete the real estate development project and was unable to obtain institutional funding. The client asked the attorney if the attorney knew of any source to obtain a loan that would facilitate completing the development project. The attorney referred the client to a Limited Liability Corporation ("LLC") of which the attorney was a member. The LLC issued a construction loan to the client and his wife, secured by a trust deed on the property.

The attorney gave the client and his wife a letter regarding a potential conflict of interest, including a reference to Rule 1.7(b) of the Rules of Professional Conduct. The letter also advised the client to consult with other counsel regarding the loan transaction. The client and his wife waived the potential conflict of interest as disclosed to them in the letter and also waived an independent legal consultation.

Eventually, the client defaulted on the loan and the development company foreclosed on the trust deed on the property. At that point, the attorney acknowledged that an actual conflict of interest existed and withdrew as counsel for the client.

**ADMONITION**

On July 12, 1999, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 1.15(a) and (c) (Safekeeping Property) and 8.4(a), (b), and (c) (Misconduct) of the Rules of Professional Conduct.

The attorney acted as a title agent for a title insurance company, and was to collect insurance premiums and remit thirty percent of the premiums within thirty days. The attorney received funds in which the client had an interest, but failed to promptly notify it of their receipt. The attorney failed to promptly deliver to the client funds to which it was entitled and failed to promptly render a full accounting for the funds being held in trust.

After being contacted by the Office of Professional Conduct, the attorney paid the outstanding title insurance premiums to the client and provided it with an accounting. At all times, the attorney held the funds in a trust account and the balance of the account remained in excess of the amount owed to the client.

**DISBARMENT**

On July 16, 1999, the Honorable Homer F. Wilkinson, Third Judicial District Court, entered Findings of Fact, Conclusions of Law, and Judgment of Disbarment disbarring Bruce J. Udall from the practice of law for violation of Rules 1.15(a), (b), and (c) (Safekeeping Property) and 8.4(a) and (c) (Misconduct) of the Rules of Professional Conduct.

Udall misappropriated client funds and converted them to his own use.

The court found the following aggravating circumstances: prior record of discipline; dishonest or selfish motive; pattern of misconduct; multiple offenses; obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary authority; refusal to acknowledge the wrongful nature of the misconduct involved; substantial experience in the practice of law; lack of good faith effort to make restitution or to rectify the consequences of the misconduct involved; and illegal conduct.

**DISBARMENT**

On July 21, 1999, the Honorable Darwin C. Hansen, Second Judicial District Court, entered Findings of Fact, Conclusions of Law, and Judgment of Disbarment disbarring David Y. Payne from the practice of law for violation of Rules 8.4(a), (b), (c), and (d) (Misconduct) of the Rules of Professional Conduct.

Payne was charged with two second-degree felony counts of giving false or inconsistent statements in both deposition and trial testimony. The charges were reduced to two class A misdemeanors alleging an "attempt," to which Payne pled guilty on April 3, 1998.

On December 10, 1998, Payne was placed on interim suspension pursuant to Rule 19, Rules of Lawyer Discipline and Disability.

The court concluded that Payne knowingly and intentionally engaged in professional misconduct as defined in Rules 8.4(a), (b), (c), and (d) (Misconduct) of the Rules of Professional Conduct and that the criminal acts reflected adversely on Payne's honesty, trustworthiness, or fitness as a lawyer. The court further concluded that when Payne knowingly and intentionally engaged in professional misconduct, he did so with the intent to benefit himself and to deceive the court, and his misconduct caused serious or potentially serious harm to a party and the legal system and caused serious or potentially serious interference with a legal proceeding as defined in Rule 4.2(a), Standards for Imposing Lawyer Sanctions.

The court found the following aggravating circumstances: prior record of discipline; dishonest or selfish motive; a pattern of misconduct; multiple offenses; refusal to acknowledge the wrongful nature of the misconduct involved; substantial experience in the practice of law; lack of good faith effort to make restitution or to rectify the consequences of the misconduct involved; and illegal conduct.

The court found the following mitigating circumstances: personal or emotional problems; good character or reputation; imposition of penalties or sanctions; and remorse.

**DISBARMENT**

On July 26, 1999, the Honorable Frank G. Noel, Third Judicial District Court, entered Findings of Fact, Conclusions of Law, and Judgment of Disbarment disbarring Robert A. Bentley from the practice of law and ordering him to pay restitution for violations of Rules 1.1 (Competence), 1.2(a) (Scope of Representation), 1.3 (Diligence), 1.4 (Communication), 1.5 (Fees), 1.7 (Conflict of Interest: General Rule), 1.15(a) and (b) (Safekeeping Property), 1.16(a) and (d) (Declining or Terminating Representation), 3.2 (Expediting Litigation), 3.4(c) (Fairness to Opposing Party), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a), (b), (c), and (d) (Misconduct) of the Rules of Professional Conduct.

Bentley was retained to represent two clients in an eviction matter. Bentley failed to accomplish the eviction and failed to pursue the appropriate remedies. Bentley's check covering the filing fee for the clients' Complaint was returned for insufficient funds, causing the filing to be deemed ineffective. Bentley failed to communicate with the clients and abandoned his representation of them without taking steps reasonably practicable to protect their interests. Bentley's failure to expedite the litigation in the eviction matter ultimately resulted in the dismissal of the case for failure to prosecute. Bentley failed to respond to the

Office of Professional Conduct's requests for information concerning this matter and failed to appear for the Screening Panel hearing.

Bentley was retained to represent two clients in a wage and compensation claim against one of the client's brothers while representing the brother in a divorce action, without obtaining the clients' consent thereto. Bentley drafted and filed an inaccurate Complaint and misrepresented to the clients the status of their case. Bentley "misplaced" funds given to him by the clients' former employer, which were intended to be forwarded to the clients. Bentley failed to communicate with the clients.

Bentley was retained to represent a client in obtaining the return of property held in pawn. Bentley failed to obtain the property, and failed to return funds the client had given him to redeem the property. Bentley failed to return the client's telephone calls and terminated the representation without taking steps reasonably practicable to protect the client's interests. Bentley failed to respond to the OPC's requests for information concerning this matter and failed to appear for the Screening Panel hearing.

Bentley was retained to represent a client seeking an annulment. Bentley misrepresented to the client that the annulment papers had been filed, when in fact they had not. Bentley failed to return the client's telephone calls and failed to return the money paid to him by the client, despite the client's demand that he do so. Bentley failed to respond to the OPC's requests for information concerning this matter and failed to appear for the Screening Panel hearing.

Bentley was retained to represent a client in a quiet title action. Bentley failed to timely file an Answer on the client's behalf, failed to timely respond to discovery, and failed to respond to the opposing party's Motion for Summary Judgment, which was granted by the court. Bentley's inaction resulted in the loss of the client's property. The client was unable to communicate with Bentley for long periods and Bentley abandoned the representation without taking steps reasonably practicable to protect the client's interests. Bentley failed to return the client's retainer fee, despite having failed to earn it.

Bentley undertook representation of a client when the client's initial attorney became incapacitated. Bentley received funds, belonging to the client and intended for use in a settlement, from the client's initial counsel. Bentley cashed the check and failed to apply the funds to the settlement. Bentley failed to respond to the OPC's requests for information concerning this matter and failed to appear for the Screening Panel hearing.

Bentley was retained to represent a client in obtaining a restraining order. Thereafter, the client instructed Bentley to desist working on her case, but Bentley ignored her communications and failed to withdraw. Bentley failed to provide a statement of the amount of time he spent on the client's case and failed to return the unused portion of the retainer fee upon request. Bentley failed to communicate with the client. Bentley failed to respond to the OPC's requests for information concerning this matter and failed to appear for the Screening Panel hearing.

Bentley failed to complete the domestic law matters for which a client had retained him and failed to appear for a hearing scheduled in the client's case. Bentley failed to return the client's telephone messages, and failed to respond to a letter from the client. Bentley abandoned the representation while a court matter was pending without taking steps reasonably practicable to protect the client's interests. Bentley failed to respond to the OPC's requests for information concerning this matter and failed to appear for the Screening Panel hearing.

Bentley undertook representing a client in a personal injury action, but failed to rapidly file and serve the Complaint, contrary to the client's instructions. Bentley failed to file the Complaint until seventeen months after he undertook the representation, and failed to serve it until six months after it was filed. Bentley failed to respond to the OPC's requests for information concerning this matter and failed to appear for the Screening Panel hearing.

Bentley undertook representing a client in a child custody action, but failed to provide any meaningful legal services. Bentley failed to communicate with the client. Bentley failed to respond to the OPC's requests for information concerning this matter and failed to appear for the Screening Panel hearing.

Bentley represented one of the parties in a paternity action. Bentley failed to obey several court orders requiring him to prepare proposed findings of fact and conclusions of law. Bentley abandoned the representation without taking steps reasonably practicable to protect the client's interests. Bentley failed to respond to the OPC's requests for information concerning this matter and failed to appear for the Screening Panel hearing.

Bentley failed to diligently provide meaningful legal services to a client in connection with settling claims made against her by various medical care providers, and in investigating a possible malpractice action against her former attorney. Bentley failed to respond to the client's request for an accounting and misappropriated the unearned portion of the legal fees the client paid him. Bentley failed to respond to the OPC's requests for information concerning this matter and failed to appear for the Screening Panel hearing.

Bentley failed to provide meaningful legal services to a client in connection with the client's child support matter. Bentley failed to inform the client of a settlement offer from the opposing party. Bentley failed to respond to the client's request for an accounting of his services and the amount the client paid him. Bentley failed to respond to the OPC's requests for information concerning this matter and failed to appear for the Screening Panel hearing.

Additionally, Bentley failed to pay court-ordered restitution, and continued to practice law in violation of an Order of Interim Suspension.

**ADMONITION**

On August 31, 1999, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rule 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

The Office of Professional Conduct received a complaint against the attorney and wrote to the attorney on three separate occasions requesting a response to the allegations. The attorney belatedly responded to these requests. Thereafter, the OPC wrote to the attorney requesting specific information related to the complaint, but the attorney failed to respond.

**ADMONITION**

On September 10, 1999, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rule 1.4 (Communication) of the Rules of Professional Conduct

The attorney was hired to represent a client in a bankruptcy action. The client told the attorney that the client wanted to reaffirm several of her debts. The attorney did not advise the client to the extent reasonably necessary to enable the client to make informed decisions regarding the client's case, and did not reaffirm the debts the client wanted reaffirmed.

**DISBARMENT**

On September 14, 1999, the Honorable Timothy R. Hanson, Third Judicial District Court, entered Findings of Fact, Conclusions of Law, and Judgment of Disbarment disbarring Jamis M. Johnson from the practice of law for violation of Rules 1.15(a), (b), and (c) (Safekeeping Property) of the Rules of Professional Conduct.

The court found that Johnson intentionally misappropriated client funds. Johnson held the client's funds in a trust account. Johnson attempted to deliver the funds to the client but the funds were returned to Johnson. There was a dispute about the settlement into which Johnson had entered on behalf of the client, and the client advised Johnson he could do as he wished with the funds. Johnson agreed to hold the client's funds in trust pending a resolution of the dispute. Thereafter, the client requested return of the funds, but Johnson did not return them. Johnson converted his client's funds for his own use. The court found that the removal of the funds belonging to the client from the trust account constituted misappropriation.

The court found the following mitigating factors: no prior record of discipline and good character or reputation. The court found that the mitigating circumstances were not sufficient to warrant something less than disbarment.

*Note: This matter is presently on appeal and cross-appeal to the Utah Supreme Court. The District Court stayed Johnson's disbarment pending appeal; the OPC has appealed the stay of judgment pending appeal.*

**DISBARMENT**

On September 23, 1999, the Honorable Guy R. Burningham entered a Default Judgment and Judgment of Disbarment disbarring James L. Thompson from the practice of law for violation of Rules 8.4(a), (b), (c), and (d) (Misconduct) of the Rules of Professional Conduct.

On December 17, 1998, Thompson was found guilty on three counts of felony tax evasion for knowingly and intentionally filing false tax returns with the State of Utah.

The court found that Thompson knowingly and intentionally filed false tax reports with the State of Utah, conduct which involved serious criminal conduct involving dishonesty, fraud, deceit, and misrepresentation. In committing these acts, Thompson violated Rules 8.4(a), (b), (c), and (d) (Misconduct) of the Rules of Professional Conduct.

The court further found that Thompson's acts reflect adversely on his honesty, trustworthiness and fitness to practice law and disbarment is the appropriate and the presumptive discipline in this matter as described in the Standards for Imposing Lawyer Sanctions, Rules 4.2(a), (b), and (c).

**ADMONITION**

On October 31, 1999, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rule 5.1 (Responsibilities of a Partner or Supervisory Lawyer) of the Rules of Professional Conduct.

An associate attorney of the law firm of which the attorney was the principal was retained to represent a couple in a custody modification matter. The couple's relationship with the associate and the law firm deteriorated and they unsuccessfully attempted to reach the associate for approximately one month. The attorney eventually informed the couple that the associate would no longer represent them.

The attorney assured the clients that the matter would be investigated and they would be contacted. Despite three visits to the law firm, the clients were unable to obtain their file until approximately two months later, and at that time were only given a partial copy of it.

Although the attorney met with the associate and instructed the associate to return the file to the couple, the associate did not do so. The associate later informed the attorney that the associate had returned the file, but the attorney did not contact the clients to verify that this was the case.

Mitigating circumstances include: lack of dishonest or selfish motive and cooperative attitude toward the disciplinary proceedings.

Aggravating circumstances include: substantial experience in the practice of law.

**SUSPENSION**

On November 2, 1999, the Honorable Leslie A. Lewis, Third Judicial District Court, entered an Order of Suspension suspending David R. Maddox for a period of three years for violation of Rules 1.15 (Safekeeping Property) and 8.4(a), (b), and (c) (Misconduct).

Maddox was a partner in a law firm. The firm discovered that Maddox misappropriated client funds for his own use and confronted him about it. Maddox acknowledged wrongdoing. The day after the firm confronted him, Maddox contacted the Office of Professional Conduct and informed it he had misappropriated funds.

The OPC believed that even though the presumptive level of discipline was clearly disbarment in this case, the mitigating factors were sufficiently substantial and compelling to warrant a downward departure from the presumptive discipline.

**ADMONITION**

On November 25, 1999, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rule 1.4 (Communication) of the Rules of Professional Conduct.

The attorney was appointed to represent someone in an appeal of a criminal conviction. The attorney requested and received an extension of time in which to file the appeal for the purpose of meeting with the client to discuss the matter. The attorney subsequently failed to meet with the client.

While preparing an appellate brief, the attorney determined that the client's concerns regarding ineffective assistance of counsel had no good faith basis. The attorney decided to argue the appeal on a different basis, but failed to inform the client of this decision. The attorney failed to adequately communicate with the client throughout the appeal.

In a second matter, the attorney was appointed to represent someone in an appeal of a criminal conviction. The attorney was provided a copy of the client's Petition for Extraordinary Relief and began researching the issues raised in it. During the course of conducting legal research, the attorney was unable to find case law in support of the client's Petition. The attorney failed to contact the client prior to an evidentiary hearing to inform the client of the results of the legal research and the attorney's position that there existed no good faith basis to pursue the Petition. At the evidentiary hearing the attorney informed the court and the client that no good faith argument could be made to support the client's Petition. The court granted the government's Motion to Dismiss. The attorney failed to afford the client an opportunity to take whatever steps the client felt were necessary to protect his interests.

Mitigating circumstances include: absence of a dishonest or selfish motive; cooperative attitude towards proceedings; inexperience in habeas corpus proceedings.

**ADMONITION**

On November 25, 1999, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rule 3.2 (Expediting Litigation) of the Rules of Professional Conduct.

The attorney represented a client in a divorce action in which a third party attempted to intervene. The attorney failed to respond to numerous written and oral communications from counsel for the third party.

**ADMONITION**

On December 20, 1999, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rule 8.4(g) (Misconduct) of the Rules of Professional Conduct.

The attorney agreed to represent a client pro bono in a divorce matter. The attorney and client later engaged in sexual relations. The sexual relationship was brief and began at the urging of the client; the attorney later terminated the sexual relationship with the client. The professional relationship continued for approximately six weeks.

The attorney's professional performance was not affected by the affair; nevertheless, it may have adversely affected the working relationship between the client and the attorney because the attorney may have lost the ability to advise and counsel the client effectively.

Mitigating circumstances include: absence of prior record of discipline; cooperative attitude toward proceedings; good character and reputation; and remorse.

**SUSPENSION**

On January 31, 2000, the Honorable Homer F. Wilkinson, Third Judicial District Court, entered an Order of Suspension suspending Alan E. Barber for three years for violation of Rules 1.1 (Competence), 1.2 (Scope of Representation), 1.3 (Diligence), 1.4 (Communication), 1.5 (Fees), 1.7(b) (Conflict of Interest: General Rule), 1.8(a) (Conflict of Interest: Prohibited Transactions), 1.16(a), (b), and (d) (Declining or Terminating Representation), 3.7(a) (Lawyer as Witness), 4.4 (Respect for Rights of Third Persons), and 8.4(a) and (d) (Misconduct) of the Rules of Professional Conduct.

Barber was retained to represent a client in divorce proceedings. He assured the client the divorce should only take six months to complete and would only cost $1000. The divorce took substantially longer than one year, and Barber charged the client more than $12,760. The major property of the marriage was a house, which ended up in foreclosure as a result of Barber's advice to the client. Barber advised the client not to make payments on the house because it was part of the dispute. When the house was sold, the couple had to pay back payments, attorney's fees, and

foreclosure costs. Barber did not keep the client informed of the progress of the case or of the foreclosure. Barber delayed filings with the court because of a dispute over the amount of his legal fees. Barber additionally failed to keep the client advised of what was happening with the client's claim on her husband's 401k plan.

Barber represented a client in a divorce/annulment/separate maintenance matter. During the course of the representation, Barber had an inappropriate and perhaps sexual relationship with his client and that relationship caused many difficulties in the legal matter.

Barber was retained to assist a client in preparation of immigration documents for four of the client's employees. Barber was paid a retainer. After one week the client determined that he did not want Barber to represent the employees, and advised Barber that he had hired another lawyer. Barber told the client that the law firm would return the retainer because he had not begun work on the matters. Thereafter Barber failed to return the unearned fees.

Barber was retained to represent several clients in immigration matters. In one case, Barber filed a Notice of Appearance and on that date the case was set over for a hearing on the merits and a deadline was set for filing a suspension application. Barber did not file a suspension application, nor did he appear at the scheduled hearing. The client tried to contact Barber by telephone but received a recorded message stating that Barber was ill. The client was required to proceed with his case, the asylum application was denied, and the client was granted voluntary departure. In another case, Barber filed a Notice of Appearance and the case was set for a hearing. Barber did not appear for the hearing. The client stated that he tried to reach Barber for three days but was unable to, and was informed that Barber was sick and that a family member had died. The client indicated to the judge that Barber had not spent any time with him to prepare for the hearing. The client was required to proceed with his case, the asylum application was denied, and the client was granted voluntary departure. The judge received a detailed response from Barber explaining the circumstances, and felt the response was satisfactory. After Barber failed to appear for three more hearings with other clients, the judge wrote to him, asking Barber to respond within thirty days. Barber never responded.

Barber was retained to represent a family in an asylum case before the Immigration Court. During the course of the representation, Barber failed to prepare for the hearing, failed to communicate with the clients regarding their asylum applications, and lied to them when he told them that they would qualify for a new amnesty. Barber failed to appear for their hearing and when the judge and the government attorney tracked him down by phone, Barber advised that they were "just pro bono clients" and he had a criminal trial in another state.

Barber was retained to assist a client in the asylum process and to file for suspension of deportation before the Immigration Court. Each time the client made a payment to Barber, Barber claimed he did not have the time or the paper to write the client a receipt, saying he would provide one later. Barber attended the first court appointment with the client and asked that the judge continue the case. Barber continued the second appointment without telling the client until the morning of the hearing. Barber also failed to appear at the trial. The client was ordered to proceed with the trial without counsel, and was ordered to leave the country. When the client returned home after the trial she found her immigration documents had been dropped off at a neighbor's house. Barber failed to keep appointments with the client and failed to respond to the client's telephone call.

Barber was retained by a client to litigate suspension of the client and the client's family's deportation case before the Immigration Court. The client gave Barber the documentation proving the client and his family had been in the United States for ten years. Barber appeared at the scheduling hearing and a trial was scheduled. Prior to trial the client was unable to contact Barber and believed Barber had "just disappeared." Barber failed to appear for the trial. The judge asked if the client was aware that there is no asylum from Mexico, and the client told the judge that they were not asking for asylum. The client was informed that Barber had never filed the request for suspension of deportation. The client has been unable to obtain the file with the family's original documents.

Barber was retained by a client to prepare, file, and litigate the client's suspension of deportation case before the Immigration Court. Barber appeared at the scheduling hearing and the judge told him to file the suspension application. A trial was scheduled. One of the receipts Barber gave to the client showed "Retainer for I-485." Barber was not supposed to file an I-485; rather the judge told the client to file an EOIR-40. On the day of the trial, the client was unable to reach Barber and Barber did not appear. Barber failed to respond to calls from the client requesting the client's file with the client's original documents needed for submission to the INS.

Barber was retained by a client to file and litigate suspension of deportation for the client, his wife, and his four children before the Immigration Court. The client gave Barber the documenta-

tion to support the application, including the children's birth certificates, tax records, and bank records. Barber lost the documentation and told the client to obtain new documentation. After a trial was scheduled, the client unsuccessfully attempted to contact Barber and was told by Barber's secretary not to be concerned, that Barber would be in court. Barber failed to appear for the trial. At the trial the client was told that Barber had never filed the applications. The judge told the client to get a new lawyer and rescheduled the trial. The client was unable to obtain his file with the original documents from Barber.

Barber was retained to represent a client in an asylum claim. The client gave Barber documents in Spanish that proved the facts to establish the client's claim for asylum. Barber and the client appeared at a hearing on the request for asylum. Barber stated that he had lost the documents and, therefore, none were presented to the judge. Thus, the client's request was denied. Barber asked the client for additional fees so that Barber could appeal the denial. The client delivered a check to Barber and was told that he would pursue the appeal. Thereafter, the client had no communication with Barber. The client later applied for extension of his employment authorization. The client received a Notice of Denial denying his employment authorization and advising him that he lost his appeal because it was not timely filed. The client received an order to report to Immigration in Salt Lake City for deportation. The client retained another attorney, but both have been unable to obtain the client's file from Barber. The client continued to receive statements from Barber's former office requesting payment of attorney's fees billed by Barber.

Aggravating circumstances include: pattern of misconduct; multiple offenses; vulnerability of victims; and substantial experience in the practice of law.

Mitigating circumstances include: no prior record of discipline; personal or emotional problems; and cooperative attitude toward proceedings.

**DISBARMENT**

On February 15, 2000, the Honorable Timothy R. Hanson, Third Judicial District Court, entered an Order of Disbarment disbarring Phillip A. Harding from the practice of law for violation of Rules 1.1 (Competence), 1.2(a) (Scope of Representation), 1.3 (Diligence), 1.4(a) and (b) (Communication), 1.5 (Fees), 1.15(b) (Safekeeping Property), 5.5(a) (Fees), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a), (c), and (d) (Misconduct) of the Rules of Professional Conduct.

Harding was retained to represent a client on a contingency fee basis in a personal injury matter. Harding failed to proceed with the representation until more than two years after the client filed a complaint with the Office of Professional Conduct. Approximately one month before the statute of limitations on the client's claim expired, Harding advised the client that governmental immunity would bar suit against the defendants involved, and he should seek alternate counsel if he wanted another legal opinion on the matter.

Harding was retained by a client to complete divorce proceedings. Thereafter, the client paid Harding attorney fees, but Harding failed to render an accounting to her despite repeated verbal and written requests. Harding provided no meaningful legal services to the client. Harding failed to keep the client reasonably informed about the status of her matter and failed to promptly comply with her reasonable requests for information. Harding reported to the client that her divorce matter had been set for trial, even though no date had been scheduled and he had failed to file the paperwork necessary to move the matter forward. The client was forced to retain new counsel to conclude her divorce, and Harding delayed delivering her file to her new counsel, despite repeated requests.

Harding was retained by clients to obtain modification of a divorce decree, to collect unpaid child support and to file suit for trespass and resulting property damages to their residence by a construction company. Although a fee was paid to Harding in the domestic relations matter, he failed to provide any meaningful legal services. Because Harding delayed in obtaining service on the client's ex-spouse in the child support matter, the clients lost a substantial amount of money in child support. In the trespass action, Harding failed to name the correct construction company as defendant, and failed to name the city, county, and state as defendants before the statute of limitations expired. Harding failed to keep the clients reasonably informed about the status of their matters, and did not promptly comply with their reasonable requests for information. Harding made material misrepresentations to the clients regarding the status of their cases. Harding was suspended from practicing law approximately two years after initiating his representation of the clients, but continued to represent them and never informed them of his suspension. When the clients discharged Harding, they were unable to find successor counsel in the trespass matter because of the manner in which the case had been handled, and were advised to renegotiate representation with Harding after reminding him that the statute of limitations was about to expire. The clients did so, but although aware of their

dissatisfaction, Harding allowed the statute of limitations to run without adding the additional parties.

Harding was suspended for failure to meet continuing legal education requirements; he admitted to his law partners that he knew he had been suspended. During the period of his suspension, Harding continued to represent clients and was observed appearing in District Court. Harding failed to respond to the OPC's request for information concerning this matter.

Aggravating circumstances include: prior record of discipline; dishonest or selfish motive; a pattern of misconduct; multiple offenses; obstruction of the disciplinary process by intentionally failing to comply with rules or orders of the disciplinary authority; submission of false evidence; false statements or other deceptive practices during the disciplinary process; refusal to acknowledge the wrongful nature of the misconduct involved either to the client or to the disciplinary authority; vulnerability of the victim; substantial experience in the practice of law; lack of good faith effort to make restitution or to rectify the consequences of the misconduct involved; and illegal conduct.

**RESIGNATION PENDING DISCIPLINE**

On February 17, 2000, the Honorable Richard C. Howe, Chief Justice, Utah Supreme Court, executed an Order Accepting Resignation Pending Discipline in the matter of Richard A. Higgins. In the Petition for Resignation Pending Discipline, Higgins admitted that he violated Rules 8.4(a), (b), and (c) (Misconduct) of the Rules of Professional Conduct.

Higgins pled no contest in *State v. Higgins* to two counts of unlicensed broker dealer, a third degree felony, and one count of attempted securities fraud, also a third degree felony.

**RESIGNATION PENDING DISCIPLINE**

On February 17, 2000, the Honorable Richard C. Howe, Chief Justice, Utah Supreme Court, executed an Order Accepting Resignation Pending Discipline in the matter of Earl S. Spafford. Spafford has been on interim suspension since October 23, 1996. In his Petition for Resignation Pending Discipline, Spafford acknowledged that on January 28, 1997, the Honorable William B. Bohling, Third Judicial District Court, made findings of fact and conclusions of law which Spafford accepted, and could not

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successfully defend against the charges. Spafford also admitted that the findings and conclusions were grounds for disbarment.

The Supreme Court's Order provided that prior to making application for readmission to the Utah State Bar, Spafford must reimburse any money paid out on his behalf by the Utah State Bar's Client Security Fund, and must satisfy any restitution orders or agreements, whether civil or criminal.

**ADMONITION**

On February 22, 2000, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rule 5.5 (Unauthorized Practice of Law) of the Rules of Professional Conduct.

The attorney failed to timely pay annual licensing fees and as a result, was placed on administrative suspension. The Utah State Bar mailed a certified letter to the attorney advising of the administrative suspension, but the certified letter was returned unopened and undelivered after three unsuccessful attempts to deliver it. The attorney filed a civil complaint on behalf of a client while suspended. Shortly thereafter, the attorney was informed of the suspension and on the same day paid the professional dues and the reinstatement fee.

**ADMONITION**

On March 3, 2000, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 1.7 (Conflict of Interest: General Rule) and 2.2(b) (Intermediary) of the Rules of Professional Conduct.

A married couple contacted the attorney regarding possible representation in a divorce action. During the initial meeting the attorney recommended that the husband and wife each hire their own attorney to protect their individual interests in the divorce action. The couple insisted that they agreed on all divorce and custody issues and did not want the expense of retaining separate counsel. The attorney drafted the Divorce Decree containing the language agreed upon by the couple, including child visitation language that differed from the Utah Standard Visitation Schedule. The attorney informed the couple that the language regarding the husband's visitation rights was too vague and recommended that they adopt the Utah Standard Visitation Schedule. The couple insisted on using the visitation language granting the husband visitation "by mutual agreement" as opposed to the Standard Visitation Schedule.

Prior to filing the Divorce Decree the wife instructed the attorney to add language concerning the husband's chronic health problems and to change the language regarding his visitation rights to "restricted visitation." The attorney questioned whether the husband had agreed to the changes and was told that he agreed. The attorney made the changes requested by the wife and the Divorce Decree was filed and subsequently entered by the court. Several weeks later the husband informed the attorney that he had not agreed to the "restricted visitation" language. The attorney prepared and filed a Motion for Relief of Judgment on behalf of the husband. The court denied the motion; nevertheless, the husband's visitation rights do not appear to have been legally altered by the modified language in the Divorce Decree.

Mitigating circumstances include: absence of prior record of discipline and timely good faith effort to make restitution or to rectify the consequences of the misconduct involved.

**ADMONITION**

On March 9, 2000, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 1.7 (Conflict of Interest: General Rule) and 4.4 (Respect for Rights of Third Persons) of the Rules of Professional Conduct.

The attorney's spouse and two brothers-in-law were members of a family who owned and operated a business. The attorney's father-in-law died and an acrimonious family dispute ensued over the ownership and operation of the family business. There was litigation by the family with another relative of the deceased over the family business. Also involved were issues involving dividing the estate of the father-in-law and surviving mother-in-law. In the dispute over the ownership and assets of the family business, the attorney represented the attorney's spouse, both brothers-in-law, and the mother-in-law against another party. During the representation, the attorney prepared a voting trust agreement for the mother-in-law that effectively gave control of the family business to one brother-in-law while effectively evicting the second brother-in-law from the business.

The attorney's representation of the mother-in-law in drafting the voting trust and simultaneous representation of all the beneficiaries was directly adverse to the second brother-in-law's interests. A dispute arose between the second brother-in-law and the other family members creating a conflict of interest. A dispute also arose between the attorney's personal interest in the family dispute and the attorney's role as an attorney for the various family members, which also created a conflict of interest. The attorney failed to consult with the various family members regarding the conflict and failed to explain the implications of the common representation. In the course of dealing

with the second brother-in-law, the attorney used means that had no substantial purpose other than to embarrass or burden the second brother-in-law. The attorney's letters and comments to the opposing party and opposing counsel in the litigation with the deceased's relative were unprofessional and rude.

**DISBARMENT**

On March 7, 2000, the Honorable Thomas L. Kay, Second Judicial District Court, entered Findings of Fact, Conclusions of Law, and Order of Disbarment disbarring John M. Bybee from the practice of law for violation of Rules 1.1 (Competence), 1.2 (Scope of Representation), 1.3 (Diligence), 1.4 (Communication), 1.5 (Fees), 1.15 (Safekeeping Property), 1.16 (Declining or Terminating Representation), 8.1 (Bar Admission and Disciplinary Matters), and 8.4(a), (b), (c), and (d) (Misconduct) of the Rules of Professional Conduct.

Bybee represented a client in the sale of a family-owned house. The house was sold, and Bybee was to prepare documents in connection with the sale, collect the profit, and distribute it equally between the client and her two brothers. Bybee deposited the proceeds from the sale of the house into his trust account for safekeeping until they could be distributed. Bybee gave only a portion of the money to the client and represented that the balance was for legal services he had performed. Bybee failed to promptly give the client the proceeds of the house and failed to promptly give her an accounting of the portion of the funds that he kept for legal fees. Bybee gave only a small and undetermined amount of money to the client's brother, but substantially less than the share to which the brother was entitled. An attorney on behalf of the client demanded an accounting of these disputed funds claimed by Bybee, but Bybee failed to keep the disputed funds separate until there could be an accounting and severance of the client's interest and the dispute resolved. Bybee intentionally misappropriated the client's funds for his personal and business use.

Bybee represented one of the brothers and his wife in the sale of another house. After the house sold, an amount of money remained and was to be used to pay debts the clients had accumulated. Bybee was to make sure that those debts were paid from the proceeds of the house. The profit from the sale of the house was deposited into Bybee's trust account but not all of the debts were paid. The clients received only part of the funds from Bybee. Bybee failed to give the clients their share of the proceeds from the house and failed to provide them with an accounting of the legal fees that he deducted. The clients disputed Bybee's distribution of the funds from the sale of their house and claimed an interest in the funds in Bybee's possession. An attorney on behalf of the clients demanded an accounting, but Bybee failed to keep the funds separate until there was an accounting and severance of the clients' interest and the dispute resolved.

Bybee represented a client participating in a class action lawsuit. The client received a letter informing her that a partial settlement check had been sent to Bybee on her behalf, and the client went to Bybee's office to demand that he give her the settlement funds. Bybee had received the settlement check, had endorsed the check with the client's signature, deposited the funds, and disbursed the funds for his personal and business use. Bybee claims he had this authority pursuant to his retainer agreement with the client. Bybee never notified the client of his receipt of the settlement funds. When questioned, Bybee told the client that he did not have her funds, then wrote her two checks on his business account. When the client attempted to cash the checks she was told there were insufficient funds to cover one of them. The client disputed Bybee's distribution of the funds from the partial settlement of the class action litigation. The client claimed an interest in the funds in Bybee's possession. An attorney on behalf of the client demanded an accounting of these disputed funds. Bybee failed to keep the funds separate until there was an accounting and severance of the client's interest and the dispute resolved. Bybee misappropriated the client's settlement funds for his personal or business use, then paid funds to the client that belonged to him or to other clients.

The Office of Professional Conduct received several non-sufficient funds or overdraft notices from the bank that held Bybee's trust account. The OPC requested on numerous occasions that Bybee produce trust account and billing records, but he failed to do so.

Bybee was retained to represent a client in a custody matter and a criminal matter. In the criminal matter the client paid Bybee a retainer. Bybee told the client that if the case went to a jury trial he would charge an additional amount. The client paid Bybee a portion of the additional amount. The case did not go to a jury trial and the client asked Bybee to return the unearned funds. Bybee did not return them, but told the client he would apply the funds to his work on the client's custody matter. Thereafter, Bybee provided no meaningful legal services and refused to return the unearned funds to the client. There was no retainer agreement for the custody matter, and the client never received a bill for services performed.

Bybee was retained to represent a client in a child support and paternity action. Bybee failed to adequately, diligently, and competently represent the client and failed to communicate. While representing the client, Bybee closed his local office and did not respond to the client's telephone calls and letters. Bybee failed to respond to the OPC's requests for information regarding this matter.

Bybee was retained to represent a client in the amendment of a Decree of Divorce. He failed to adequately, diligently, and competently represent the client and failed to communicate. While representing the client, Bybee closed his local office and failed to respond to the client's telephone calls and letters. Bybee charged the client an excessive fee and failed to promptly deliver or account for client funds that he was holding. Bybee failed to respond to the OPC's requests for information regarding this matter.

Bybee was retained to represent a client in divorce proceedings. He failed to adequately, diligently, and competently represent the client and failed to communicate. While representing the client, Bybee closed his local office and failed to respond to the client's telephone calls and letters. Bybee failed to respond to the OPC's requests for information regarding this matter.

Bybee was retained to represent a client regarding modification of support payments. Bybee failed to adequately, diligently, and competently represent the client and failed to communicate. While representing the client, Bybee closed his local office and failed to respond to the client's telephone calls and letters. Bybee failed to respond to the OPC's requests for information regarding this matter.

Bybee was retained to represent a client in a divorce modification matter. Thereafter, while refinancing his home, the client discovered that there was allegedly an outstanding unpaid debt owed by him to Bybee. The client and his wife attempted to contact Bybee about this, but Bybee would not respond to their inquiries. Finally, Bybee returned the client's telephone calls. The client requested a detailed billing statement for the alleged debt, but Bybee failed to provide it. Bybee charged the client an excessive fee for the legal services provided. Bybee failed to respond to the OPC's requests for information regarding this matter.

Bybee was retained to represent a client regarding paternity issues and child support payments. Bybee failed to adequately, diligently, and competently represent the client, including failure to attend hearings in the paternity matter and failure to communicate with the client. Following termination of the representation, Bybee failed to take steps reasonably practicable to protect the client's interest and failed to surrender papers to which the client was entitled. Bybee charged the client an excessive fee. Bybee failed to respond to the OPC's requests for information regarding this matter.

Bybee was retained to represent a client in a divorce action. Thereafter, Bybee failed to adequately, diligently, and competently represent the client and failed to communicate. While representing the client, Bybee closed his local office and failed to respond to the client's telephone calls and letters. Bybee failed to respond to the OPC's requests for information regarding this matter.

Bybee was retained to represent a client in a lawsuit involoving an apartment complex. Bybee failed to adequately, diligently, and competently represent the client and failed to communicate. While representing the client Bybee closed his local office and failed to respond to the client's telephone calls and letters. Bybee failed to respond to the OPC's requests for information regarding this matter.

Bybee was retained to represent a client in a name change action. Bybee failed to adequately, diligently, and competently represent the client and failed to communicate. While representing the client Bybee closed his local office and failed to respond to the client's telephone calls and letters. Bybee failed to promptly deliver or account for client funds that he was holding. Bybee failed to respond to the OPC's requests for information regarding this matter.

**ADMONITION**

On March 14, 2000, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rule 4.4 (Respect for Rights of Third Persons) of the Rules of Professional Conduct.

In the hallway of the Federal District Courthouse, the attorney raised his middle finger at a party to litigation.

**ADMONITION**

On March 15, 2000, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 4.2 (Communication with Person Represented by Counsel) and 8.4(a) and (d) (Misconduct) of the Rules of Professional Conduct.

The attorney represented a client in a civil matter. During the course of the representation, the attorney interviewed the client's minor children without the presence of their Guardian ad Litem.

Mitigating circumstances include: full and free disclosure and cooperative attitude toward proceedings and remoteness of prior offenses.

Aggravating circumstances include: prior discipline.

**SUSPENSION**

On April 5, 2000, the Honorable Leslie A. Lewis, Third Judicial District Court, entered an Order of Discipline By Consent: One Year Suspension suspending R. LaMar Bishop from the practice of law for one year for violation of Rules 1.3 (Diligence), 1.4 (Communication), 1.16(d) (Declining or Terminating Representation), 5.5 (Unauthorized Practice of Law), and 8.4(a) and (d) (Misconduct) of the Rules of Professional Conduct.

Bishop was retained to represent a client in tax matters. Bishop failed to act with reasonable diligence and promptness in representing the client and failed to keep the client reasonably informed about the status of her case. After the client terminated Bishop's legal services, Bishop failed to promptly return the client's file.

Bishop was placed on administrative suspension for failing to pay his Bar dues in 1995, 1996, 1997, and 1999. During some of the time that Bishop was on administrative suspension, he provided legal services to clients.

**SUSPENSION**

On May 1, 2000, the Honorable Stephen L. Henriod, Third Judicial District Court, entered an Order: Suspension suspending Peter M. Ennenga for six months for violation of Rules 1.4 (Communication), 1.15 (Safekeeping Property), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(b) and (c) (Misconduct) of the Rules of Professional Conduct.

Ennenga violated Rule 8.1 in numerous instances by failing to provide information requested by the Office of Professional Conduct.

Ennenga violated Rule 1.4 by failing to communicate with a client. After filing a Complaint, Ennenga failed to continue to work on the matter and failed to inform the client of that fact.

With respect to Rules 1.15, 8.4(b) and 8.4(c), Ennenga collected funds for a client who requested that Ennenga hold the


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funds in trust. Ennenga never deposited the money into a trust account, but instead deposited part in his personal checking account and had part converted into a cashier's check, all of which he eventually used for himself. Ennenga repaid the client in 1997 after she filed an informal complaint against him with the OPC and retained an attorney to take action against him.

Aggravating circumstances include: prior record of discipline for matters of a different nature; a pattern of misconduct; multiple offenses; obstruction of the disciplinary proceedings; refusal to acknowledge the wrongful nature of the misconduct involved; vulnerability of victim; substantial experience in the practice of law; lack of good faith effort to make restitution; and illegal conduct.

Mitigating circumstances include: absence of prior record of discipline; personal or emotional problems; timely good faith effort to make restitution or to rectify the consequences of the misconduct involved; good character or reputation; unreasonable delay in the disciplinary proceedings; interim reform; remorse; and remoteness of prior offenses.

*Note: This matter is presently on appeal and cross-appeal to the Utah Supreme Court.*

**SUSPENSION**

On May 2, 2000, the Honorable Frank G. Noel, Third Judicial District Court, entered an Order of Discipline: Suspension suspending Stanford V. Nielson from the practice of law for thirty days for violation of Rules 1.1 (Competence), 1.2 (Scope of Representation), 1.3 (Diligence), 1.4 (Communication), 1.5 (Fees), 1.15 (Safekeeping Property), and 8.4(a), (c), and (e) (Misconduct) of the Rules of Professional Conduct.

Nielson was retained to represent a client in a divorce action in the most cost-effective and time-efficient manner possible. The client asked Nielson how funds could be safeguarded from her husband during the pendency of the domestic proceedings. Nielson advised the client to give him two checks, one for the initial retainer fee and one for funds to be held in trust earmarked as legal fees, thus, shielding the money from court review. Nielson assured the client that the second check would not be applied toward fees unless the client first authorized him to do so. Nielson failed to immediately place the funds in trust, and deposited the second check two days after the client claimed she terminated Nielson's services. Nielson denies the client terminated his services at that time. The client alleges she never received the letter Nielson purportedly mailed to her in which Nielson memorialized a telephone conversation he claims he had with her authorizing the use of the funds. The client denies the conversation took place. The client further alleges she did not see a copy of a Retainer Agreement or an itemized billing from Nielson until he forwarded her file to her successor counsel. Nielson failed to advise the client that she could seek an expedited Restraining Order, but instead attempted to procure a Temporary Restraining Order, which was not obtained for more than thirty days.

Aggravating circumstances include: prior record of discipline; dishonest or selfish motive; submission of false evidence, false statements, or other deceptive practices during the disciplinary process; refusal to acknowledge the wrongful nature of the misconduct involved; vulnerability of the victim; substantial experience in the practice of law; and lack of good faith effort to make restitution or to rectify the consequences of the misconduct involved.

Mitigating circumstances include: the client's acknowledgement that the funds could be used for attorneys fees, if needed.

**ADMONITION**

On May 22, 2000, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 1.16(d) (Declining or Terminating Representation) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The attorney was retained to represent a client in a custody matter. Two months after the representation began, the attorney transferred the client's file to another attorney without the client's knowledge or consent.

**ADMONITION**

On May 22, 2000, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rule 1.5 (Fees) of the Rules of Professional Conduct.

The attorney was retained to represent an out-of-state client in divorce proceedings. The proceedings were contentious and the parties could not resolve their differences by agreement. The attorney did not have the client sign a written fee agreement, although the attorney knew it was reasonable to believe that the fees for the representation would exceed $750.

**ADMONITION**

On May 22, 2000, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rule 5.5 (Unauthorized Practice of Law) of the Rules of Professional Conduct.

The attorney was suspended for non-compliance with mandatory continuing legal education requirements, but continued to practice law while on administrative suspension.

**ADMONITION**

On May 22, 2000, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rule 5.5 (Unauthorized Practice of Law) of the Rules of Professional Conduct.

The attorney was suspended for failing to pay his annual Bar licensing dues, but continued to practice law while on administrative suspension.

**ADMONITION**

On May 22, 2000, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rule 1.7(b) (Conflict of Interest) of the Rules of Professional Conduct.

The attorney's firm was retained by a client ("Client 1") to represent the client's company ("Company A"). The attorney had knowledge that a second company ("Company B") was affiliated with Company A and was also owned by Client 1. The attorney also represented a second client ("Client 2"), and was unaware that Client 2 was a real estate agent licensed with Company B. The attorney's representation of Client 1's companies was materially limited by his responsibilities to Client 2, in that Client 2 employed the attorney to review a commission contract with Company B.

Mitigating circumstances include: absence of prior record of discipline; absence of dishonest or selfish motive; full and free disclosure to the client prior to the discovery of any misconduct and cooperative attitude toward proceedings; and remorse.

Aggravating circumstances include: substantial experience in the practice of law.

**SUSPENSION**

On June 2, 2000, the Honorable David S. Young, Third Judicial District Court, entered an Order Revoking Probation, Lifting Stay, and Ordering Suspension of Dean Becker From the Practice of Law for two years for violating his probation.

On May 31, 2000, the Office of Professional Conduct and Becker filed a stipulation in which Becker stipulated that he violated his probation and his probation should be revoked and the two years suspension assessed against him.

**ADMONITION**

On June 8, 2000, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 1.3 (Diligence) and 8.4(a) and (d) (Misconduct) of the Rules of Professional Conduct.

The attorney was retained to represent a client in a personal injury matter. The client identified potential expert witnesses, but the attorney failed to timely communicate the names to opposing counsel and they were excluded from testifying at trial.

Mitigating circumstances include: cooperation with the Office of Professional Conduct.

**SUSPENSION**

On June 14, 2000, the Honorable James R. Taylor, Fourth Judicial District Court, entered an Order of Discipline By Consent: Three Months Suspension and Two Year Probation suspending Jacqueline de Gaston from the practice of law for three months for violation of Rules 1.1 (Competence); 1.3 (Diligence); 1.4 (Communication); 4.2 (Communication with Persons Represented by Counsel); and 8.4(d) (Misconduct) of the Rules of Professional Conduct.

de Gaston was admitted to practice law in December 1997. Thereafter she commenced practice as a solo practitioner. Although her intent was to limit her practice to simple divorce and adoption cases, de Gaston became involved in more complex, disputed matters and agreed to represent numerous clients in various areas of the law. In some of these matters, de Gaston failed to provide competent representation to clients in that she failed to have the legal knowledge, skill, thoroughness, and preparation reasonably necessary to represent these clients. In her representation of some clients, de Gaston failed to act with reasonable diligence and promptness. de Gaston failed to keep some of her clients reasonably informed and failed to explain matters to the extent reasonably necessary to enable the clients to make informed decisions regarding the representation. In some matters, de Gaston inappropriately tried to contact and obtain affidavits from children who were represented by counsel. On one occasion de Gaston attempted to have a District Court clerk back-date the date of filing on pleadings.

Mitigating circumstances include: absence of prior record of discipline; personal or emotional problems; inexperience in the practice of law; interim reform; and remorse.

Following the three month suspension, de Gaston was placed on a term of probation of two years and reports to a supervising attorney.

**ADMONITION**

On June 28, 2000, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 1.4 (Communication) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The attorney was retained to represent a client in a paternity suit. Thereafter, the client moved out of the country. Although the client advised the attorney of current addresses and telephone numbers, the client was unable to communicate with the attorney. The client left several voice mail messages for the attorney, but the attorney failed to return many of the calls. The attorney failed to adequately keep in contact with the client, failed to respond to the client's reasonable requests for information regarding the client's cases, and failed to explain the cases to the extent reasonably necessary to enable the client to make informed decisions regarding the representation.

Mitigating circumstances include: absence of prior record of discipline; absence of dishonest or selfish motive; cooperative attitude toward disciplinary proceedings; good character and reputation; and remorse.

Aggravating circumstances include: vulnerability of victim and substantial experience in the practice of law.

**RESIGNATION PENDING DISCIPLINE**

On August 11, 2000, the Honorable Richard C. Howe, Chief Justice, Utah Supreme Court, entered an Order Accepting Resignation Pending Discipline in the matter of Kim David Olsen.

In April 1992, while administratively suspended for failing to pay his Utah State Bar dues, Olsen contacted a member of the Arizona State Bar to request that the Arizona attorney make application on his behalf to appear in a matter in Arizona pro hac vice. Olsen told the Arizona attorney that he was a member in good standing of the Utah State Bar. Olsen later filed an application to appear pro hac vice in the Superior Court of the State of Arizona, Maricopa County. In the application, Olsen represented that he was a member in good standing and admitted to practice in the Utah Supreme Court.

In September 1994, the Supreme Court of Arizona censured Olsen for his conduct and ordered him to pay $401.24, plus interest, for costs. Olsen failed to satisfy this judgment.

In March 1994, Olsen pled guilty to five counts of fraudulently obtaining a controlled substance, a third degree felony; one count of unlawful possession of a controlled substance, a third degree felony; and one count of escape from official custody, a class B misdemeanor.

In March 1998, Olsen held himself out as an attorney during a time he was aware that he was suspended from the practice of law in Utah for non-payment of Bar dues.

In May 1998, Olsen pled guilty to two counts of fraudulently obtaining a controlled substance, a third degree felony, and one count of issuing bad checks, a third degree felony.

On October 8, 1998, Olsen was placed on interim suspension by the Third Judicial District Court.

In October 1999, Olsen pled guilty to one count of attempted forgery, a class A misdemeanor, and one count of attempted theft by deception, a class A misdemeanor.

**RESIGNATION PENDING DISCIPLINE**

On August 11, 2000, the Honorable Richard C. Howe, Chief Justice, Utah Supreme Court, executed an Order Accepting Resignation Pending Discipline in the matter of Len R. Eldridge.

Eldridge was retained to represent a client in a suit against the client's employer. Eldridge wrote to the employer, then commenced litigation. During the course of the representation the client moved out of the United States and back, but remained in contact with Eldridge. Thereafter, the client was unable to reach Eldridge to ascertain the status of the litigation. The client later learned that her suit had been dismissed without her knowledge.

Eldridge was retained to assist a client in obtaining agency review of the denial of the client's nursing license. The client only met Eldridge at the initial meeting. Thereafter, with the exception of sending him a copy of one letter, Eldridge failed to return phone calls, failed to respond to the client's written requests for information, and failed to attend scheduled appointments.

Eldridge was retained to represent a client in a divorce and custody dispute. Eldridge prepared an Order to Show Cause and the judge agreed to order the client's ex-husband to pay child support. Eldridge failed to prepare the order, and because the judge did not receive it, the file was sent back to juvenile court.

Eldridge was retained to represent a client in a domestic mater. Eldridge prepared a Service of Protective Order to be served on his client's ex-husband. The client was later notified that Eldridge had not filed the original documents and therefore the documents could not be filed. This resulted in opposing counsel requesting a hearing to vacate the protective order. The client was not informed of the hearing and neither she nor Eldridge

was present. The client's failure to appear at the hearing resulted in an Order of Default being entered. Eldridge failed to inform the client of hearings and orders and failed to respond to the dispute or to discuss the impact with the client. Eldridge misappropriated funds belonging to the client when he endorsed a check made payable to him and the client as her portion of a tax refund. Although the client repeatedly requested an itemized billing statement, Eldridge failed to provide one.

Eldridge was retained to represent a client in an annulment. Eldridge twice prepared divorce documents rather than annulment papers and filed the annulment based on irreconcilable differences. Eldridge verbally agreed to a fee of $340 to $350 if uncontested ($125 per hour and service fees) but then charged the client $200 per hour and billed her $150 to file the annulment (the filing cost is $82). Eldridge failed to communicate with the client and misrepresented on two occasions that he had filed and served the papers in a timely manner, when in fact he had not. Eldridge also misrepresented to the client that her estranged husband was in default and that the default judgment was on the judge's desk, when in fact it was not.

Eldridge was retained to represent a client in a custody matter. During the representation Eldridge failed to return telephone calls or respond to numerous written communications from the client and failed to notify the client of a court hearing. At the hearing the client was ordered to sign over his interest in the marital home. Eldridge failed to inform the client of the court's ruling and the order was not complied with. Opposing counsel brought the matter back before the court and was awarded attorney's fees. Eldridge failed to inform the client that he owed attorney's fees to opposing counsel. Eldridge wrote four post-dated checks to opposing counsel to cover the remaining attorney's fees owed by the client. There were insufficient funds in Eldridge's general business account to cover the fourth check and it "bounced" as a result. The client informed Eldridge of the bounced check and requested that he immediately forward a cashier's check or money order to opposing counsel. Eldridge failed to promptly send payment to opposing counsel.

Eldridge was retained to represent a client in a divorce modification matter. Previously, the client complained to the Office of Professional Conduct about Eldridge's representation of her in the divorce modification and a Screening Panel was convened to review the complaint. At the hearing Eldridge assured the client that he was diligently working on her matter. Following the hearing, the client received a notice from opposing counsel informing her that she needed to obtain new counsel. The client attempted to contact Eldridge by telephone to find out why she needed to retain new counsel, but he failed to return her telephone calls. The client received no notice or explanation from Eldridge regarding the termination. The client retained new counsel and requested that Eldridge return her file, but he failed to do so.

Eldridge represented the plaintiff in a civil matter. During the course of that action, Eldridge submitted a Motion and Order in Supplemental Proceedings although he knew, or should have known, that there was no judgment in effect upon which an Order in Supplemental Proceedings could be issued pursuant to Rule 69(o) of the Utah Rules of Civil Procedure. The court entered the Order and opposing counsel filed a Motion to Set Aside which the court granted.

**SUSPENSION**

On August 29, 2000, the Honorable Tyrone E. Medley, Third Judicial District Court, entered an Order of Discipline by Consent suspending Margaret E. Hiller-Polster from the practice of law for three years for violation of Rules 1.1 (Competence), 1.2 (Scope of Representation), 1.3 (Diligence), 1.4 (Communication), 1.8(j) (Conflict of Interest: Prohibited Transactions), 1.5 (Fees), 1.15 (Safekeeping Property), 1.16 (Declining or Terminating Representation), 8.4(a), (c), and (d) (Misconduct) of the Rules of Professional Conduct. Two years of the suspension are stayed; Hiller-Polster will be on supervised probation during those two years.

Hiller-Polster agreed to open a joint-checking account with her client for the purpose of hiding assets from the client's husband, to pay attorney fees, and to otherwise provide for the client's needs. The client deposited funds into the account. Over a two month period Hiller-Polster withdrew all funds from the joint account without obtaining the client's express consent or providing any billing statements, receipts, or the like, until after the account had been depleted. In addition, Hiller-Polster's fees appeared excessive, and one charge to acquire pleadings from an out-of-state firm was not paid by Hiller-Polster to any out-of-state firm.

In a separate matter, Hiller-Polster was retained to represent a client in a divorce action. Hiller-Polster charged the client fees that the OPC deems excessive. Thereafter, the client terminated Hiller-Polster's legal services and hired another attorney to represent her. Hiller-Polster was contacted by the attorney who requested that the client's file be provided to him. Hiller-Polster made arrangements for the attorney to pick up the original file

at a local copy center. Hiller-Polster had the file photocopied, but left the client to pay the bill, which exceeded $300.

Hiller-Polster was retained to represent a third client in a lawsuit against the client's former employer. Hiller-Polster and the client entered into a fee agreement and Hiller-Polster was given a retainer fee. Thereafter, Hiller-Polster missed a filing deadline. Hiller-Polster was also retained to represent the same client in a divorce action. Hiller-Polster and the client entered into a fee agreement and Hiller-Polster was given a $500 retainer fee. Hiller-Polster knowingly provided inaccurate information to the court concerning the client's hourly wage represented on her child support worksheet.

Hiller-Polster was retained to assist two clients in a dispute between the clients, who are property managers, and the Home Owners Association of a property they managed. Although the representation would cost far in excess of $750, no retainer agreement was provided to the clients. Hiller-Polster improperly withdrew from the case and charged fees that the OPC believes are excessive given Hiller-Polster's experience and abilities in this field of practice. Also, Hiller-Polster placed attorney liens on existing client property that was not the subject of litigation and refused to timely remove the liens.

Mitigating circumstances include: no prior record of discipline.

Aggravating circumstances include: refusal to acknowledge the wrongful nature of the misconduct and lack of good faith effort to make restitution or to rectify the consequences of the misconduct.

**SUSPENSION**

On August 30, 2000, the Honorable Leon A. Dever, Third Judicial District Court, entered an Order of Discipline suspending David A. Reeve from the practice of law for a period of six months for violation of Rules 4.3(b) (Dealing With Unrepresented Person) and 8.4(a) and (c) (Misconduct) of the Rules of Professional Conduct. The entire six months of the suspension was stayed upon condition that Reeve pay full restitution and attend Ethics School.

Reeve represented the sellers of real property located out-of-state. A potential buyer was interested in the property and contacted the sellers about purchasing it. Thereafter, Reeve contacted the buyer and an agreement was reached whereby the individual would make an initial down payment, followed by monthly payments.

The buyer sent Reeve a down payment, then made monthly payments directly to the sellers. Thereafter, the buyer decided to pay the remaining balance on the property, and in attempting to do so discovered there was a lien on the property. The buyer had incorrectly assumed there were no liens on the property by virtue of the fact that in the Sale of Real Estate, prepared by Reeve, no liens are noted. Reeve had, however, indicated to the buyer that the sellers would provide first mortgage information.

Unbeknownst to the buyer, the out-of-state property went into foreclosure and was sold at a trustee's sale. The buyer was not represented by legal counsel in the real property matter and misunderstood Reeve's role. Prior to the foreclosure, Reeve contacted the buyer and asked her to loan him money, to be repaid in thirty days. The buyer agreed, and wired the funds to Reeve the following day. Although Reeve told her he would repay the loan within thirty days, he failed to do so.

Mitigating circumstances include: cooperative attitude toward the disciplinary proceedings.

Aggravating circumstances include: selfish motive and substantial experience in the practice of law.

**ADMONITION**

On August 31, 2000, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 3.4(d) (Fairness to Opposing Party and Counsel) and 8.4(a) and (d) (Misconduct) of the Rules of Professional Conduct.

The attorney represented a client in an employment matter. In responses to interrogatories and in oral responses during the client's deposition, the client failed to disclose a former employer. The client had identified the former employer to the attorney prior to the responses being served, but represented to the attorney that the client's relationship with the former employer had been one other than that of an employer/employee relationship. Based on the client's statements, the attorney told the client that it was not necessary to disclose the identity of the former employer since it did not appear that there was an employer/employee relationship. The attorney should have known that the relationship between the client and the former employer was an employer/employee relationship and should have known that the former employer should have been disclosed both in the interrogatory responses and during the deposition of the client.

Mitigating circumstances include: personal or emotional problems and inexperience in the practice of law.

**ADMONITION**

On August 31, 2000, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rule 1.5(b) (Fees) of the Rules of Professional Conduct.

The attorney undertook the legal representation of a new client, and it was reasonably foreseeable that total attorney fees would exceed $750. Although the attorney verbally communicated the hourly rate to the client, the attorney did not communicate in writing the basis for the fee.

Mitigating circumstances include: absence of prior record of discipline; absence of dishonest or selfish motive; timely good faith effort to rectify the consequences of the misconduct involved; and cooperative attitude toward the disciplinary proceedings.

**ADMONITION**

On September 7, 2000, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 5.3 (Responsibilities Regarding Non-Lawyer Assistants) and 1.7 (Conflict of Interest: General Rule) of the Rules of Professional Conduct.

A law firm was retained to represent an individual client in a lawsuit against a city. The attorney had an "of counsel" relationship with the firm. After the firm filed the lawsuit, the attorney brought to the firm the city as a client in another matter. The attorney gave the new client file for the city to a legal assistant to check for conflicts within the firm. The legal assistant failed to correctly perform the conflicts check, resulting in a client number being assigned to the city as a client in the second matter, and a new client file being opened. Other attorneys in the firm commenced working on the second city matter. The attorney essentially turned the matter over to other attorneys in the firm who then performed the legal services for the city. While the firm performed legal work for the city in the second matter, other attorneys in the firm continued to represent the individual client against the city.

When the conflict was brought to the firm's attention, the firm notified both clients. Although the city was willing to waive the


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conflict, the individual client was not willing to waive it. Accordingly, the firm withdrew from the representation of both clients.

**SUSPENSION**

On September 11, 2000, the Honorable Lyle R. Anderson, Seventh Judicial District Court, entered an Order of Discipline By Consent: Six Months Suspension suspending Natasha Hawley from the practice of law for six months.

In May 1998, Hawley and the OPC entered into a Stipulation for Discipline By Consent, pursuant to which Hawley was placed on a one year probation to be monitored by the OPC. As part of the stipulation, Hawley agreed that if during the one year probationary period she was arrested and convicted of an alcohol-related offense, her license to practice law would be suspended for six months. During the probationary period Hawley was twice arrested and convicted on alcohol-related criminal offenses, but failed to report these arrests to the OPC as required by the terms of her probation. Pursuant to the terms of the 1998 stipulation and order, Hawley was suspended for six months for violating their terms.

**RESIGNATION PENDING DISCIPLINE**

On September 22, 2000, the Honorable Richard C. Howe, Chief Justice, Utah Supreme Court, entered an Order Accepting Resignation Pending Discipline in the matter of Scott C. Pierce.

Pierce represented a client in a bankruptcy action. During the course of the representation Pierce signed the client's name on multiple bankruptcy documents, including a sworn Declaration Concerning Debtor's Schedules. Pierce believed he had the authority to sign the documents but acknowledged that without a Power of Attorney, he technically did not. The bankruptcy trustee assigned to the client's action brought the signatures to the court's attention and the bankruptcy was dismissed.

Additionally, Pierce continued to practice law during a period when he was suspended for non-compliance with mandatory continuing legal education requirements.

**DISBARMENT**

On November 8, 2000, the Honorable Boyd Bunnell, Seventh Judicial District Court, entered Findings of Fact, Conclusions of Law and Order of Contempt and Judgment of Disbarment disbarring Wendy L. Hufnagel from the practice of law.

On May 31, 2000, the court entered an Order of Suspension suspending Hufnagel from the practice of law for one year and imposing requirements including the notification requirements of Rule 26, Rules of Lawyer Discipline and Disability. The Order of Suspension provided that Hufnagel's failure to comply with Rule 26 would constitute contempt, and would be punishable with further disciplinary action. The order further required Hufnagel to promptly respond in writing to any further requests from the Office of Professional Conduct concerning alleged unethical conduct. The order also required Hufnagel to file and serve on the OPC an inventory and accounting of all client files and client and third party funds held by her during a specified period. The order also required Hufnagel to submit to binding fee arbitration in the event that any of her clients allege a fee dispute and consent to arbitration.

Hufnagel failed to comply with Rule 26 and the various other requirements set forth in the Order of Suspension, including failing to file the inventory and accounting for client files and funds. After the Order of Suspension had been entered, several of Hufnagel's clients retained new attorneys to represent them, and those attorneys wrote letters and made telephone calls to Hufnagel's office requesting either the client's file or an accounting of retainers paid to her. Hufnagel did not return many of these clients' files and did not refund unearned portions of the clients' retainers.

The court found Hufnagel in contempt for failing to comply with the Order of Suspension pursuant to Rule 26(e), Rules of Lawyer Discipline and Disability and Rule 5.2, Standards for Imposing Lawyer Sanctions. The court also appointed a trustee over Hufnagel's law practice with the authority to take possession of client files and records, and any trust accounts and records.

The court found the following aggravating circumstances: multiple offenses; obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary authority; and lack of good faith effort to make restitution or to rectify the consequences of the misconduct involved.

**SUSPENSION**

On November 9, 2000, the Honorable Sandra N. Peuler, Third Judicial District Court, entered Findings of Fact, Conclusions of Law and Order of Suspension and Probation suspending Keith Henderson from the practice of law for two years for violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.4 (Communication), 1.7 (Conflict of Interest: General Rule), 3.2 (Expediting Litigation), 3.4 (Fairness to Opposing Party and Counsel), 8.1 (Bar Admission and Disciplinary Matters), and 8.4(d) (Misconduct) of the Rules of Professional Conduct. All but six months of the two-year suspension is stayed.

Henderson was retained to represent a married couple in a bankruptcy matter. The main purpose of the bankruptcy filing was to discharge tax debts for which the clients were being garnished. Henderson filed the bankruptcy action too early to be able to discharge all of the clients' taxes. During the bankruptcy proceedings Henderson represented the wife against the husband in a divorce action. Henderson did not obtain a written conflict of interest waiver. In the divorce decree the husband was ordered to reimburse the wife for the tax debts which had been the subject of the bankruptcy proceedings. The clients sued Henderson for malpractice and were awarded a judgment; Henderson took more than two years to pay the judgment. During the course of the malpractice litigation, Henderson filed an Affidavit in Opposition to Motion for Summary Judgment in which he alleged that the clients made the decision to file the bankruptcy case early. During the course of the same litigation at a later deposition, Henderson admitted he erred in the filing date. The Office of Professional Conduct sent seven letters to Henderson before he responded to its request for information concerning this matter.

Henderson was retained to represent a client regarding a wage claim based upon termination from employment. The client expected Henderson to file his wage claim, but he failed to do so. Henderson took no action to protect the client from losing his wage claim by operation of the statute of limitations and also refused to return the unearned retainer. Additionally, Henderson failed to return the client's phone calls. Henderson failed to respond to the OPC's requests for information regarding this matter.

Henderson was retained to represent a client regarding a worker's compensation claim. During the four month period of the representation the client called Henderson approximately thirty times, and Henderson only returned two or three of the calls. On two occasions Henderson assured the client that his office was working on the client's file and that the client's file was "getting big." Thereafter, Henderson met with the client, at which time the client saw his file contained only the same three or four papers he had given Henderson months earlier. Henderson failed to respond to the OPC's requests for information concerning this matter.

Henderson was retained to represent a client regarding a worker's compensation matter. The client filled out and signed a form as requested by Henderson. During the four month period of the representation the client telephoned Henderson fifty or more times. Henderson only spoke with the client personally once or twice. During this period, Henderson advised the client that the application for hearing had been filed with the Industrial Commission. The client thereafter contacted the Commission and learned that the forms had not been filed. Upon being contacted by the client, Henderson acknowledged that his secretary forgot to file the application and stated that he would do it immediately. Thereafter, the client again learned that the application for hearing had not been filed. Henderson sent a letter to the client indicating that the application for hearing had been filed; nevertheless, the application was not filed until after the letter was sent. The OPC sent five letters to Henderson regarding this matter before he filed a response.

Henderson represented the defendant in a divorce action. Henderson failed to appear at a pretrial conference held before the commissioner. Opposing counsel telephoned Henderson, who had failed to calendar the conference, and Henderson thereafter appeared late for it. Some months later Henderson failed to appear at a pretrial conference with the judge. Henderson did not appear because he was not able to resolve the case by stipulation and anticipated opposing counsel would simply obtain a trial setting. The judge awarded attorney's fees to opposing counsel as a result of Henderson's failure to appear at the court hearing. Henderson failed to pay the fees until more than one year later. Henderson had difficulty communicating with his client because of the client's out-of-state incarceration. The case was delayed based upon Henderson's inability to communicate with his client, his failure to appear at court proceedings, and his failure to communicate with opposing counsel.

In five other matters, Henderson failed to respond in a timely manner to the OPC's requests for information regarding the substance of the informal complaints.

The court found the following aggravating circumstances: prior record of discipline, pattern of misconduct, multiple offenses, obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary authority, refusal to acknowledge the wrongful nature of the misconduct involved, either to the client or the disciplinary authority, substantial experience in the practice of law, lack of good faith effort to make restitution or to rectify the consequences of the misconduct involved.

The court found the following mitigating circumstances: absence of dishonest or selfish motive; imposition of other penalties or sanctions; remoteness of prior offenses; and time period of the complaints.

**SUSPENSION**

On November 14, 2000, the Honorable Timothy R. Hanson, Third Judicial District Court, entered an Order of Suspension and Probation suspending Suzanne Benson from the practice of law for three years for violation of Rules 1.1 (Competence), 1.2 (Scope of Representation), 1.3 (Diligence), 1.4 (Communication), 1.5 (Fees), 1.16 (Declining or Terminating Representation), 5.5(a) (Unauthorized Practice of Law), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a), (b), (c) and (d) (Misconduct) of the Rules of Professional Conduct.

Benson was placed on interim suspension on August 24, 1995, but by agreement with the Office of Professional Conduct and approval by the court, the beginning of the three year suspension was set at August 24, 1997.

Benson was suspended from the practice of law for failure to comply with continuing legal education requirements and later for failure to pay her Bar dues. Although she was suspended, Benson continued to represent a client. Benson failed to respond to the OPC's requests for information regarding this matter.

Benson was retained by a client to draft testamentary documents, but failed to provide the legal services for which she was hired and failed to communicate with the client. Benson failed to respond to the OPC's requests for information regarding this matter.

Benson was retained by a client to obtain support from the client's mother's estranged husband. Benson failed to provide the legal services for which she was retained and failed to communicate with the client. Benson failed to respond to the OPC's requests for information regarding this matter.

Benson was retained to represent a client in a civil action. A judgment was obtained in the client's favor but Benson failed to take sufficient action to collect it, and failed to communicate with the client. Benson also failed to return the client's file. Benson failed to respond to the OPC's requests for information regarding this matter.

Benson was retained by a client to obtain a step-child adoption. Benson received a retainer but failed to provide the legal services for which she was hired and failed to communicate with the client regarding the representation. Benson failed to respond to the OPC's requests for information regarding this matter.

Benson was retained to represent a client in a domestic relations matter. Benson failed to provide the legal services for which she was hired and failed to communicate with the client regarding the representation.

Benson was employed by a law firm that had been retained by a client. Benson was to provide legal services to the client for the law firm, but failed to provide sufficient services.

Benson was retained to represent several other clients but failed to provide the legal services and failed to communicate with these and other clients regarding the representation.

Benson was arrested and charged with misdemeanor counts of criminal trespass and retail theft concerning a shoplifting matter. Benson pled guilty and was fined and placed on probation.

Mitigating circumstances include: personal or emotional problems; mental disability or impairment due to Benson's diagnosed substance abuse problems; and remorse.

**ADMONITION**

On November 21, 2000, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 3.2 (Expediting Litigation) and 8.4(a) and (d) (Misconduct) of the Rules of Professional Conduct.

The attorney represented the plaintiff in a medical malpractice action. The attorney failed to respond to discovery requests and failed to comply with court orders compelling responses. As a result of the attorney's failure to comply with discovery requests, the District Court dismissed the client's Complaint without prejudice. The attorney appealed the dismissal, but the Utah Court of Appeals upheld it.

Mitigating circumstances include: absence of prior record of discipline; cooperation with the Office of Professional Conduct; the client was unavailable much of the time to respond to discovery because of ill health, and in some instances did not cooperate with the attorney in discovery matters; the attorney did not fail to respond to all discovery requests in the case, which was pending over a long period.

Aggravating circumstances include: substantial experience in the practice of law.

**DISBARMENT**

On November 22, 2000, the Honorable Donald Eyre, Jr., Fourth Judicial District Court, entered an Order of Disbarment disbarring Mark K. Stringer from the practice of law. This order was entered pursuant to an Affidavit of Consent from Stringer.

**PUBLIC REPRIMAND**

On November 27, 2000, the Honorable Tyrone E. Medley, Third Judicial District Court, entered an Order of Discipline: Public Reprimand reprimanding Michael L. Labertew for violation of

Rules 1.1 (Competence), 1.2 (Scope of Representation), 1.3 (Diligence), 1.4 (Communication), 3.2 (Expediting Litigation), and 8.4(a) and (d) (Misconduct) of the Rules of Professional Conduct.

Labertew was retained to represent a client in a personal injury action concerning injuries suffered in an automobile accident. The client hired Labertew to file claims against the insurance company of the driver of the other vehicle and the government entity responsible for the stoplight at the intersection where the accident occurred. Labertew failed to do the necessary research regarding the requirements of filing a claim against a government entity, and failed to file the necessary notice with the entity responsible for the stoplight. Labertew's failure to timely file notice with the government entity resulted in the client's claim against it being barred by the applicable statute of limitations. During the course of the representation, Labertew failed to promptly return some of the client's telephone calls and failed to keep the client reasonably informed about the status of her case. Labertew failed to promptly obtain the client's disability rating following her surgery, which resulted in an unnecessary delay in her case.

Mitigating circumstances include: no prior record of discipline; and cooperation with the OPC during its investigation.

Aggravating circumstances include: substantial experience in the practice of law.

**SUSPENSION**

On November 28, 2000, the Honorable Donald J. Eyre, Fourth Judicial District Court, entered an Order commencing November 7, 2000, whereby Wayne B. Watson has been suspended from the practice of law for one year stayed back to nine months arising out of violations of Rules 1.15 and 1.7 of the Utah Rules of Professional Conduct.

**ADMONITION**

On November 28, 2000, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 1.1 (Competence) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The attorney represented a client in a criminal matter. The attorney did not conduct research to determine whether the prosecution's presentation of the case constituted double jeopardy. The client was convicted on all counts and sentenced to concurrent terms at the Utah State Prison. On appeal, the Utah Court of Appeals found that by failing to research the relevant law concerning whether the client was facing double jeopardy, the attorney provided ineffective assistance of counsel.

**SUSPENSION**

On November 29, 2000, the Honorable Ronald E. Nehring, Third Judicial District Court, entered an Order of Suspension suspending Isaac B. Morley from the practice of law for three years for violation of Rules 1.1 (Competence), 1.2 (Scope of Representation), 1.3 (Diligence), 1.4(a) (Communication), 1.5(a) (Fees), 1.15(a) and (b) (Safekeeping Property), 3.2 (Expediting Litigation), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(b), (c), and (d) (Misconduct) of the Rules of Professional Conduct. Morley has been on interim suspension since December 14, 1998.

Morley was retained to represent a client in a personal injury matter. Later, Morley was retained to represent the same client in a divorce and child custody matter. Morley continued a custody hearing on three separate occasions without informing the client or seeking his approval. Morley failed to timely pursue the personal injury matter and the divorce matter, causing unnecessary delays and hardship for the client. Morley provided no meaningful representation after being retained by the client. Morley made misrepresentations to the client concerning the status of the personal injury matter.

Morley cashed a client trust account check at a grocery store and the check was returned for insufficient funds. An attorney for the grocery store contacted Morley about the bounced check but Morley refused to pay the store. There was no proof that Morley misappropriated client funds by these actions.

Morley was retained to represent a client in a divorce matter, but failed to perform any meaningful legal services on the client's behalf. The client made numerous attempts at written and telephonic communication with Morley, but was unsuccessful. Morley refused to refund the unearned fees to the client even after the client demanded that he do so. Morley failed to respond to the Office of Professional Conduct's requests for information regarding this matter.

Morley was retained to represent a client in a bankruptcy and civil matter, but failed to perform any meaningful legal services on the client's behalf. Although the client made numerous attempts to contact Morley regarding his legal matters and to request refund of unearned fees, Morley failed to answer the client's demands and did not refund the unearned fees. Morley failed to respond to the OPC's requests for information regarding this matter.

Morley was retained to represent a client in a child support matter, but failed to perform any meaningful legal services on the client's behalf. The client instructed Morley to prepare and file a stipulation, but he failed to do so. On more than one occasion, Morley informed the client that he had prepared the stipulation and that court dates had been set and subsequently postponed, but Morley had not prepared the stipulation and no court dates had been set. The client made numerous attempts to contact Morley, but Morley failed to respond.

Morley was retained to represent a client in an uncontested, out-of-state divorce matter, but failed to perform any meaningful legal services on the client's behalf. Morley told the client a court date had been set and then said the date was cancelled because a stipulation had been reached when actually there was no stipulation and Morley had preformed no work on the matter. Morley failed to communicate with the client. Morley's failure to pursue the client's divorce resulted in the client having to retain another attorney. Morley failed to respond to the OPC's requests for information regarding this matter.

Morley wrote a check to a Nevada hotel and casino when he knew or should have known that there were no funds in his account to cover the check. Morley left Nevada and failed to appear at a pre-trial conference regarding the check. After threat of forfeiture of Morley's bond, he appeared and pled nolo contendre to the criminal charge of drawing and passing a check without sufficient funds with intent to defraud. Morley failed to respond to the OPC's requests for information regarding this matter.

Morley was charged with two counts of criminal non-support, class A misdemeanors, after becoming grossly delinquent on his court-ordered child support payments. Morley appeared, entered not guilty pleas, and a pretrial conference was set. Morley failed to appear for the first pretrial conference and a bench warrant was issued. Thereafter, Morley failed to appear at three pretrial conferences.

In addition to suspending Morley for three years, the court ordered that Morley cannot be reinstated to the practice of law until he has fulfilled all sanctions relating to the bench warrant and the criminal charges arising from the support issues have resulted in a final disposition, and all sanctions other than probation completed.

**SUSPENSION**

On December 1, 2000, the Honorable Anne M. Stirba, Third Judicial District Court, entered Findings of Fact, Conclusions of Law, and Order of Suspension suspending Paul Gotay from the practice of law for six months for violation of Rule 8.4(d) (Misconduct) of the Rules of Professional Conduct. All but the first forty-five days of the suspension were stayed.

Gotay, the owner of an office building, was involved in an altercation with a tenant who was moving out of the building. Gotay witnessed the tenant attempting to dismantle some electronic telephone equipment located in the building. Gotay approached the tenant and questioned him regarding the removal of the equipment and acrimonious words were exchanged. Gotay retrieved a gun from his office and proceeded to brandish it in the presence of others who were there for the purpose of assisting the tenant remove his possessions from the building. Gotay acted in the belief that the tenant would assault him. Following initial questioning by police officers, Gotay disposed of the gun by placing it in a garbage dumpster.

**PUBLIC REPRIMAND**

On December 4, 2000, the Honorable James R. Taylor, Fourth Judicial District Court, entered an Order of Discipline By Consent: Reprimand reprimanding Earl B. Taylor for violation of Rules 1.3 (Diligence) and 1.4 (Communication) of the Rules of Professional Conduct.

Taylor was retained to represent a couple in a bankruptcy matter. Taylor filed the bankruptcy on the clients' behalf but it was dismissed at the first creditors' meeting because Taylor failed to timely file the proper pleadings. After the matter was dismissed, Taylor assured the clients that he would meet with the judge and take care of everything. Thereafter the clients attempted to reach Taylor on several occasions but he did not return their calls. Taylor failed to rectify the dismissal of the clients' bankruptcy filing. In the three other client matters, Taylor also violated Rules 1.3 (Diligence) and 1.4 (Communication). Taylor agreed to return fees to one client, and agreed to submit to binding fee arbitration in the three other matters.

Mitigating circumstances include: personal or emotional problems; and remorse.

**ADMONITION**

On December 20, 2000, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 4.4 (Respect for Rights of Third Persons) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The attorney represented a client in a criminal matter in which the client was charged with sexual abuse of a child. During the

first preliminary hearing, counsel for the government apprised the attorney's co-counsel that using a specific term when referring to the child's undergarments caused the child extreme embarrassment and distress. Immediately before trial, counsel for the government called the attorney's co-counsel to reiterate the request that a specific term not be used when questioning the child. At trial, during his cross-examination of the child, the attorney used language the attorney knew would embarrass the child to obtain information that was already part of the record.

**ADMONITION**

On December 26, 2000, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 4.2(a) (Communication with Person Represented by Counsel) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The attorney represented the petitioner in a civil action; the opposing party was also represented by counsel. At the client's request, the attorney drafted legal papers for the opposing party's signature and filing, including a Notice of Dismissal of Counsel and Cancellation of OSC Hearing, whereby the opposing party dismissed the opposing party's counsel.

**PUBLIC REPRIMAND**

On January 18, 2001, the Honorable David K. Winder, United States District Court, entered an Order of Public Reprimand reprimanding Charles F. Loyd for violation of Rules 1.3 (Diligence), 3.2 (Expediting Litigation), and 8.4(d) (Misconduct) of the Rules of Professional Conduct.

Loyd represented a client in an appeal of a criminal conviction. After several extensions, Loyd failed to file an opening brief on behalf of the client. The Court of Appeals issued an order requiring Loyd to show cause why the client's appeal should not be dismissed for failure to prosecute. Loyd failed to respond to the order to show cause and to four subsequent orders of the court.

## *Cover of the Year*

*E. Craig McAllister, holding winning Cover of the Year for 2000*

The winner of the Cover of the Year award for 2000 is the June/July issue, featuring a beautiful photograph taken by E. Craig McAllister of Orem, Utah. The photograph is of Candlestick formation, taken from Potato Bottom, Canyonlands National Park.

This is the fourth photograph by Mr. McAllister that has been featured on a Bar Journal cover. His other photographs appeared in November and December 1993, and March 1997.

Mr. McAllister is one of 39 attorneys or members of the legal assistant division of the Bar whose photographs of Utah scenes have appeared on at least one cover since August 1988. Covers of the year are framed and displayed, along with winners from prior years, on the upper level of the Law and Justice Center. Congratulations to Mr. McAllister, and thanks to all who have participated in this program.

## *2001 Annual Meeting Awards*

The Board of Bar Commissioners is seeking nominations for the 2001 Annual Meeting Awards. These awards have a long history of honoring publicly those whose professionalism, public service and personal dedication have significantly enhanced the administration of justice, the delivery of legal services and the building up of the profession. Your award nomination must be submitted in writing to Maud Thurman, Executive Secretary, 645 South 200 East, Suite 310, Salt Lake City, Utah 84111, no later than **Thursday, April 26, 2001.** The award categories include:

1. Judge of the Year
2. Lawyer of the Year
3. Young Lawyer of the Year
4. Section/Committee of the Year
5. Community Member of the Year

# *Discipline Corner*

**ADMONITION**

On January 10, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 1.4(a) (Communication), 1.16(d) (Declining or Terminating Representation), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The attorney represented a married couple in an adoption matter. During the course of the representation the attorney failed to keep the clients reasonably informed about the status of their matter. Thereafter, the attorney's law office was closed, but the attorney failed to notify the clients of the attorney's whereabouts. The attorney abandoned the representation of the clients without taking reasonable steps to protect their interests.

**SUSPENSION**

On January 23, 2001 the Honorable Leslie A. Lewis, Third District Court, entered Findings of Fact, Conclusions of Law, and Order of Suspension suspending H. Delbert Welker from the practice of law for thirty days for violation of Rules 1.15(a) and 1.15(b) (Safekeeping Property) of the Rules of Professional Conduct.

Welker represented three clients in separate personal injury matters. Welker signed written medical reports and doctor's liens ("medical provider lien") with a chiropractic clinic for medical services provided to the clients; the clients also signed the medical liens. Pursuant to the written medical provider liens, Welker was directed by the clients "to pay directly" to the chiropractic clinic "such sums as may be due and owing" for "medical service rendered" to the clients and "to withhold such sums from any settlement, judgement or verdict as may be necessary to adequately protect said clinic." Neither Welker nor the clients disputed the amount owed to the clinic.

Welker moved his law practice out-of-state and for approximately six months did not have a trust account in Utah for the purpose of holding client and third-party funds as required by Rule 1.15 of the Rules of Professional Conduct. Welker was able to settle the clients' personal injury matters, and he distributed the clients' settlement funds by paying himself attorney's fees on a contingency percentage basis and by distributing to the clients their portion of the funds. When Welker distributed the settlement funds to himself and to the clients, he did not promptly pay the amount owed to the chiropractic clinic for medical services provided to the clients. When Welker settled the clients' personal injury matters and distributed the settlement funds to himself and to the clients, he did not promptly notify or account to the chiropractic clinic regarding the funds he was holding for the clinic pursuant to the medical provider liens. Welker did not keep the complete records of his trust account concerning the settlement funds for the required period of five years after the termination of the representation. Welker eventually paid all money owed to the clinic on the three client matters. Welker did not receive any additional funds in the three client matters other than the funds due him for fees and costs. Any funds that were to be paid over to the chiropractic clinic were paid over to the clients. At no time did the chiropractic clinic seek repayment from the three clients.

**ADMONITION**

On January 25, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 1.7(c) (Conflict of Interest: General Rule) and 1.10 (Imputed Disqualification: General Rule) of the Rules of Professional Conduct.

The attorney represented a client in a divorce action. As part of the divorce action, there were contested issues relating to whether certain pieces of property were part of the marital estate, and if so, how that property should be divided. One piece of property was in dispute between the client's estranged spouse and certain of the spouse's business associates. The disputed ownership issue raised questions concerning whether the property would be included in the marital estate and the value of the property. The divorce court made rulings, including the division of the marital estate property, and awarded a credit to the client of not less than a specified amount, or one-half of the actual sale price of the property. By the time of the court's ruling, the client had surrendered any interest in the properties that were in dispute in the litigation, which involved a dispute over the ownership interest that the estranged spouse had in various companies. Following the divorce, the court's rulings as to the division of the property, and at the divorce court's direction, the attorney began preparing proposed findings of fact and conclusions of law pursuant to the divorce court's instructions. In its ruling, the court ordered the client's estranged spouse to report to the client regarding on-going litigation regarding various lawsuits, the results of which might affect the value of property awarded to the client.

Thereafter, the client's estranged spouse approached the attorney's law partner and asked that the partner represent him in two lawsuits, one concerning the property and another concerning issues involving litigation with a former employer. The attorney

informed the client in writing concerning the estranged spouse's request to retain the attorney's partner in the property and litigation matter. The attorney informed the client that the client's interest was adverse to the estranged spouse's in the divorce, but that their interests were not adverse in the property and in the other litigation matter because the partner would essentially be protecting or recovering property from third parties that might be part of the marital estate. The client faxed a letter to the attorney in which the client stated that until the client and the attorney had an opportunity to discuss the attorney's partner representing the estranged spouse, the client was opposed to the representation. Six days later the client sent another letter to the attorney's firm in which she conditionally waived any conflict and agreed to allow the attorney's partner to represent the estranged spouse as long as two conditions were met. The two conditions to the waiver were: (1) that the divorce litigation be finalized and (2) that the client be kept informed of the progress in the litigation in which the attorney's partner was representing the estranged spouse. The divorce was not finalized because of unresolved objections to the proposed findings of fact. One of the conditions was not met by the time the partner began representing the client's estranged spouse, and consequently the client's waiver was not perfected.

Although the client's "interests" were not adverse to the estranged spouse's "interests" in the litigation over the pieces of property, the client was an adverse party in a separate matter. Rule 1.7(c) is not based on an "interest" analysis but rather strictly on an "adverse parties" analysis.

**ADMONITION**

On January 25, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 1.7(c) (Conflict of Interest: General Rule) and 1.10 (Imputed Disqualification: General Rule) of the Rules of Professional Conduct.

The attorney's law partner represented a client in a divorce action. As part of the divorce action, there were contested issues relating to whether certain pieces of property were part of the marital estate, and if so, how that property should be divided. One piece of property was in dispute between the client's estranged spouse and certain of the spouse's business associates. The disputed ownership issue raised questions concerning whether the property would be included in the marital estate and the value of the property. The divorce court made rulings, including the division of the marital estate property, and awarded a credit to the client of not less than a specified amount, or one-half of the actual sale price of the property. By the time of the court's ruling, the client had surrendered any interest in the properties that were in dispute in the litigation, which involved a dispute over certain ownership interests that the estranged spouse had in various companies. Following the divorce, the court's rulings as to the division of the property, and at the divorce court's direction, the attorney began preparing proposed findings of fact and conclusions of law pursuant to the divorce court's instructions. In its ruling, the court ordered the client's estranged spouse to report to the client regarding on-going litigation regarding various lawsuits, the results of which might affect the value of property awarded to the client.

Thereafter, the client's estranged spouse approached the attorney and requested representation in two lawsuits, one concerning the property and another concerning issues involving litigation with a former employer. The attorney's partner informed the client in writing concerning the estranged spouse's request to retain the attorney in the property and litigation matter. The partner informed the client that the client's interest was adverse to the estranged spouse's in the divorce, but that their interests were not adverse in the property and in the other litigation matter because the partner would essentially be protecting or recovering property from third parties that might be part of the marital estate. The client faxed a letter to the attorney's law partner in which the client stated that until the client and the law partner had an opportunity to discuss the attorney representing the estranged spouse, the client was opposed to the representation. Six days later the client sent another letter to the attorney's firm in which she conditionally waived any conflict and agreed to allow the attorney to represent the estranged spouse as long as two conditions were met. The two conditions to the waiver were: (1) that the divorce litigation be finalized and (2) that the client be kept informed of the progress in the litigation in which the attorney's partner was representing the estranged spouse. The divorce was not finalized because of unresolved objections to the proposed findings of fact. One of the conditions was not met by the time the attorney began representing the client's estranged spouse, and consequently the client's waiver was not perfected.

Although the client's "interests" were not adverse to the estranged spouse's "interests" in the litigation over the pieces of property, the client was an adverse party in a separate matter. Rule 1.7(c) is not based on an "interest" analysis but rather strictly on an "adverse parties" analysis.

**ADMONITION**

On January 29, 2001, an attorney was admonished by the Chair

of the Ethics and Discipline Committee of the Utah State Bar for violation of Rule 8.4(d) (Misconduct) of the Rules of Professional Conduct.

The attorney represented the plaintiff in a personal injury matter stemming from an automobile accident. The client reached a settlement of the personal injury claim with the defendant driver's ("driver") insurance carrier. Prior to the settlement agreement, the client's insurance company notified the driver's insurance carrier of its subrogation claim for personal injury protection ("PIP") payments made to the client. The client's settlement amount was to include a payment to the client's insurance carrier for the PIP payments paid to the client.

The client's insurance carrier informed the attorney that it would be handling its subrogation claim directly through arbitration with the driver's insurance carrier. In a letter to the driver's insurance carrier the attorney confirmed the settlement amount and indicated that the client recognized the client's insurance carrier's subrogation claim. The client executed a release in the amount of the settlement. The driver's insurance carrier informed the client's insurance carrier that its interest had been protected by including its name in the settlement draft along with the attorney's and the client's names. The driver's insurance carrier issued two checks in accordance with its settlement agreement with the client. One check was made payable to the attorney, the client and the client's insurance carrier; the second check was made payable to the attorney and the client to cover the balance of the settlement. The attorney, on behalf of the client, alleged that the settlement had not made the client whole and notified the client's insurance carrier that he felt it should not receive the total amount for its lien for PIP payments provided. The client's insurance carrier disagreed, and refused to negotiate directly with the client regarding its subrogation claim. The attorney returned the disputed check to the driver's insurance carrier and requested that a new check be issued without the client's insurance carrier as a payee. The driver's insurance carrier refused to issue a new check and returned the disputed check to the attorney. Thereafter, while the attorney had possession of the check, someone endorsed the check with the words: [CLIENT'S INSURANCE CARRIER], PER LTRS 3/31/95 - 12/8/95, and deposited the check into the attorney's trust account, where it remained until the attorney deposited it into the court in litigation initiated by the client's insurance carrier. When the attorney negotiated the check, the attorney notified the client's insurance carrier that funds would be held in trust until the dispute was resolved.

**ADMONITION**

On February 2, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.5 (Fees), 3.2 (Expediting Litigation), 8.1 (Bar Admission and Disciplinary Matters), 8.4(a) (Misconduct), and 8.4(d) (Misconduct) of the Rules of Professional Conduct.

The attorney represented a client in a termination of parental rights matter. A four day trial was scheduled. On two of the first four days of trial, the attorney was fifteen to twenty minutes late for the beginning of trial, and late returning after the lunch recesses. On each day the attorney failed to alert the court to any need for such delays. The court continued the remaining days of the trial to approximately one month later. On the day set to begin the trial, the attorney failed to appear and did not call the court to explain the absence. The trial began in the attorney's absence. The client had flown in from out-of-state and was present. Another attorney involved in the matter located the attorney and reported the attorney's whereabouts to the court. The attorney claimed to be in another court. The judge's clerk attempted to reach the attorney, but was unable to do so. Eventually, the judge was able to reach the attorney who offered a series of contradictory explanations for being absent from the trial. The attorney's failure to appear forced the judge to declare a mistrial. The court ordered the attorney removed from the case, and ordered the attorney to reimburse the client for any fees paid. The attorney reimbursed the fees paid.

Mitigating factors include: imposition of other penalties and sanctions.

# *Discipline Corner*

**SUSPENSION**

On August 21, 2000, the Honorable Anne M. Stirba, Third Judicial District Court, entered an Order of Discipline suspending Thomas Rasmussen for one year for violation of Rules 1.5(a) and (b) (Fees), 1.15(a) (Safekeeping Property), 5.1(a) and (b) (Responsibilities of Partner or Supervisory Lawyer), 5.3 (Responsibilities Regarding Nonlawyer Assistants), 7.5(d) (Firm Names and Letterheads), and 8.4(a) (Misconduct) of the Rules of Professional Conduct. The entire one year suspension was stayed; Rasmussen was placed on supervised probation for one year.

Rasmussen was retained to represent a client in a legal dispute regarding purchase of a business. The client paid Rasmussen an advance of attorney's fees that substantially exceeded $750. Rasmussen did not provide the client with a retainer agreement. Rasmussen assigned the client's matter to his assistant and thereafter failed to properly supervise the assistant. The client paid Rasmussen additional monies; the additional monies constituted an excessive fee. Rasmussen failed to keep an accounting of the fees paid by the client and failed to promptly provide the client with an accounting when one was requested. Rasmussen failed to promptly transfer funds out of his trust account as fees were earned. Rasmussen failed to adequately supervise his nonlawyer employee. Rasmussen's letterhead misrepresented the status of his association with another attorney.

Mitigating circumstances include: no prior record of discipline; lack of dishonest or selfish motive; cooperative attitude toward disciplinary proceedings; and remorse.

Aggravating circumstances include: vulnerability of the victim and substantial experience in the practice of law.

**ADMONITION**

On February 21, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rule 1.9(b) (Conflict of Interest: Former Client) of the Rules of Professional Conduct.

The attorney was legal counsel for an association. The attorney later was terminated as legal counsel for the association. Thereafter, the attorney began representing a group of individuals whose interests were adverse to the association. The association never agreed to waive the conflict of interest created when the attorney undertook representation of the group of individuals. During the course of representing the group, the attorney used information concerning the association to its disadvantage.

**ADMONITION**

On March 1, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 1.3 (Diligence) and 1.4(a) (Communication) of the Rules of Professional Conduct.

For a three year period, while working as a solo practitioner, the attorney failed to keep a number of clients reasonably informed about the status of their matters and did not promptly comply with those clients' reasonable requests for information. The attorney failed to act with reasonable diligence and promptness in representing a number of clients.

Mitigating circumstances include: absence of dishonest or selfish motive; personal or emotional problems; good faith effort to rectify the consequences of the misconduct involved; inexperience in the practice of law; and remorse. The attorney also agreed to submit to binding fee arbitration.

**SUSPENSION**

On March 6, 2001, the Honorable Robert T. Braithwaite, Fifth Judicial District Court, entered an Order of Discipline by Consent suspending E. Kent Winward for six months for violation of Rule 8.4(c) (Misconduct) of the Rules of Professional Conduct. The entire six month suspension was stayed.

Winward was charged with forgery as a result of his having signed another person's name on a check and depositing that check in connection with a real estate transaction. Winward was convicted and sentenced to a term of one to fifteen years in the Utah State Prison. In addition, Winward was suspended from the practice of law. Winward appealed his conviction and the conviction was overturned. Winward later entered into a diversion agreement with the Iron County Attorney's Office and has since successfully completed the terms of that agreement.

Mitigating circumstances include: imposition of other penalties and sanctions.

**SUSPENSION**

On March 13, 2001, the Honorable Leslie A. Lewis, Third Judicial District Court, entered an Order of Discipline suspending Steven Lee Payton for six months for violation of Rule 4.4 (Respect for Rights of Third Persons) of the Rules of Professional Conduct. The entire six month suspension was stayed and Payton was placed on probation for one year, effective January 17, 2001.

Payton used his office as an attorney and officer of the court to contact and communicate with an individual's employer for no substantial purpose other than to embarrass the individual. Further, Payton used his office as an attorney and officer of the court to improperly seek private information from an individual's employer.

# *Discipline Corner*

**PUBLIC REPRIMAND**

On February 14, 2001, the Honorable Michael D. Lyon, Second Judicial District Court, entered an Order of Discipline: Reprimand reprimanding Stuwert B. Johnson for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.16(d) (Declining or Terminating Representation), and 8.4(a) and (c) (Misconduct) of the Rules of Professional Conduct.

Johnson was retained to represent a client in a personal injury action. The client provided Johnson with copies of her medical records and other personal information regarding the automobile accident which was the subject of her personal injury action. Thereafter, Johnson misplaced the client's file containing her medical records and other information, but failed to immediately inform her of this fact. The client attempted to contact Johnson by telephone on numerous occasions to inquire about the status of her matter, but Johnson failed to return her telephone calls. Johnson failed to make adequate contact with the insurance carrier, and did not provide it with the needed information. Johnson represented to the client that he had provided the insurance carrier with all relevant information concerning her matter, when in fact he had not.

**ADMONITION**

On February 21, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 1.1 (Competence), 1.2 (Scope of Representation), 1.3 (Diligence), 1.15(a) (Safekeeping Property), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The attorney was retained to represent a client regarding injuries sustained in an automobile accident. Prior to retaining the attorney, the client was represented by other counsel, who referred the client to a chiropractor for treatment. The client received approximately sixty-five treatments from the chiropractor for a period of eight months. Thereafter, the client became dissatisfied with the prior attorney's representation, partly because of the prior attorney's relationship to the chiropractor, and terminated the relationship with the prior attorney and the chiropractor. After being retained by the client, the attorney executed a doctor's lien with the chiropractor concerning the client's outstanding chiropractic bills. The lien did not contain a set amount that was due and owing. Thereafter, the attorney settled the client's case and received settlement funds on the client's behalf. The attorney did not remember the lien held by the chiropractor and did not find the lien in the client's files when settlement funds were dispersed. Consequently, the attorney did not withhold funds from the settlement for the chiropractor's services, nor did the attorney deal with determining the amount of the lien.

Aggravating factors include: substantial experience in the practice of law.

Mitigating factors include: absence of prior record of discipline and cooperation with the Office of Professional Counsel.

**SUSPENSION**

On February 27, 2001, the Honorable William B. Bohling, Third Judicial District Court, entered an Order of Suspension and Probation suspending John Alex from the practice of law for six months for violation of Rules 1.1 (Competence), 1.2 (Scope of Representation), 1.3 (Diligence), 1.4 (Communication), 1.5 (Fees), 1.15(b) (Safekeeping Property), 3.2 (Expediting Litigation), 5.5 (Unauthorized Practice of Law), 8.1 (Bar Admission and Disciplinary Matters), and 8.4(c) (Misconduct) of the Rules of Professional Conduct. The entire six month suspension was stayed. Alex was placed on probation for twenty-four months.

Alex was notified that he had been suspended from the practice of law as a result of his failure to comply with mandatory continuing legal education requirements. While suspended, Alex signed and filed a Docketing Statement on a client's behalf with the Utah Supreme Court. Alex represented the same client in a civil matter. After filing a lawsuit on the client's behalf, Alex failed to have the defendants served within 120 days, which resulted in the matter being dismissed without prejudice.

Alex was retained by a collection agency to collect on several accounts and to file lawsuits if necessary. The collection agency paid Alex a fee for legal services to be performed and certain funds for costs of the various matters. Thereafter, the collection agency attempted to contact Alex to inquire about the status of the collection matters by telephone, fax, and mail. Alex failed to promptly respond to these requests. On at least one occasion, Alex responded with a general status report, but failed to timely respond to the collection agency's requests for information. In his representation of the collection agency, Alex failed to provide competent representation and failed to have the skill, thoroughness, and preparation reasonably necessary for such a representation. Alex failed to abide by the collection agency's decisions concerning the objectives of the representation and failed to consult with it as to the means by which to pursue them. Alex failed to act with reasonable diligence and promptness in representing the collection agency. Alex failed to make reasonable efforts to expedite litigation consistent with the interests of the collection agency and its customers

An individual was sent a "collections letter" for an unpaid bill owed to a department store. The individual went to Alex's law office and paid the bill with a check made out to Alex personally. Thereafter, the individual received a letter from a collection agency informing him that they had been retained to collect the amount owing to the department store. Alex received funds from the individual to pay a debt owed by the individual to the department store. Although part or all of the funds belonged to

someone other than Alex, he failed to promptly notify, deliver, and account for the funds.

Alex was retained to represent a client in a divorce matter and related temporary and protective orders. Alex never obtained a written fee agreement with the client although the cost of that legal representation exceeded $750, and Alex reasonably should have expected that the cost of the legal representation would exceed $750.

Alex was retained to represent a client in a divorce matter. Alex failed to keep the client reasonably informed about the status of her matter and failed promptly to comply with reasonable requests for information; Alex further failed to explain the matter to the extent reasonably necessary to enable the client to make informed decisions regarding her divorce.

Alex was retained to represent a client in the recovery of disputed and converted funds from another person. Although Alex agreed to represent the client on a contingency fee basis, he never obtained a written fee agreement. Alex failed to provide competent representation and failed to have the skill, thoroughness and preparation reasonably necessary for such a representation. Alex failed to abide by the client's decisions concerning the objectives of the representation and failed to consult with her as to the means by which to pursue them. Alex failed to act with reasonable diligence and promptness. Alex failed to keep the client reasonably informed about the status of her pending matter and failed promptly to comply with reasonable requests for information about her matters; Alex further failed to explain the matter to the extent reasonably necessary to enable the client to make informed decisions. Alex failed to make reasonable efforts to expedite litigation consistent with the interests of the client. Alex misrepresented to the client the status of her matter.

During the course of its investigation into the informal complaints filed against Alex, the Office of Professional Conduct ("OPC") requested on numerous occasions that Alex submit written responses to each of the complaints and produce specific records and documents. In addition, the OPC sent Notices of Informal Complaint in each matter to Alex. Under the Rules of Lawyer Discipline and Disability, Alex was to respond within twenty days to the Notices of Informal Complaint. Alex failed to submit written responses, failed to timely produce the documents and responses requested by the OPC, and failed to attend the Screening Panel hearings held in those matters.

Alex failed to act with reasonable diligence and promptness in representing four other clients. Alex failed to keep the clients reasonably informed about the status of their pending matters and failed to comply with the clients' reasonable requests for information about their matters; Alex further failed to explain the matters to the extent reasonably necessary to enable the clients to make informed decisions.

Mitigating factors include: personal or emotional problems; good faith effort to rectify the consequences of the misconduct involved; and remorse.

**ADMONITION**

On February 28, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 8.4(a) and (d) (Misconduct) of the Rules of Professional Conduct.

The attorney represented a client in a civil action. The court in the civil action directed the attorney to prepare an order. The attorney failed to prepare and file an order, consistent with the court's directive, within the fifteen-day time frame required by Rule 4-504 of the Code of Judicial Administration.

**PUBLIC REPRIMAND**

On March 28, 2001, the Honorable J. Dennis Frederick, Third Judicial District Court, entered an Order of Reprimand reprimanding John L. McCoy for violation of Rules 1.15(a), (b), and (c) (Safekeeping Property) of the Rules of Professional Conduct.

McCoy was an agent for Attorney's Title Guarantee Fund ("ATGF") for the purpose of issuing title insurance. Pursuant to the agency agreement McCoy entered into with ATGF, he was to collect title insurance premiums at the closing of each real estate transaction, holding thirty percent of each premium in a trust/escrow account for ATGF, and remitting it to ATGF within thirty days of each transaction. In the course of his agency on behalf of ATGF, McCoy issued several title insurance policies for which he did not promptly account or promptly provide ATGF with its portion of the funds. McCoy received funds which belonged to ATGF and placed those funds into a trust/escrow account.

McCoy had an employee who was, for certain limited purposes, his agent. McCoy allowed the employee to have signatory power over the trust/escrow account in which McCoy was to hold third-party funds belonging to ATGF. After an initial period of supervision during which McCoy and the employee together handled the closing paperwork for real estate sales transactions, the closings and paper work of the sales were handled by the employee. The employee, without McCoy's knowledge or consent, misappropriated ATGF funds from the trust/escrow account. ATGF sent several letters to McCoy listing all title insurance policies that he held and requesting that he account for all title jackets and distribute all funds he had collected on ATGF's behalf. McCoy sent at least one of these written requests from ATGF to the employee and asked that he account for the title jackets. McCoy has paid funds to ATGF to replace the funds that his employee misappropriated. The court ordered McCoy to provide a final accounting to ATGF of all policy jackets and to pay any monies owed to ATGF within six months of the order.

McCoy's employee also arranged a real estate closing on a condo-

minium owned by an individual. Certain of the individual's and third-party debts were paid from the proceeds of the real estate closing. In addition to the debts paid from the real estate closing proceeds, McCoy was to pay an additional amount out of the trust/escrow account to a third party. The employee misappropriated the amount from the trust/escrow account and there were insufficient funds in the account to pay third parties. The employee did this without McCoy's knowledge or consent. A dispute existed as to whether the amount was to be paid to the individual or another third-party. Since it was disputed who was to receive the funds, McCoy interpleaded the funds into District Court. McCoy used his personal funds to replace the amount the employee misappropriated from his trust/escrow account in the individual's condominium sale.

McCoy was negligent in allowing the employee signatory power over the trust/escrow account and was negligent in his supervision of the employee in his handling of the trust/escrow account and the closing paperwork for real estate sales transactions and sales.

McCoy violated Rules 1.15(a), (b) and (c) (Safekeeping Property) by negligently failing promptly to account for funds he received on behalf of ATGF, by negligently failing promptly to notify ATGF upon receiving funds belonging to it, and by negligently failing promptly to deliver those funds to ATGF. McCoy further violated Rule 1.15 by negligently supervising the use of his trust/escrow account in such a manner that his employee was able to misappropriate third-party funds.

Mitigating circumstances include: absence of a dishonest or selfish motive; timely good faith effort to make restitution or to rectify the consequences of the misconduct involved; and remorse.

**ADMONITION**

On April 2, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.5(a) (Fees) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The attorney was retained to help a client recover stolen property, or to obtain a judgment against the person who took the property. The client periodically asked the attorney for updates concerning the case, but the attorney did not initiate any contact with the client, and the client was only intermittently successful in reaching the attorney. The attorney told the client that there was a trial date, but the day before the trial, the attorney informed the client of a settlement proposal. The client agreed to accept settlement and repeatedly requested a copy of the settlement agreement, but the attorney never provided it to the client. When the deadline passed for payment of the settlement and the client had not received any money, the client called the attorney repeatedly without success. Thereafter, the attorney told the client that they might have to pursue payment of the judgment. The client again made numerous unsuccessful attempts to reach the attorney to find out what would be the implications of an action to enforce judgment. A full year after the settlement should have been paid, the attorney told the client that they might have to go back to court to seek a default judgment. Again, the attorney failed to explain what might be entailed. Several months later, the attorney told the client that the settlement was worthless, and the client would have to go after the opposing party's property. The attorney told the client a date had been set to seize the property. The day before the seizure date, the attorney informed the client that the opposing party had filed bankruptcy. Although the attorney claimed to have attended a meeting of creditors, he was unable to tell the client under what chapter the bankruptcy had been filed. No further progress was made, despite repeated calls to the attorney's office. Although the matter was pursued on a contingency fee basis, there was no written fee agreement.

**RESIGNATION PENDING DISCIPLINE**

On March 29, 2001, the Honorable Richard C. Howe, Chief Justice, Utah Supreme Court, executed an Order Accepting Resignation Pending Discipline in the matter of Dean H. Becker.

On June 2, 2000, Becker was suspended from the practice of law for two years. Thereafter, Becker failed to comply with the District Court's Order of Suspension and Rule 26, Rules of Lawyer Discipline and Disability.

Although Becker received notice that he was suspended for failing to pay dues to the Utah State Bar in September 1998, Becker made appearances as an attorney representing clients while suspended.

Becker has prior discipline which constitutes an aggravating circumstance under Rule 6, Standards for Imposing Lawyer Sanctions.

**ADMONITION**

On April 2, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 1.8(a) and (h) (Conflict of Interest: Prohibited Transactions) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The attorney represented a client in several legal matters. The attorney entered into a stipulation and release of claims with the client that prospectively limited the attorney's liability for malpractice. The client was not independently represented in making the agreement with the attorney. The attorney allowed the client an opportunity to repudiate the stipulation and seek counsel.

Aggravating factors include: substantial experience in the practice of law.

Mitigating factors include: cooperative attitude toward the disciplinary proceedings.

# *Discipline Corner*

**SUSPENSION**

On April 13, 2001, the Honorable Leslie A. Lewis, Third Judicial District Court, entered an Order of Discipline: Suspension suspending George G. Ventura from the practice of law for ninety days for violation of Rules 1.6 (Confidentiality of Information) and 8.4(a) and (b) (Misconduct) of the Rules of Professional Conduct. In addition to the ninety day suspension, Ventura was placed on unsupervised probation for nine months.

Ventura provided newspaper reporters, who were doing a story about his former employer, Chiquita Brands International, with the means by which they could access the voicemail boxes of high level Chiquita lawyers and executives. Ventura provided the reporters with voicemail numbers, personal access passcodes, and instructions on how to access both new and stored voicemail messages. Ventura made these disclosures without consulting with or obtaining the consent of Chiquita Brands International. The Hamilton County Ohio Grand Jury indicted Ventura with ten felony offenses. Ventura entered a plea of no contest to four charges of attempted unauthorized access to computer systems, in violation of the Ohio Revised Code. Each of these violations is a first-degree misdemeanor.

Mitigating factors include: no prior record of discipline; cooperative attitude toward the disciplinary proceedings; good reputation; and imposition of other penalties and sanctions.

Aggravating factors include: a pattern of misconduct in that Ventura disclosed the confidential information on more than one occasion; substantial experience in the practice of law; and illegal conduct.

**ADMONITION**

On April 26, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 5.3(a) and (b) (Responsibilities Regarding Nonlawyer Assistants) and 8.4(d) (Misconduct) of the Rules of Professional Conduct.

The attorney employed a nonlawyer assistant who misrepresented himself as a lawyer to clients, prospective clients, and others. The nonlawyer assistant solicited by mail or by telephone new clients for the attorney. During telephone conversations with prospective clients, the nonlawyer assistant informed prospective clients that he was a lawyer. The attorney was advised of the nonlawyer assistant's conduct and the attorney continued to employ the nonlawyer assistant. The nonlawyer assistant continued to misrepresent himself as being a lawyer and continued to solicit clients on the attorney's behalf. Although the attorney did not authorize the nonlawyer assistant to misrepresent to prospective or current clients that he was a lawyer, the attorney was negligent in supervising the nonlawyer assistant.

**SUSPENSION**

On May 7, 2001, the Honorable Glenn Iwasaki, Third Judicial District Court, entered an Order of Discipline by Consent suspending Larry Gantenbein from the practice of law for twenty-four months; eighteen months of the suspension were stayed.

On August 20, 1999, the Idaho Supreme Court suspended Gantenbein from the practice of law in Idaho for twenty-four months; eighteen months of the suspension were stayed. Pursuant to Rule 22, Rules of Lawyer Discipline and Disability, the Office of Professional Conduct sought reciprocal discipline against Gantenbein. The conduct for which Gantenbein was disciplined in Idaho would result in at least the same level of discipline in Utah.

**ADMONITION**

On May 14, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 3.4(b) (Fairness to Opposing Party and Counsel), 4.1(a) (Truthfulness in Statements to Others), 5.3(b) and (c) (Responsibilities Regarding Nonlawyer Assistants), and 8.4(a) and (c) (Misconduct) of the Rules of Professional Conduct.

The attorney directed a secretary to notarize an affidavit that was not signed in the secretary's presence. Thereafter, the attorney notarized two documents that were executed several months earlier. The attorney dated the documents with the date they were executed although this was not the date upon which the attorney notarized them.

Aggravating factors include: pattern of misconduct.

Mitigating factors include: no prior record of discipline; cooperative attitude towards disciplinary proceedings; and the circumstances under which the notarizations occurred did not alter the factual substance or accuracy of the affected documents, and did not prejudice or harm the attorney's clients or other parties.

**ADMONITION**

On May 14, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rule 1.15(b) (Safekeeping Property) of the Rules of Professional Conduct.

The attorney was retained to collect an out-of-state judgment on a client's behalf. During a nine month time period, seven partial settlement checks were sent to the attorney's law office. When the settlement checks arrived at the attorney's law office the attorney's secretary deposited the funds into the attorney's trust account and recorded the payments on a computer database. Although the database was designed to track payments received on clients' behalf and disbursements to clients, a malfunction in the computer system resulted in the client's funds not appearing on the attorney's monthly computer printouts. The attorney was unaware that the client's funds had been received and deposited

into the attorney's trust account; therefore, the attorney failed to promptly notify the client of receipt of the funds and failed to promptly account for and deliver the funds to the client. Upon being contacted by the client regarding the funds, and after verifying that the funds had in fact been received and deposited, the attorney made complete payment of the funds to the client, including interest. At all relevant times the client's settlement funds remained in the attorney's trust account.

Mitigating factors include: absence of prior record of discipline and cooperation with the Office of Professional Conduct.

**PUBLIC REPRIMAND**
On May 29, 2001, the Honorable Leslie A. Lewis, Third Judicial District Court, entered an Order of Discipline: Public Reprimand reprimanding James D. Mickelson for violation of Rules 1.2(a) (Scope of Representation) and 1.3 (Diligence) of the Rules of Professional Conduct.

Mickelson was retained to represent a client in a personal injury matter. Mickelson failed to act diligently on the client's behalf, including failing to provide requested documents to the client's insurance company. Mickelson failed to return the client's telephone calls and failed to complete the matter for which he was hired. Mickelson transferred the client's case to another attorney without the client's knowledge or consent.

Mitigating factors include: no prior record of discipline and cooperative attitude toward disciplinary proceedings.

Aggravating factors include: vulnerability of the victim and substantial experience in the practice of law.

**ADMONITION**
On June 4, 2001, an attorney was admonished by the Vice Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.5(a) (Fees), 1.15(b) (Safekeeping Property), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The attorney represented a client in a divorce matter. The client paid the attorney a retainer fee. The client's divorce papers were finalized and signed by both parties to the divorce and returned to the attorney for filing, but the attorney failed to file them. The attorney failed to provide the client with billing statements or an accounting of how the retainer fee was earned. The Office of Professional Conduct received an informal complaint from the client concerning the attorney, and sent the attorney three letters requesting a written response to the complaint. The attorney failed to submit a written response.

**ADMONITION**
On June 20, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 1.7 (Conflict of Interest: General Rule) and 8.4(a) and (d) (Misconduct) of the Rules of Professional Conduct.

The attorney engaged in inappropriate behavior with a client that limited the attorney's representation of the client. Additionally, during a legal consultation with another client, the attorney made comments of a sexual nature. The comments were inappropriate, eroded the attorney/client relationship, and were offensive to the client.

Mitigating factors include: cooperation with the Office of Professional Conduct.

**ADMONITION**
On June 20, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rule 1.5(b) (Fees) of the Rules of Professional Conduct.

The attorney received a $2500 retainer fee from clients whom the attorney had not previously regularly represented. The attorney failed to have a written fee agreement with the clients and did not communicate to the clients in writing before or within a reasonable time after commencement of the representation the basis or rate of the fee.

Mitigating factors include: the attorney submitted to binding fee arbitration and returned a portion of the retainer fee to the client.

**ADMONITION**
On June 20, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 1.3 (Diligence), 1.4 (Communication), and 1.16(d) (Declining or Terminating Representation) of the Rules of Professional Conduct.

The attorney was retained to represent a client in a divorce proceeding. The attorney failed to act with reasonable diligence in representing the client. The attorney did not keep the client reasonably informed about the status of the client's divorce, did not promptly comply with the client's reasonable requests for information, and did not adequately explain the client's divorce matter to the extent reasonably necessary to enable the client to make informed decisions regarding the matter. The attorney failed to timely return the client's file after the representation was terminated.

**ADMONITION**
On June 20, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah State Bar for violation of Rules 4.2 (Communication With Person Represented By Counsel) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The attorney served an order compelling attendance upon a witness whom the attorney knew was represented by counsel.

Mitigating factors include: absence of prior record of discipline; absence of dishonest or selfish motive; and cooperative attitude toward proceedings.

# Discipline Corner

**ADMONITION**

On August 17, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.3 (Diligence), 1.4 (Communication), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The attorney represented a client in post divorce proceedings. The client's former spouse had initiated proceedings before an out-of-state court to modify the current parenting plan. The attorney contacted the opposing party and opposing counsel in an attempt to negotiate a settlement. Opposing counsel sent the attorney a proposed plan with a request for the client's response. The attorney did not respond and the opposing counsel sent a second request for response. Thereafter, opposing counsel sent via facsimile to the attorney a courtesy copy of a motion hearing notice along with a motion and declaration of default. The notice informed the attorney that a default hearing was set. The attorney did not review the proposed parenting plan with the client until several days before the default hearing. After the meeting, the attorney informed the client that the attorney would draft the proposed changes to the parenting plan and send them to opposing counsel. The attorney did not send the proposed changes to opposing counsel until a day after the court had entered a default judgment adopting the opposing party's parenting plan, resulting in a minor adjustment to the parties' rights.

Mitigating factors include: absence of a prior record of discipline and cooperation with the Office of Professional Conduct.

**ADMONITION**

On August 22, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rule 1.15 (Safekeeping Property) of the Rules of Professional Conduct.

The Office of Professional Conduct received an overdraft notice regarding the attorney's trust account. The attorney deposited two client checks into the trust account and, without waiting for the checks to clear, issued checks from the trust account. One of the deposited checks was returned by the bank due to insufficient fund in the client's account, causing the attorney's trust account to be overdrawn.

# Utah State Bar Ethics Advisory Opinion Committee

**Opinion No. 01-07**

***Issue:*** Is it a violation of the ethical rules for an attorney or law firm to use trade names such as "Legal Center for the Wrongfully Accused" or "Legal Center for Victims of Domestic Violence" in selected court pleadings?

***Opinion:*** It is not a violation of the ethical rules for an attorney or law firm to use trade names such as "Legal Center for the Wrongfully Accused" or "Legal Center for Victims of Domestic Violence" so long as the organization represents clients who claim to be in the indicated categories and provided the name is uniformly used for all such representation. Selective use of such trade names for some clients in the indicated categories but not others would violate Utah Rule of Professional Conduct 7.1(a).

# *Discipline Corner*

**RESIGNATION PENDING DISCIPLINE**

On September 21, 2001, the Honorable Richard C. Howe, Chief Justice, Utah Supreme Court, executed an Order Accepting Resignation Pending Discipline in the matter of Ralph W. Curtis.

The Office of Professional Conduct ("OPC") notified Curtis of its investigation into allegations made against him and requested that he provide a written response thereto. Curtis failed to respond in writing to the OPC's requests for information.

Curtis failed to provide competent representation to clients in violation of Rule 1.1 (Competence); failed to abide by clients' decisions concerning the objectives of representation in violation of Rule 1.2(a) (Scope of Representation); failed to act with reasonable diligence and promptness in representing his clients in violation of Rule 1.3 (Diligence); failed to keep clients reasonably informed about the status of their matters and failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a) (Communication); failed to explain matters to the extent reasonably necessary to enable clients to make informed decisions regarding representation in violation of Rule 1.4(b) (Communication); charged excessive fees in violation of Rule 1.5(a); represented a client when the representation was materially limited by Curtis's own interest in violation of Rule 1.7(b) (Conflict of Interest: General Rule); failed to hold property of clients or third persons in his possession in connection with a representation separate from his own property in violation of Rule 1.15(a) (Safekeeping Property); failed to promptly notify clients or third persons upon receiving funds or other property to which the clients or third persons had an interest in violation of Rule 1.15(b) (Safekeeping Property); failed to take steps to the extent reasonably practicable to protect clients' interests upon termination of representation in violation of Rule 1.16(d) (Declining or Terminating Representation); failed to respond to the OPC's lawful demands for information in violation of Rule 8.1(b) (Bar Admission and Disciplinary Matters); violated the Rules of Professional Conduct in violation of Rule 8.4(a) (Misconduct); engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) (Misconduct); and engaged in conduct that is prejudicial to the administration of justice in violation of Rule 8.4(d) (Misconduct).

**RESIGNATION PENDING DISCIPLINE**

On September 21, 2001, the Honorable Richard C. Howe, Chief Justice, Utah Supreme Court, executed an Order Accepting Resignation Pending Discipline in the matter of Michael J. Glasmann. In the Petition for Resignation Pending Discipline, Glasmann admitted that he violated Rule 8.4(d) (Misconduct) of the Rules of Professional Conduct.

During the course of presiding over a criminal case as a judge, Glasmann failed to initially disclose that he had had an intimate relationship with the criminal defendant.

**ADMONITION**

On September 25, 2001, the Honorable L. A. Dever entered an Order of Discipline: Admonition and Probation admonishing an attorney for violation of Rules 1.3 (Diligence) and 8.4(a) and (c) (Misconduct) of the Rules of Professional Conduct. The attorney was also placed on private probation for a period of one year.

The attorney was retained to represent two clients in an adoption matter. On several occasions the attorney misrepresented to the clients that court dates were set in the adoption matter. The attorney later advised the clients that the court dates were canceled for one reason or another. Thereafter, the clients contacted the court and learned that the adoption matter had not been filed by the attorney. The attorney admitted to the clients that the attorney procrastinated in the work on their file, did not complete their work in a timely manner, and made material misrepresentations to them regarding the status of their case during the course of the representation. The attorney apologized to the clients, returned their retainer fee, and suggested they file a complaint with the Bar.

Aggravating factors include: prior record of discipline and substantial experience in the practice of law.

Mitigating factors include: timely good faith effort to make restitution and to rectify the consequences of the misconduct involved; cooperative attitude towards the disciplinary proceedings; and remorse.

**ADMONITION**

On October 18, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rule 1.5(b) (Fees) of the Rules of Professional Conduct.

The attorney was retained to represent a client in a criminal matter. Prior to being retained in the criminal matter, the attorney had not regularly represented the client. Although the attorney charged the client fees in excess of $750, the attorney failed to communicate in writing the basis or rate of the fee.

Mitigating factors include: cooperation with the Office of Professional Conduct.

**ADMONITION**

On October 18, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rule 1.15 (Safekeeping Property) of the Rules of Professional Conduct.

The attorney and a client signed a doctor's lien whereby the attorney agreed to withhold funds from any settlement involving the client and directly pay the funds to the doctor to cover the amount owed by the client. Thereafter, the attorney received a settlement check on the client's behalf but failed to withhold funds owed to the doctor pursuant to the attorney's obligation under the lien before forwarding the funds to the client.

Mitigating factors include: cooperation with the Office of Professional Conduct.

**ADMONITION**

On October 30, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 8.1(b) (Bar Admission and Disciplinary Matters) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The attorney knowingly failed to respond to the Office of Professional Conduct's reasonable requests for information concerning an informal complaint filed against the attorney.


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# *Discipline Corner*

**ADMONITION**

On January 24, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.3 (Diligence); 1.4 (Communication) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The attorney was hired to represent the client in a divorce action. The attorney tried to have the client's husband served, but could not because he was out of state. When the attorney failed to serve the client's husband in a timely manner, the client's divorce action was dismissed. The attorney assumed that the client did not wish to proceed with the divorce and lost contact with the client because of address and telephone changes over a period of time. When the client did contact the attorney, the attorney did not return the call or any further calls. Thereafter, the attorney did respond to the client, and completed the divorce at no additional charge.

**ADMONITION**

On February 8, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.3 (Diligence); 1.4(a) (Communication); and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The attorney was hired to file a Chapter 11 bankruptcy action. The attorney failed to file the necessary financial reports to support the clients' Chapter 11 bankruptcy, resulting in the bankruptcy being converted to a Chapter 7 bankruptcy. The attorney failed to keep his clients reasonably informed about the status of their case.

**ADMONITION**

On February 6, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.16(d) (Declining or Terminating Representation) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The attorney was hired to pursue a medical malpractice claim resulting from an automobile accident. The client provided documentation to the attorney, including a journal that had been kept since the accident. The attorney withdrew as counsel and failed to return the file to the client. When the client requested the file, the client was informed that it had been lost when the attorney moved offices. New copies of the documentation were eventually provided to the client, but, the journal and other property belonging to the client were never recovered.

**ADMONITION**

On January 30, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.4(a) (Communication); 5.3(b) (Responsibilities Regarding Nonlawyer Assistants); and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The attorney was hired to file a Chapter 7 bankruptcy action. The client wanted to reaffirm the debt owed on the client's car. The client repeatedly contacted the attorney's office to find out whether the reaffirmation agreements had been received and was told they had not. The client made numerous attempts to contact the attorney but the attorney failed to return the client's phone calls. One week after the deadline to file the reaffirmation papers, the client received the papers from the attorney. The papers had been received by the attorney approximately two months earlier, but were not forwarded in a timely fashion to the client. The client immediately signed and filed the reaffirmation papers but, because the client had missed the deadline, the car was repossessed.

**ADMONITION**

On February 6, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.3 (Diligence) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The attorney was hired to represent the client in a divorce action. At the pre-trial hearing, the court admonished the client for failing to file a financial declaration and warned that it would enter a default judgment if the financial declaration was not filed. At the continuation of the pre-trial hearing, the court told the client that a declaration must be filed within five days. Before the final pre-trial hearing, the client reminded the attorney that a financial declaration must be filed. The attorney did not attend the final pre-trial hearing. Ultimately, a default judgment was entered against the client for failing to file a financial declaration.

**ADMONITION**

On January 30, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.15 (Safekeeping Property) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The attorney advanced funds from the attorney's trust account to a client without making sure that there were sufficient funds to cover the check. Because there were insufficient funds in the trust account, this resulted in an overdraft on the attorney's trust account. At the time, the trust account held no other funds of any client or other third party.

Mitigating factors include: cooperation with the Office of Profes-

sional Conduct during its investigation of this matter.

Aggravating factors include: the attorney received a previous letter of caution from the Office of Professional Conduct advising the attorney to verify that funds were in the trust account before issuing checks to clients or third parties against those funds.

**DISBARMENT**

On February 8, 2002, the Honorable Stephen Henriod, Third Judicial District Court, entered Findings of Fact and Conclusions of Law disbarring Peter Ennenga from the practice of law effective February 8, 2002. Ennenga was allowed a wind-down period of thirty days.

The disbarment is a result of the Office of Professional Conduct's appeal of the judgment of the District Court suspending Ennenga from the practice of law for six months and placing him on probation for three years for violations of Rules 1.4 (Communication), 1.15 (Safekeeping Property), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(b) and 8.4(c) (Misconduct) of the Rules of Professional Conduct. The Utah Supreme Court issued an opinion on December 18, 2001, holding that Ennenga should have been disbarred for his misconduct.

**DISBARMENT**

On January 25, 2002, the Honorable William B. Bohling, Third Judicial District Court, entered Findings of Fact, Conclusions of Law, and Order re Disbarment, disbarring John Alex from the practice of law effective November 26, 2001.

On January 10, 2002, the court held a review hearing regarding the court's order disbarring the Respondent, but staying that disbarment. The purpose of the hearing was to allow Alex to show good cause why the stay of his disbarment should not be lifted. The court found that Alex presented no evidence of good cause and accordingly the stay was lifted.

Alex previously violated the court's Order of Suspension by failing to meet with and respond to his court-appointed supervising attorney, by failing to timely respond to informal complaints filed against him with the Office of Professional Conduct, by failing to timely respond to a client's request for binding fee arbitration, and by failing to timely pay his Utah State Bar annual licensing fee.

# *Discipline Corner*

**RESIGNATION PENDING DISCIPLINE**

On March 29, 2001, the Honorable Richard C. Howe, Chief Justice, Utah Supreme Court, executed an Order Accepting Resignation Pending Discipline in the matter of D. John Musselman.

On October 2, 1997, the Fourth Judicial District Court entered an Order of Suspension and Probation suspending Musselman from the practice of law for two years. All but four months of the suspension were stayed and Musselman was placed on probation for a period of twenty months. The Order of Suspension and Probation provided that if Musselman's probation were revoked, he would be required to serve the entire two years of the suspension.

Musselman violated a term of his probation and the Office of Professional Conduct ("OPC") filed a motion to revoke his probation. A hearing was held on the OPC's motion and on May 14, 1999, the Court signed an Order suspending Musselman from the practice of law for two years and ordering Musselman to comply with Rule 26, Rules of Lawyer Discipline and Disability ("RLDD"). Pursuant to Rule 26(a), RLDD, Musselman was given a thirty-day period to wind up his law practice.

Musselman failed to comply with the requirements of Rule 26(b), RLDD, and continued to practice law following his thirty-day wind-up period.

In addition, three informal complaints against Musselman were reviewed by Screening Panels of the Ethics and Discipline Committee of the Utah Supreme Court, and in each case the Panel found that probable cause existed for public discipline against Musselman.

While suspended from the practice of law, Musselman received a settlement check on behalf of a client for a personal injury matter settled after the thirty-day wind-up period. Musselman deposited the check into his personal bank account and disbursed the settlement funds to the client by personal check. The bank did not initially honor the check, but when presented a second time for payment, the funds were paid to the client.

The OPC filed a motion for order to show cause why Musselman should not be held in contempt for violating the Court's order of May 14, 1999. Musselman then filed his petition for resignation with discipline pending, which the Supreme Court accepted.

Aggravating factors include: prior discipline.

**SUSPENSION**

On June 1, 2001, the Honorable Anthony M. Schofield, Fourth Judicial District Court, entered an Order of Discipline by Consent suspending Earl B. Taylor from the practice of law for three months for violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.4 (Communication), 1.5 (Fees), 5.5 (Unauthorized Practice of Law), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(c) and (d) (Misconduct), of the Rules of Professional Conduct.

While administratively suspended from the practice of law for failure to pay his annual Bar licensing fees, Taylor filed a Complaint and Summons on a client's behalf. The client's case was later dismissed because Taylor was not authorized to practice law at the time he filed the case. Taylor failed to respond to the Office of Professional Conduct's lawful requests for information.

While administratively suspended from the practice of law for failure to pay his annual Bar licensing fees, Taylor represented a client in a bankruptcy matter. Taylor was present for the client's first bankruptcy hearing, but failed to appear at a second hearing. Taylor misinformed the client concerning the second hearing date as a result of which, the client failed to appear and the bankruptcy was dismissed. Taylor told the client that he would refile the bankruptcy, but failed to do so. Taylor charged the client an excessive fee for the amount of work performed.

Mitigating factors include: personal or emotional problems and remorse.

Aggravating factors include: prior record of discipline.

**SUSPENSION**

On June 26, 2001, the Honorable Roger S. Dutson, Second Judicial District Court, entered an Order of Suspension (Stayed) Based on Discipline by Consent suspending Geoffrey L. Clark from the practice of law for six months for violation of Rules 1.3 (Diligence), 1.4 (Communication), 1.7(b) (Conflict of Interest: General Rule), 7.3 (Direct Contact with Prospective Clients), and 8.4(a) and (d) (Misconduct), of the Rules of Professional Conduct. The entire six month suspension was stayed.

In representing five clients, Clark failed to act with reasonable diligence and promptness, did not keep the clients reasonably informed about their matters, and did not promptly comply with reasonable requests for information.

Clark directly contacted in person or by telephone potential clients for the purpose of soliciting them to become his clients.

While representing a criminal defendant against rape charges, Clark negligently referred before the jury to other sexual behavior by the alleged victim. Clark had not filed a written motion prior to trial pursuant to Rule 412(c), Utah Rules of Evidence. The State was granted a mistrial based on Clark's references before the jury.

Clark was retained to represent a female client. During the course of the representation, Clark engaged in inappropriate

behavior which may have limited his representation of the client.

Mitigating factors include: inexperience in the practice of law and remorse.

**ADMONITION**

On June 28, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 5.5 (Unauthorized Practice of Law) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The attorney participated in a telephone conference with the court and filed a pleading on an individual's behalf while administratively suspended for failure to comply with mandatory continuing legal education requirements.

**ADMONITION**

On July 14, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rule 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

The attorney failed to respond to the Office of Professional Conduct's lawful requests for information concerning an informal complaint filed against the attorney.

**ADMONITION**

On July 14, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.5(b) (Fees), and 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

The attorney was retained to represent a client in a criminal matter. Although the client paid the attorney a retainer fee in excess of $750, the attorney did not have a written fee agreement with the client. The attorney advised the client that the State had insufficient evidence to proceed with the criminal case and that the attorney would file a Motion to Dismiss on the client's behalf. Thereafter, the attorney failed to file the Motion to Dismiss and failed to perform any additional work on the client's behalf. The attorney failed to keep the client reasonably informed about the status of the criminal matter. The attorney failed to respond to the Office of Professional Conduct's lawful requests for information.

**ADMONITION**

On July 14, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rule 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

The attorney failed to respond to the Office of Professional Conduct's lawful requests for information concerning an informal complaint filed against the attorney.

**ADMONITION**

On July 14, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.3 (Diligence), 1.4(a) and (b)and 5.3(b) (Responsibilities Regarding Nonlawyer Assistants) of the Rules of Professional Conduct.

The attorney was retained to represent a client in a workers' compensation matter. Ultimately, the client's case was on appeal and the Court of Appeals set an extended deadline for filing the client's brief. The court had granted two previous extensions of time in which to file the brief and had advised the client that no further extension of time would be granted. The deadline passed without a brief being filed on the client's behalf and as a result, the client's appeal was dismissed. During the course of the representation, the attorney failed to keep the client reasonably informed about the status of the matter and failed to inform the client of the deadline for filing the appellate brief. The attorney also failed to inform the client that the deadline for filing the appellate brief had been missed. The attorney failed to explain the client's matter to the extent reasonably necessary to enable the client to make informed decisions regarding the representation. The attorney hired a nonlawyer to prepare the brief on the client's behalf. Thereafter, the attorney failed to make reasonable efforts to ensure that the nonlawyer's conduct in drafting the brief for the client was compatible with the attorney's professional obligations.

**ADMONITION**

On July 18, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 3.1 (Meritorious Claims and Contentions), and 8.4(a) and (d) (Misconduct) of the Rules of Professional Conduct.

The attorney represented a client in a bankruptcy matter and prematurely filed the action without conducting a reasonable investigation as to whether the client was permitted by law to file at that time. The early bankruptcy filing stopped a court-ordered constable's sale, and the client was able to sell many of the assets to which one of the client's creditors had a claim.

**ADMONITION**

On July 18, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.4(a) (Communication), 1.5(b) (Fees), 1.16(d) (Declining or Terminating Representation), Rule 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The attorney was retained to represent a client in a divorce action. Although it was reasonably foreseeable that total attorney's fees in the client's divorce would exceed $750, the attorney did not have a written fee agreement with the client. During the course of the representation, the attorney was difficult to contact and failed to keep the client reasonably informed about the status of the client's divorce, and failed to notify the client of a court hearing. Upon termination of the representation, the attorney failed to return the client's file as requested. The attorney failed to timely respond to the Office of Professional Conduct's lawful requests for information.

**ADMONITION**

On August 9, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rule 1.3 (Diligence) of the Rules of Professional Conduct.

The attorney was retained to represent a client in a claim against the State of Utah. The attorney failed to send legally sufficient notice of claim to the State of Utah on the client's behalf. The attorney failed to file a civil complaint on the client's behalf.

Mitigating circumstances include: effort to make restitution; inexperience in the practice of law; and imposition of other penalties or sanctions.

**ADMONITION**

On August 14, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.1 (Competence), 1.3 (Diligence), and 8.4(d) (Misconduct) of the Rules of Professional Conduct.

The attorney represented a client in a medical malpractice matter. The attorney failed to meet a court-ordered deadline for filing the client's expert witness designation. Although the court granted the attorney's motion for leave to designate expert witnesses, the court ordered the attorney to pay attorney's fees related to the motion and to pay the other party's expenses in deposing the designated experts.

Mitigating factors include: imposition of other penalties and sanctions in that the attorney was sanctioned by the trial court and paid those monetary sanctions.

**ADMONITION**

On August 20, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.8(e) (Conflict of Interest: Prohibited Transactions) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The attorney represented a client in connection with a personal injury matter and a wrongful death lawsuit. During the course of the representation, the attorney advanced to the client funds to cover non-litigation expenses.

## *Utah State Bar Ethics Advisory Opinion Committee*

**Opinion No. 01-05**

***Issue:*** What are the ethical implications for a real estate broker who includes in his promotional material that he is also a lawyer?

***Opinion:*** A lawyer functioning in a law-related profession, such as real estate brokerage, who holds out as either an active or inactive lawyer will be subject to the Utah Rules of Professional Conduct while engaged in that law-related profession.

**Opinion No. 01-06**

***Issue:*** May a private practitioner who serves as a part-time county attorney represent private clients in connection with protective-order hearings?

***Opinion:*** The private representation by a part-time county attorney of individuals at protective-order hearings is not a per se violation of the Utah Rules of Professional Conduct. However, the county attorney must fully inform the client that he will not be able to continue the representation if the client later becomes a criminal defendant in his county, and that he will have to withdraw as counsel. The county attorney must also determine, on a case-by-case basis, the likelihood that this potential conflict of interest between his prosecutorial duties and the interest of his private client will actually arise. If the likelihood that this will occur is relatively high, the attorney must obtain both the county's and the client's informed consent to the representation.

# *Discipline Corner*

**SUSPENSION**

On August 3, 2001, the Honorable Bruce J. Lubeck, Third Judicial District Court, entered an Order of Suspension suspending J. Douglas Kinateder from the practice of law for a period of twenty months, beginning October 15, 2001, for violation of Rules 1.3 (Diligence), 1.15(a) and (b) (Safekeeping Property), 5.5 (Unauthorized Practice of Law), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

Kinateder was grossly negligent in the management of his trust account. Kinateder did not promptly notify, deliver, and account for the client's and third party's funds. Thereafter, Kinateder paid funds owing to the clients and third party medical provider from his own funds. Kinateder was grossly negligent in failing to keep client and third party funds separate from his personal funds. Kinateder failed to act with reasonable diligence and promptness in representing a client in a personal injury matter. Kinateder continued to practice law while administratively suspended for failure to comply with mandatory continuing legal education requirements.

Mitigating factors include: personal or emotional problems; good faith effort to rectify the consequences of the misconduct involved; full and free disclosure to the Office of Professional Conduct prior to the discovery of further misconduct, and cooperative attitude towards proceedings; good character; physical disability; mental disability; and remorse.

Aggravating factors include: pattern of misconduct and substantial experience in the practice of law.

**DISBARMENT**

On October 15, 2001, the Honorable Michael D. Lyon, Second Judicial District Court, entered Findings of Fact, Conclusions of Law and Order of Disbarment disbarring Stanley L. Ballif from the practice of law for violation of Rules 1.15(a) and (b) (Safekeeping Property) and 8.4(c) (Misconduct) of the Rules of Professional Conduct.

While employed at a law firm, in one case Ballif placed a client's settlement check into his personal account instead of the firm's trust account. Ballif temporarily used the client's money for his own personal use without authorization.

In another case Ballif failed to promptly notify the firm of a settlement in a client matter, failed to render a prompt accounting to the firm, and failed to immediately deliver to the firm its share of the settlement proceeds.

Aggravating factors include: prior record of discipline; dishonest or selfish motive; multiple offenses; substantial experience in the practice of law; and illegal conduct.

Mitigating factors include: full disclosure to the disciplinary authority prior to the discovery of any misconduct; cooperative attitude toward proceeding; and good character or reputation.

**ADMONITION**

On October 15, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.3 (Diligence) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The attorney agreed to represent a client for the purpose of appealing the client's criminal conviction. The attorney failed to file a Notice of Appeal of the client's conviction before the time for appeal expired.

Mitigating factors include: absence of prior record of discipline and cooperation with the Office of Professional Conduct.

**ADMONITION**

On October 15, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.15(a) (Safekeeping Property) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The Office of Professional Conduct received several overdraft notices regarding a law firm's trust account. At all relevant times the attorney was a signatory on the law firm's trust account, and was responsible for the trust account. In one instance, the attorney deposited funds into the trust account to cover an overdraft, but the funds were not credited to the trust account until the following day. The attorney failed to verify that the deposit had been credited to the trust account before issuing two checks against the deposited funds. The bank honored the two checks leaving the trust account overdrawn. In another instance, the attorney wrote three checks against the law firm's trust account believing the checks to be operating account checks. There were insufficient funds in the trust account to cover the three checks. The bank honored the three checks leaving the trust account overdrawn.

**PUBLIC REPRIMAND**

On October 26, 2001, the Honorable Frank G. Noel, Third Judicial District Court, entered an Order of Discipline: Reprimand reprimanding William B. Parsons, III for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), and 8.4(a) and (d) (Misconduct) of the Rules of Professional Conduct.

Parsons was retained to represent a client in a lawsuit. Parsons failed to respond to discovery requests on the client's behalf and failed to appear for a scheduling conference, resulting in dismissal of the case. Parsons failed to keep the client reasonably informed about the status of the lawsuit.

**ADMONITION**

On October 29, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.3 (Diligence) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The attorney filed a Notice of Appeal to the United States Court of Appeals for the Tenth Circuit on a client's behalf. The Court sent the attorney notice of receipt of the Notice of Appeal and informed the attorney that the attorney needed to become a member of the Court's bar to proceed with the appeal. The attorney did not respond to the Court's notice, did not apply to become a member of the Court's bar, and did not file a request to withdraw from the appeal.

**ADMONITION**

On November 16, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.6 (Confidentiality of Information) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The attorney was retained to represent a client in a family law matter. The attorney advertised for applicants to apply for a secretarial position in the attorney's law office. Several applicants applied and were interviewed for the position by the attorney. As part of the interview process, the applicants were given a typing test. The applicants were given access to the client's file and were given a tape of a dictated letter concerning the file to type. One of the applicants was a friend of the client and reported to the client that the applicant had been given access to the client's file and had typed a dictated letter from the file. The client's file and the dictated letter contained information relating to the attorney's representation of the client. The attorney admitted that the client's file and dictated letter had been used for the applicant testing, expressed remorse for doing so, and apologized to the client.

**ADMONITION**

On November 16, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme


# APPELLATE REPRESENTATION

before the United States Supreme Court,
Courts of Appeal for the Ninth and Tenth Circuits,
and the Courts of Utah and California

Alternative, Contingent Fee, and Hourly Billing

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# *Discipline Corner*

**DISBARMENT**

On May 24, 2002, the Honorable Douglas Cornaby, Eighth Judicial District Court, entered Findings of Fact, Conclusions of Law and Judgment of Disbarment disbarring Alan Williams from the practice of law for violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.4 (Communication), 3.3(a) (Candor Toward the Tribunal), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a), (c) and (d) (Misconduct) of the Rules of Professional Conduct.

In summary:
In one matter, Williams represented a client in the Utah Court of Appeals. Williams failed to file a brief by the deadline, despite being given an extension. The Utah Court of Appeals ordered Williams to file a brief or motion for extension. Williams failed to do so and his inaction was treated as a contempt of court. Williams later misrepresented to the Utah Court of Appeals that he had completed and mailed a brief to the court and opposing counsel. The Utah Court of Appeals also found that Williams had been discharged for rendering ineffective assistance in various other matters.

In another matter, Williams represented a client in a civil rights matter. Williams failed to communicate with his client, did not perform any meaningful legal services on the client's behalf, and allowed the statute of limitations to run on the case. Williams thereafter failed to cooperate with the Office of Professional Conduct in its investigation of the complaint.

Aggravating factors include: obstruction of the disciplinary proceedings.

**DISBARMENT**

On May 9, 2002, the Honorable Roger A. Livingston, Third Judicial District Court, entered Findings of Fact, Conclusions of Law, and Judgment of Disbarment disbarring Jose Luis Trujillo from the practice of law for violation of Rule 1.1 (Competence), 1.4(a) (Communication), 1.5(a) (Fees), 1.7(b) (Conflict of Interest: General Rule), 1.15(b) and (c) (Safekeeping Property), 1.16(d) (Declining or Terminating Representation), 3.1 (Meritorious Claims and Contentions), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a), (b), (c) and (d) (Misconduct).

In summary:
In representing four clients, Trujillo filed incorrect papers, failed to communicate with clients, charged nonrefundable fees, failed to return unearned fees, represented a client with whom he had a business interest, comingled trust funds with general funds to avoid an Internal Revenue Service levy, misappropriated client funds, failed to understand the posture of a case involving bail money, failed to return bail money, initiated an immigration proceeding although it was without merit, and failed to respond, or delayed responding, to the Office of Professional Conduct's requests for information.

**SUSPENSION**

On February 28, 2002, the Honorable Ernest W. Jones, Second Judicial District Court, entered Findings of Fact, Conclusions of Law and Order of Suspension suspending Frank A. Berardi from the practice of law for two years for violation of Rules 1.3 (Diligence), 1.4 (Communication), 1.16 (Declining or Terminating Representation), 5.3 (Responsibilities Regarding Nonlawyer Assistants), 5.4(a) and (b) (Professional Independence of a Lawyer), 5.5 (Unauthorized Practice of Law), 8.1 (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct while representing seven different clients. The Order of Suspension effective date is May 29, 2002.

In summary:
While representing some of the clients, Berardi failed to act with reasonable diligence and promptness, failed to keep clients reasonably informed about their matters, failed to attend court hearings, and failed to promptly comply with reasonable requests for information. In six of the matters, Berardi permitted his paralegal to solicit and advise clients, allowed the paralegal to accept money for the paralegal's legal services, failed to ensure that the money collected by the paralegal was kept in accordance with Rule 1.15 of the Rules of Professional Conduct, and entered into a partnership and shared legal fees with the paralegal. Berardi also failed to respond to the Office of Professional Conduct's requests for information in most of the matters, did not return a client's file for some time after his services were terminated, and failed to refund the unused portion of a retainer fee.

Mitigating factors include: inexperience in the practice of law and good character or reputation.

Aggravating factors include: dishonest or selfish motive; a pattern of misconduct; multiple offenses; obstruction of disciplinary proceedings; submission of false evidence, false statements, and other deceptive practices during the disciplinary process; refusal to acknowledge the wrongful nature of the misconduct involved, either to the client or to the disciplinary authority; vulnerability of the victim; and lack of good faith effort to make restitution or

rectify the consequences of the misconduct involved.

The matter is on appeal to the Utah Supreme Court.

**ADMONITION**

On April 24, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.4(a) (Communication), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
The attorney's firm represented a client in a wrongful termination matter. The client worked with one of the attorney's associates. The associate terminated employment with the firm and communication from the firm to the client ceased. The client requested an itemized bill from the firm. The firm failed to send the client an itemized bill or return the client's telephone calls. The attorney failed to respond in writing to the Office of Professional Conduct's requests for information.

**ADMONITION**

On April 24, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 8.1(b) (Bar Admission and Disciplinary Matters) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
The Office of Professional Conduct ("OPC") notified the attorney of its investigation of allegations against the attorney and requested that the attorney provide a written response. The attorney failed to respond in writing to the OPC's requests for information.

**ADMONITION**

On April 24, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.4 (Communication) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
The attorney's firm represented the client in a sexual harassment matter. The client worked with one of the firm's associates. The associate terminated employment with the firm and the client elected to move her case with the associate. The client terminated the firm's representation and requested a refund of the unearned portion of the retainer. The attorney failed to respond to the client's requests for a refund.

**ADMONITION**

On May 1, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.5(b) (Fees), 1.15(a) and (b) (Safekeeping Property), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
The attorney was hired to represent the client's brother in an immigration matter. The attorney failed to enter into a written fee agreement with the client. The attorney also failed to keep a complete accounting of the retainer and failed to render a full accounting upon the client's request.

**ADMONITION**

On May 6, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.15 (Safekeeping Property), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
The attorney failed to maintain regular office hours, failed to perform work outside of the courtroom, failed to keep two appointments, and failed to attend two court hearings. The attorney failed to keep clients informed of the status of their cases and failed to return telephone calls. The attorney also failed to hold a law firm trust account.

**ADMONITION**

On May 6, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.3(a) and (b) (Diligence), 1.5(b) (Fees), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
The attorney represented a client in a divorce action. The attorney failed to file a timely response to a Motion for Summary Judgment; the attorney filed it on the day of the hearing. The attorney also failed to obtain necessary accounting documents for trial, and failed to enter into a written fee agreement with the client.

**ADMONITION**

On May 7, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.8 (Conflict of Interest: Prohibited Transactions) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
The attorney represented a client in a personal injury auto accident case. The attorney filed an attorney fees lien against the client. The attorney contracted with the client agreeing to release the

attorney lien in exchange for withdrawal of the client's Bar complaint. The attorney did not advise the client to seek the advice of independent counsel in the transaction.

**ADMONITION**

On May 7, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.1 (Competence), 1.8(a)(2) (Conflict of Interest: Prohibited Transactions), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
The attorney was hired to represent the complainants' adult child in a criminal matter. The attorney failed to protect the adult child's interests by failing to attend a hearing and failing to request the adult child's release on bail. The attorney contracted with the complainants agreeing to pay money in exchange for withdrawal of their Bar complaint and did not advise the complainants to seek the advice of independent counsel in the transaction.

**ADMONITION**

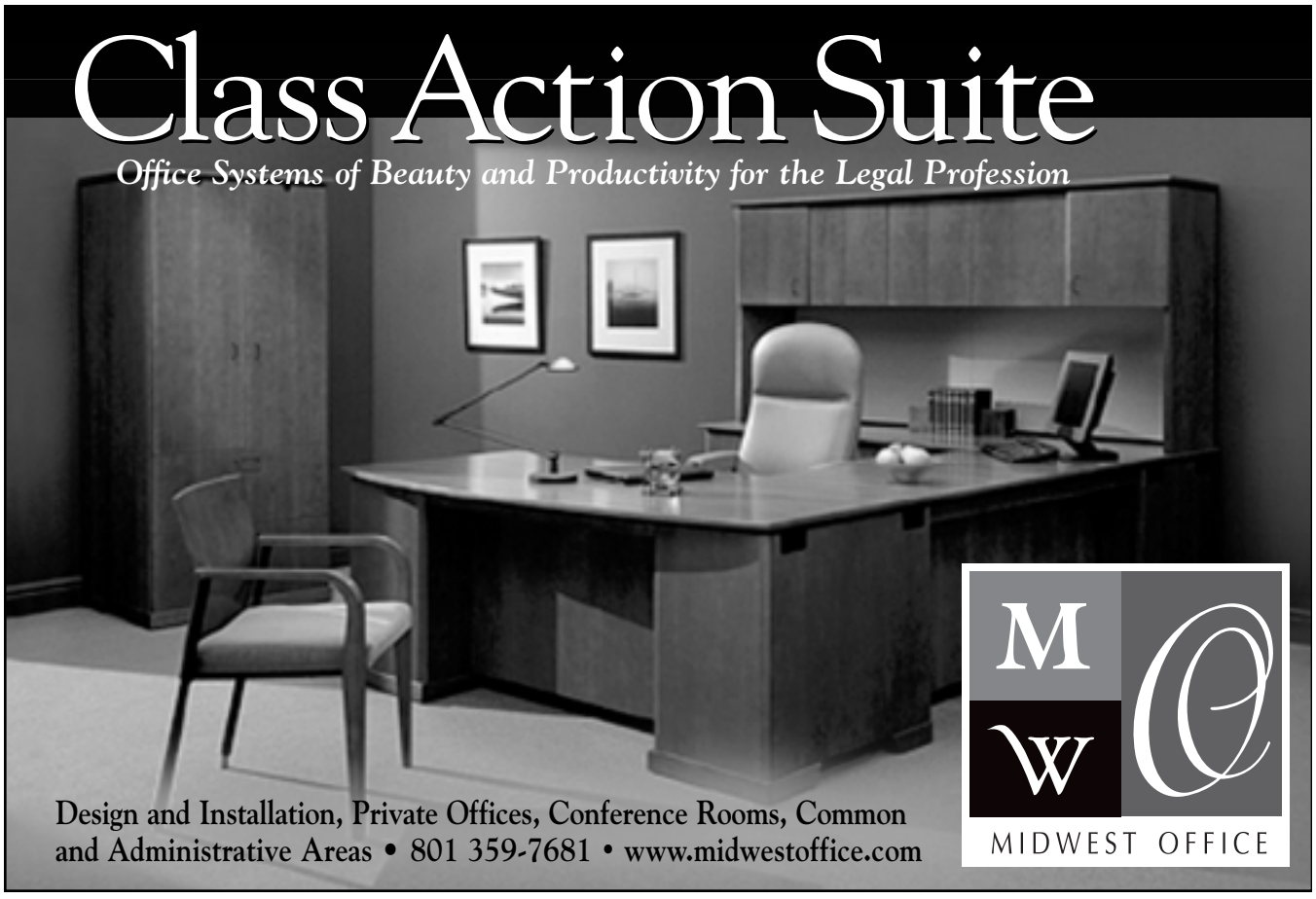
On May 7, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.4 (Communication), 8.1 (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
The attorney represented the client in a personal injury case. The attorney did not return the client's telephone calls or otherwise keep the client informed about the case for a period of time. The attorney failed to timely respond in writing to the Office of Professional Conduct's requests for information.

**ADMONITION**

On May 7, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.1 (Competence) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
The attorney represented the client in an immigration matter. The attorney was instructed to file an appeal to the Board of Immigration Appeals, but failed to timely file it. The Board of Immigration



## *Discipline Corner*

**ADMONITION**

On April 1, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rule 1.7 (Conflict of Interest: General Rule) of the Rules of Professional Conduct.

The attorney represented a client in preparing estate planning documents. The attorney later filed a lawsuit on behalf of the client's son and others (one of whom was the original client) against the client's daughter, which representation was directly adverse to the original client, and was without the original client's consent.

**ADMONITION**

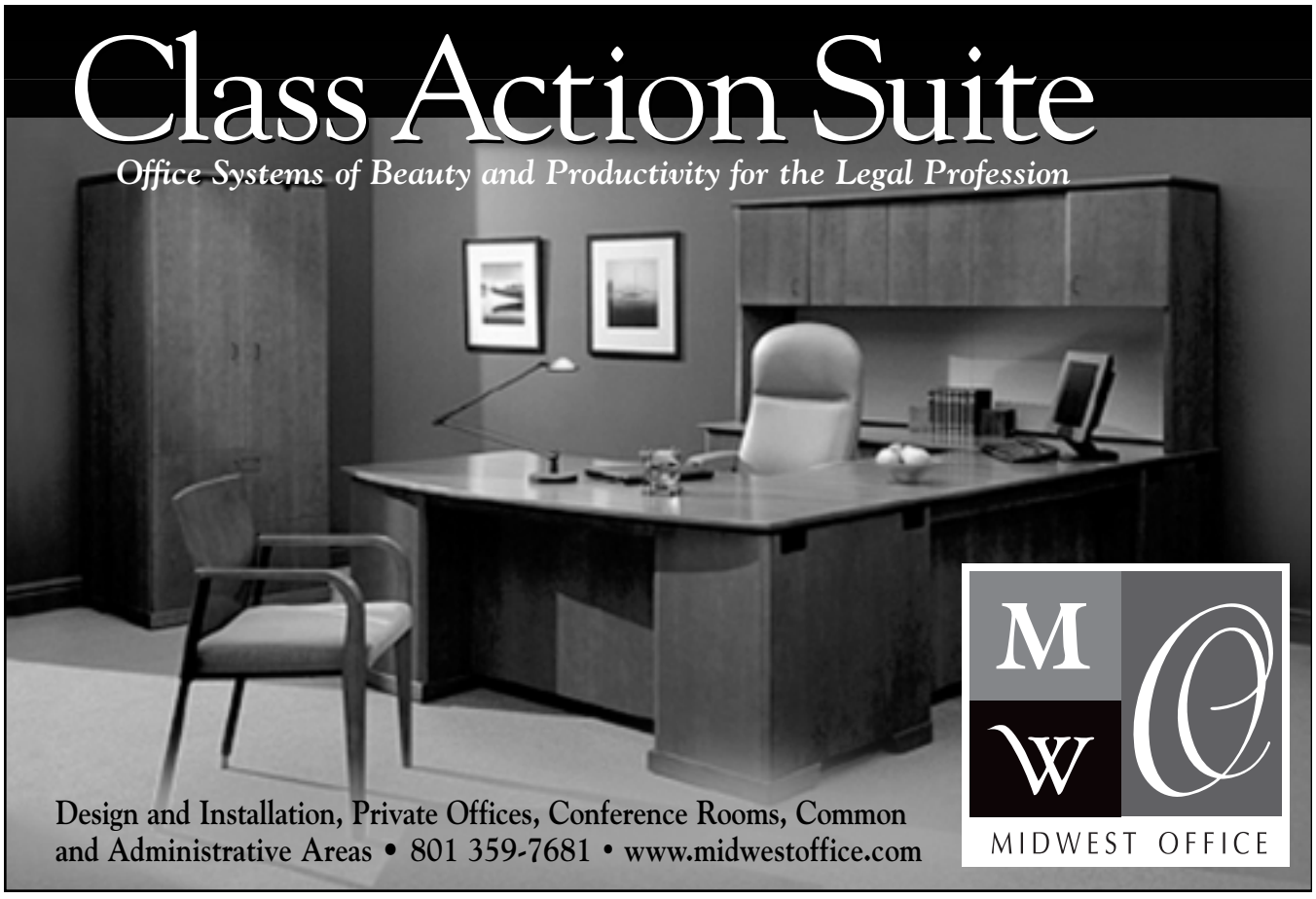
On April 2, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.1 (Competence) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The attorney signed a Durable Power of Attorney on the line intended for the attorney's client's signature. The attorney also notarized the attorney's own signature.

**ADMONITION**

On April 5, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.3 (Diligence), 1.4 (Communication), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The attorney represented a client in a Chapter 11 bankruptcy matter. The attorney failed to file necessary financial reports, which resulted in the bankruptcy being converted to a Chapter 7 bankruptcy. The attorney failed to keep the client reasonably informed of the status of the case.



**ADMONITION**

On April 10, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.16(d) (Declining or Terminating Representation) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The attorney failed to return a client's file upon termination by the client of representation. The attorney refused to return the file alleging that the client owed attorney fees.

**ADMONITION**

On April 10, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.5 (Fees) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The attorney traded with a client for legal services in a domestic matter in return for the client constructing a driveway. The attorney continued to charge the client in excess of the work performed on the client's case. The attorney also charged the client duplicate fees and for bills already paid.

**ADMONITION**

On April 10, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.5 (Fees) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The attorney represented the client's sons in criminal matters. The attorney agreed to a fee with the client, but charged the client excessive fees for the work performed in the cases.

# Thank You!

***We wish to acknowledge the efforts and contributions of all those who made this year's Law Day celebrations a success. We extend a special thank you to:***

**Bob Miller Memorial Law Day 5K Run/Walk**
Lon Jenkins, Chair of the Law Day Run/Walk Committee and its members, and all those who participated.

**Law Day Luncheon/Awards:**
*Young Lawyers Division*
Nathan Alder, President
Martha Knudson and Mickell Jiminez Rowe
Co-Chairs

*and the following firms:*
Clyde Snow Sessions & Swenson,
Manning Curtis Bradshaw & Bednar,
Richards Brandt Miller & Nelson,
Snell & Wilmer

**Minority Bar Association**
Essay Contest

**Mock Trial Competition**
Utah Law Related Education Project and all volunteer coaches, judges, teachers and students.

**Salt Lake County Bar Association**
Art & the Law Project

***Thank you for your participation!***

**Bar Commission and Staff**
**Law Related Education and Law Day Committee**

# *Discipline Corner*

**DISBARMENT**

On December 4, 2001, the Honorable Lee Dever, Third Judicial District Court, entered Findings of Fact and Conclusions of Law disbarring Stephen G. Bennett from the practice of law for violation of Rules 1.2(a) (Scope of Representation), 1.4(a) (Communication), 1.15(a), (b), and (c) (Safekeeping Property), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(c) (Misconduct) of the Rules of Professional Conduct.

Bennett represented the defendants in a small claims action. A default judgment was entered against them and Bennett said he would move to have this set aside. Bennett informed his clients that he had had the default judgment set aside and settled the case in their favor. Bennett failed to obtain authorization from his clients to settle the case and misrepresented the actual amount of settlement. His clients repeatedly requested a copy of the settlement agreement and the settlement check, but Bennett failed to respond.

The Office of Professional Conduct received an informal complaint from Bennett's clients and repeatedly requested that he respond to the allegations, but Bennett failed to respond. Bennett continued to fail to cooperate when the matter was brought in District Court.

**ADMONITION**

On January 10, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 5.5 (Unauthorized Practice of Law) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The attorney was administratively suspended from the practice of law for failure to pay annual Utah State Bar licensing fees. During the period of administrative suspension, the attorney represented a client in court. The court was later made aware of the administrative suspension and required to continue the one-day trial.

**ADMONITION**

On December 17, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.7(b) (Conflict of Interest: General Rule) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The attorney was hired by a social worker who was acting as an adoption agency in arranging an adoption. The attorney later learned that the social worker was not licensed as an adoption agency with the State of Utah and could not charge adoption fees. The attorney then undertook representing the birth mother in the same adoption. There was no evidence that the birth mother consented to the representation, after consultation about the conflict of interest.

Mitigating factors include: no prior disciplinary record and cooperation with the Office of Professional Conduct.

**ADMONITION**

On January 7, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.4 (Communication), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The attorney was hired to collect a debt. The debtor filed bankruptcy. The attorney agreed to file a proof of claim, but the bankruptcy court never received it. The attorney moved offices without communicating with the client. The client filed another proof of claim, but it was disallowed as a late filing. Subsequently, the attorney was able to rectify the situation so that the client could file a proof of claim.

**ADMONITION**

On December 6, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.4(a) and (b) (Communication), 5.3 (Responsibilities Regarding Nonlawyer Assistants), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The attorney was hired to represent a client in a criminal matter and a related civil matter. The client made a check payable to the paralegal who worked in the attorney's office. The attorney failed to make reasonable efforts to ensure the paralegal's conduct was compatible with the attorney's professional obligations. The attorney failed to keep the client reasonably aware of the status of the cases and failed to explain matters so that the client could make informed decisions regarding representation. The attorney failed to promptly respond to the Office of Professional Conduct's requests for information.

**ADMONITION**

On December 12, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 3.5(c) (Impartiality and Decorum of the Tribunal), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The attorney represented a defendant in a civil matter. The attorney filed a Notice to Submit for Decision and Request for Hearing. The court telephoned the attorney informing the attorney that it did not have jurisdiction. Without reviewing the judge's ruling, the attorney prepared orders in two cases, and sent them for approval to opposing counsel. The opposing counsel refused to sign the proposed orders because they did not accurately reflect the judge's ruling. The attorney filed the proposed orders at court, conducted ex parte conversations with a visiting judge, and obtained the temporary judge's signature on the orders.

**ADMONITION**

On December 7, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rule 5.5 (Unauthorized Practice of Law), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The attorney was administratively suspended for failure to pay annual Bar licensing dues. During the period of the suspension, the attorney continued to practice law. The attorney failed to timely provide the OPC with responses to its requests for information, and failed to attend a Screening Panel hearing.

Mitigating factors include: depression during the period of suspension, for which the attorney sought medical treatment.

**ADMONITION**

On December 6, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 5.5 (Unauthorized Practice of Law) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The attorney was administratively suspended for failure to comply with mandatory legal education requirements. During this period of suspension, the attorney continued to practice law.

**ADMONITION**

On December 17, 2001, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.15(b) (Safekeeping Property), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The attorney represented a client in a personal injury case. The attorney and the client agreed that a portion of the settlement proceeds would be withheld to clear an outstanding debt to a doctor. The attorney negligently failed to pay the debt to the doctor from the settlement proceeds and instead sent a settlement check directly to the client. The client understood that the medical bill had been settled.

**STAYED SUSPENSION**

On December 17, 2001, the Honorable Donald J. Eyre, Fourth Judicial District Court, suspended attorney Karen Allen from the practice of law for a period of three months for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 8.1(b) (Bar Admission and Disciplinary Matters) and 8.4(a) (Misconduct) of the Rules of Professional Conduct. The entire period of suspension is stayed.

Allen was retained to assist a client in a child support matter. Allen prepared and filed a Petition to Modify Existing Order on her client's behalf, but failed to have it served upon the client's ex-wife. Allen failed to keep her client informed about the status of his matter and failed to return his telephone calls. Allen failed to respond to the Office of Professional Conduct's ("OPC") requests for information concerning her client's complaint against her. In December 1999, the OPC received a second complaint concerning Allen, and Allen failed to respond to the OPC's requests for information.

Mitigating factors include: absence of prior record of discipline, absence of dishonest or selfish motive, and remorse.

**ADMONITION**

On January 16, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.4(a) (Communication), 1.15(b) (Safekeeping Property), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The attorney was hired to collect debts owed to a company. The company requested a full accounting of the collections from the attorney. The attorney provided a partial accounting but failed to provide a full accounting of the remaining accounts, despite repeated requests from the company and its new attorney.

# *Discipline Corner*

**DISBARMENT**

On March 25, 2002, the Honorable Thomas M. Higbee, Fifth Judicial District Court, Civil No. 010501706, entered an Order of Disbarment disbarring Garry Erickson from the practice of law for violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.4(a) (Communication), 1.5(a) (Fees), 1.15(b) (Safekeeping Property), 1.16(d) (Declining or Terminating Representation), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) and (d) (Misconduct) of the Rules of Professional Conduct.

Erickson represented a client in a wrongful death lawsuit. He failed to deliver the settlement funds or provide an accounting to his client. He failed to file the lawsuit, failed to keep the client appraised of its status and failed to advise the client of the applicable statute of limitations. Erickson relocated his office and abandoned representation of the client, failing to protect the interests of the client. He thereafter failed to respond to the OPC's requests for information.

In two other cases, Erickson represented clients in a medical malpractice lawsuit and a property recovery case. He failed to keep the clients appraised of the status and failed to advise the clients of the statute of limitations in each matter. Erickson relocated his office and abandoned representation of the clients, failing to protect the interests of the clients. He thereafter failed to respond to the OPC's requests for information.

Aggravating factors: prior record of discipline, dishonest or selfish motive, a pattern of misconduct, multiple offenses, obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary authority, refusal to acknowledge the wrongful nature of the misconduct involved, substantial experience in the practice of law, lack of good faith effort to make restitution or to rectify the consequences of the misconduct involved, and illegal conduct.

**SUSPENSION**

On March 1, 2002, the Honorable Pamela G. Heffernan, Second Judicial District Court, Civil No. 020900608AT, entered an Order of Suspension, suspending Russell T. Doncouse from the practice of law, effective March 1, 2002, for a period of ninety days, for violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.8(h) (Conflict of Interest: Prohibited Transactions), 3.1 (Meritorious Claims and Contentions), 5.5 (Unauthorized Practice of Law), and 8.4(a) and (d) (Misconduct) of the Rules of Professional Conduct.

Doncouse represented a client in a personal injury claim. Although the medical evidence suggested the claim was frivolous, he continued to represent the client. He failed to timely file the Complaint and missed the applicable statute of limitations. He filed the Complaint late, but it was dismissed. Because of his negligent handling of the claim, Doncouse entered into an agreement with the client and agreed to pay the client's medical expenses. The client did not have an opportunity to seek independent legal advice prior to signing the agreement.

During his representation of this client, Doncouse was administratively suspended from the practice of law for failure to pay annual Utah State Bar licensing fees.

Mitigating factors: cooperative attitude toward the disciplinary proceedings, lack of dishonest motive, suffered some emotional problems which may have contributed to some of his misconduct.

**SUSPENSION**

On February 28, 2002, the Honorable Ernest W. Jones, Second Judicial District Court, Civil No. 000903564, entered an Order of Suspension suspending Frank A. Berardi from the practice of law for a period of two years for violation of Rules 1.3 (Diligence), 1.4 (Communication), 1.16 (Declining or Terminating Representation), 5.3 (Responsibilities Regarding Non-Lawyer Assistants), 5.4(a) and (b) (Professional Independence of a Lawyer), 5.5 (Unauthorized Practice of Law), and 8.1 (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct in his representation of eight clients. Berardi was ordered to wind up his law practice within ninety days of the date of the order; therefore, Berardi may not practice law beyond May 29, 2002.

Berardi employed a paralegal at his law firm. He permitted his paralegal to interview clients, provide legal advice, and accept retainers. He shared legal fees with the paralegal. He failed to ensure that all money collected from the clients by the paralegal were deposited in the law firm's trust account. He failed to attend court hearings on behalf of four clients. He failed to communicate with three of his clients or keep them appraised as to the status of their cases. In one instance, he failed to return the client's file until approximately seventy-five days after his services were terminated

and he failed to refund the unearned portion of a retainer fee. He failed to respond to the Office of Professional Conduct's requests for information in six separate matters.

Aggravating factors: dishonest or selfish motive, pattern of misconduct, multiple offenses, obstruction of disciplinary proceedings, submission of false evidence, false statements, and other deceptive practices during the disciplinary process, refusal to acknowledge the wrongful nature of the misconduct involved, vulnerability of victim, and lack of good faith effort to make restitution or rectify the consequences of the misconduct involved.

Mitigating factors: no prior record of public discipline, inexperience in the practice of law, and good character or reputation.

**INTERIM SUSPENSION**

On March 19, 2002, the Honorable David L. Mower, Sixth Judicial District Court, Civil No. 020600010AT, entered an Order of Interim Suspension, suspending Jeffrey P. Gleave from the practice of law on an interim basis pursuant to Rule 19, Rules of Lawyer Discipline and Disability, until the conclusion of the disciplinary action against him.

On February 7, 2001, Gleave was convicted of Damage to or Interruption of a Communication Device in violation of Utah Code § 76-6-108, Assault, Domestic Violence in violation of Utah Code §§ 76-5-102 and 77-36-1, Child Abuse in violation of Utah Code § 76-5-109.1(2)(c), Aggravated Assault Against a Peace Officer in violation of Utah Code §§ 76-5-103 and 76-5-102.4, and Possession of a Controlled Substance in violation of Utah Code § 58-37-8(2)(a). The interim suspension is based upon these convictions.

**PUBLIC REPRIMAND**

On March 8, 2002, the Honorable J. Dennis Frederick, Third Judicial District Court, Civil No. 020901910, entered an Order of Public Reprimand on behalf of the Supreme Court of the State of Utah, reprimanding Charles F. Loyd for his misconduct before the Tenth Circuit Court of Appeals which was the subject of reciprocal discipline in the United States District Court for the District of Utah. Specifically, Mr. Loyd's public reprimand is for violations of Rule 1.3 (Diligence), Rule 3.2 (Expediting Litigation), and 8.4 (Misconduct) of the Rules of Professional Conduct.

**ADMONITION**

On March 13, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.15(a) (Safekeeping Property) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

The Office of Professional Conduct received two overdraft notices regarding a law firm's trust account. At all relevant times, the attorney was a signatory on the law firm's trust account, and was responsible for it. In one instance, the attorney's law clerk wrote a check against funds deposited in the law firm's trust account, without confirming whether there were sufficient funds in the account to cover the check. The bank honored the check, leaving an overdraft against the attorney's trust account.

In another instance, the attorney expected two wires to be credited to the law firm's trust account. The attorney issued checks against them before both wires had been credited to the account. The bank honored the checks, leaving an overdraft against the attorney's trust account.

# *Discipline Corner*

**SUSPENSION**

On September 24, 2002, the Honorable Stephen L. Henriod, Third Judicial District Court, entered an Order of Discipline: Suspension, suspending Douglas S. Haymore II from the practice of law for three months for violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.4(a) and (b) (Communication), 1.16(d) (Declining or Terminating Representation), 5.3(b) (Responsibilities Regarding Non Lawyer Assistants), 8.4(a) (Misconduct). The suspension is effective beginning September 24, 2002.

In summary:
In one matter, Mr. Haymore was retained to represent a client in two small claims cases. The client could not attend the trial. Mr. Haymore agreed to continue the trial date. Mr. Haymore did not continue the trial date. A motion to set aside the default was denied because the trial notice had been sent directly to the client and no appearance of counsel was filed.

In another matter, Mr. Haymore was retained to represent a client in a personal injury matter when the client's former attorney became ill. Mr. Haymore hired the former attorney's paralegal to work on the case. Medical and insurance records pertaining to the client's case were not requested or acquired. Settlement demands or negotiations did not occur and no pleadings were prepared for almost three years. Mr. Haymore did not reasonably keep his client informed and did not enable his client to make informed decisions regarding the case or Mr. Haymore's representation. Mr. Haymore instructed the client to communicate through his paralegal. The paralegal was not supervised to a standard where the case was diligently managed. Mr. Haymore failed to ensure his client's file was delivered to her in a timely and reasonable manner.

**INTERIM SUSPENSION**

On September 18, 2002, the Honorable Frank G. Noel, Third Judicial District Court, entered an Order of Interim Suspension, suspending Francis Angley from the practice of law pending final disposition of the disciplinary proceeding predicated upon his alleged misconduct.

On October 1, 2002, the Honorable Frank G. Noel, entered an Order permitting Mr. Angley to represent Sandra Miller for the limited purpose of filing a Memorandum in Opposition to Summary Judgment in her employment discrimination case pending in federal court, and the oral argument, if it is set before she can obtain new counsel.

**REPRIMAND**

On September 10, 2002, the Honorable Roger Livingston, Third Judicial District Court, entered an Order of Discipline: Reprimand, reprimanding Michael L. Humiston for violation of Rules 1.2(a) (Scope of Representation), 1.3 (Diligence), 1.4(a) (Communication), 1.5(a) (Fees), 1.5(b) (Fees), 1.6(a) (Confidentiality of Information), 1.16(d) (Declining or Terminating Representation), and 8.4(a) (Misconduct).

In summary:
Mr. Humiston was retained to represent a client in connection with late and deficient alimony and child support payments and custody issues. The client paid Mr. Humiston $2,000. No fee agreement or basis or rate of the fee was communicated to the client. The client met with Mr. Humiston on two or three occasions, met with his assistant twice, and spoke with him by telephone two or three times. Most of the communication was by e-mail, but only on occasion did Mr. Humiston respond. Mr. Humiston did not provide any meaningful information to the client. The client's former husband filed a petition to modify custody. The client discussed the matter with Mr. Humiston. Mr. Humiston told his client that he would file a response. Thereafter Mr. Humiston did not return the client's telephone calls or respond to her e-mail. The client later learned from her new attorney that a default was entered because Mr. Humiston did not appear at the pre-trial conference or file a response to the petition. Mr. Humiston refunded $1,000 to his client, but did not account for the $1,000 he retained.

**ADMONITION**

On October 2, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee for violation of Rules 1.5(b) or (c) (Fees), 1.4(b) (Communication), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

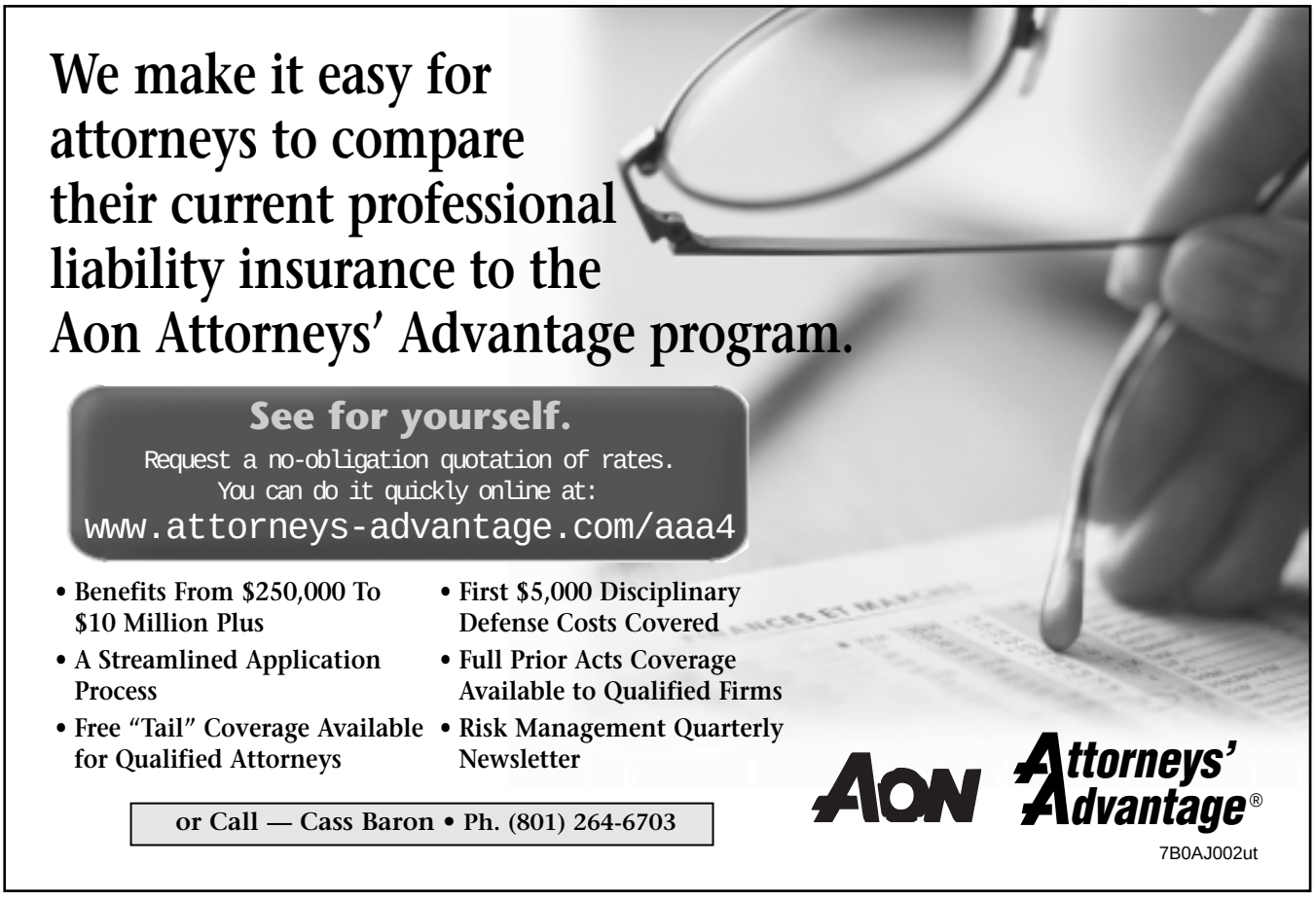
In summary:
A client's former attorney was retained to represent a client in a personal injury matter. The client's former attorney negotiated a settlement with the insurance company, but that attorney died before completing the settlement. Subsequently, the client retained the attorney who is the subject of this proceeding for representation in the personal injury matter. The client wished a prompt settlement, without court proceedings. The attorney requested that the settlement check be reissued to the attorney, then rejected

the settlement without consulting the client. The client and attorney agreed that the attorney would assist in managing unpaid medical bills. The attorney did not assist in managing the unpaid medical bills. The attorney did not return the client's telephone calls or keep the client reasonably informed of the status of the case. The attorney did not request that the client sign a fee agreement until eleven months after the attorney was hired. The client did not sign the fee agreement.

**ADMONITION**

On October 9, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee for violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.4 (Communication), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
The attorney was retained to represent a company against a lawsuit. The attorney failed to attend a Settlement/Pretrial Conference and a Final Pretrial Conference/Summary Judgment Hearing, which the court had ordered counsel who would try the case to attend. The attorney did not obtain court permission for either of the absences. The attorney agreed to attempt to settle the case, but did not diligently pursue settlement negotiations. The attorney obtained permission from the company to have an attorney who was assisting a co-defendant appear at the reset Final Pretrial Conference to keep costs down. The attorney did not inform the company that the court had ordered all trial counsel to be present, or that the attorney had previously missed two court appearances. The attorney asked the co-defendant's counsel to appear but failed to obtain court approval for the attorney's nonappearance at the Final Pretrial Conference. The co-defendant's counsel did not attend the hearing because of a scheduling conflict. The attorney failed to appear at the Final Pretrial Conference. The attorney's absence resulted in the entry of a default judgment against the company. The attorney filed a motion to set aside the default judgment, but did not inform the company until after the motion was denied. The attorney filed an appeal and the case and judgment was eventually settled.

# *Discipline Corner*

**SUSPENSION**

On July 15, 2002, the Honorable Anthony B. Quinn, Third Judicial District Court, entered Findings of Fact, Conclusions of Law and Order of Suspension suspending Kent L. Christiansen from the practice of law for three months for violation of Rules 1.7 (Conflict of Interest: General Rule), 1.8 (Conflict of Interest: Prohibited Transactions), 1.16(a) (Declining or Terminating Representation), 4.1(a) (Truthfulness in Statements to Others), and 8.4(a) and (c) (Misconduct), Rules of Professional Conduct. The Order of Suspension's effective date is August 15, 2002.

In summary:
Mr. Christiansen represented a client in a divorce case. The client was also his secretary with whom he was romantically involved. Mr. Christiansen was willing to represent her and told her there would be no charge. Mr. Christiansen failed to discuss the possible risks and disadvantages of representing his client during their romantic relationship. Mr. Christiansen's interests may have been limited because he could not give his client impartial advice on the possibility of reconciliation and legal issues presented by cohabitation. Mr. Christiansen presented a promissory note and trust deed to his client to evidence a loan from him to the client, which the client signed because of her faith and trust in Mr. Christiansen due to their romantic relationship. Mr. Christiansen did not handle the promissory note and trust deed transaction in a manner to ensure that the client understood the transaction and had a reasonable opportunity to seek independent counsel. Mr. Christiansen also denied to opposing counsel in the divorce matter that he was romantically involved with his client.

Mitigating factors include: absence of prior record of discipline; good character and reputation (outside of the events that came forward in this case); and substantial experience in the practice of law.

Aggravating factors include: multiple offenses; vulnerability of victim (vulnerability is created as a result of the relationship between the lawyer and the client).

**REPRIMAND**

On July 10, 2002, the Honorable Tyrone Medley, Third Judicial District Court, entered an Order of Discipline: Reprimand reprimanding David R. King for violation of Rules 1.2(a) (Scope of Representation), 1.4(a) (Communication), 1.4(b) (Communication), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
Mr. King was retained to represent a client in connection with an interpleader filed in the District Court. Mr. King obtained a Certificate of Default on his client's behalf, but did not resist having it set aside, although it was his client's desire to do so. Mr. King failed to keep his client reasonably informed about the status of his case and to promptly comply with his requests for information. Mr. King failed to explain his client's matter to the extent reasonably necessary to enable his client to make informed decisions regarding the representation.

Mitigating factors include: no record of prior discipline; did not have a dishonest or selfish motive; cooperative attitude toward the disciplinary proceedings.

Aggravating factors include: substantial experience in the practice of law.

**ADMONITION**

On July 11, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.7(b) (Conflict of Interest: General Rule) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
The attorney was retained to represent a client against criminal charges. The attorney simultaneously represented a client's sibling in an unrelated criminal matter. The attorney continued to simultaneously represent the client and the client's sibling after the client's sibling had been called to testify against the client.

Mitigating factors include: cooperative attitude toward the disciplinary proceedings.

**ADMONITION**

On July 18, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 5.5(b) (Unauthorized Practice of Law) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
The attorney was retained to represent a client against criminal charges. The initial interview was conducted by the attorney's office manager, outside of the attorney's presence. All contact with the client thereafter was with the office manager and not with the attorney.

**ADMONITION**

On July 18, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.8(h) (Conflict of Interest: Prohibited Transactions), 5.5(b) (Unauthorized Practice of Law), and 8.4(a) (Misconduct).

In summary:
The attorney was retained to represent a client in a DUI matter. The client signed a retainer agreement which stated that the client could not bring any type of formal or informal complaint against the attorney for anything the client found unsatisfactory. The retainer agreement was drafted by the attorney's office manager and was not reviewed or signed by the attorney. The initial interview was conducted by the attorney's office manager, outside of the attorney's presence. The attorney's office manager wrote and signed a letter on the attorney's letterhead, requesting a hearing on behalf of the client.

**ADMONITION**

On July 18, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.8(h) (Conflict of Interest: Prohibited Transactions), 5.5(b) (Unauthorized Practice of Law), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
The attorney was retained to represent a client against criminal charges. The client signed a retainer agreement which stated that the client could not bring any type of formal or informal complaint against the attorney for anything the client found unsatisfactory. The retainer agreement was drafted by the attorney's office manager and was not reviewed or signed by the attorney. The initial interview was conducted by the attorney's office manager, outside of the attorney's presence.

**ADMONITION**

On July 19, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.16 (Declining or Terminating Representation), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
The attorney was retained to represent a client in a child custody matter. The attorney failed to attend scheduled court hearings on behalf of the client. The attorney failed to provide sufficient information to the client about the attorney's proposed stipulation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and left the client to make the decision. The attorney failed to properly terminate representation of the client, forcing the court to order the attorney's appearance or submission of a withdrawal of counsel.

**ADMONITION**

On July 22, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.4(a) (Communication), 1.16(d) (Declining or Terminating Representation), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
The attorney was retained to represent a client in a divorce matter. The client attempted to contact the attorney, but the attorney did not return the client's telephone calls. The client requested his file from the attorney. The attorney was unable to locate the file. The attorney referred the client to the court to obtain a copy of the file.

**ADMONITION**

On July 22, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.4 (Communication), 1.16 (Declining or Terminating Representation), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
The attorney was retained to represent a client in a personal injury matter and subsequent to that, a collection action brought against the client by one of the medical providers that had not been paid. The case settled. The client received a portion of the settlement and a portion was to be paid to the medical bills. The attorney did not complete the collection case. The attorney told the client the attorney was giving up the practice of law and would send the client's records to the client. The client did not receive any records, including evidence that the medical bills had been paid.

**ADMONITION**

On July 30, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.4(a) (Communication), 1.15(b) (Safekeeping Property), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
The attorney was retained to represent a client in a discrimination action. The client received some of the settlement money but believed that the amount was less than what should have been received. The client requested that the attorney send the balance of what was owed, but the attorney failed to do so. The attorney failed to respond to the client's requests for information. The attorney failed to cooperate with the Office of Professional Conduct's investigation of the matter.

**ADMONITION**

On July 30, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 8.1(b) (Bar Admission and Disciplinary Matters) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
The Office of Professional Conduct ("OPC") received a complaint from a client of an attorney. The OPC forwarded the complaint to the attorney requesting a written response. The attorney's relative sent a letter to the OPC stating that the attorney was unable to respond because of physical incapacity. The letter did not address the complaint against the attorney. The OPC sent a letter to the relative requesting a response to the complaint. The attorney sent a letter to the OPC that did not address the client's complaint. The OPC sent two other reminders to the attorney and a Notice of Informal Complaint, but did not receive a written response to the complaint.

**ADMONITION**

On August 16, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rule 1.9(a) (Conflict of Interest: Former Client) of the Rules of Professional Conduct.

In summary:
The attorney was retained to represent a client relative to an investigation of allegations of misrepresentations in the client's transfer of stock. The client informed the attorney that stock was transferred to an individual. The client later sued that individual to recover the same stock. The attorney began representing that individual against his former client, without obtaining a waiver of conflict of interest. The attorney thus represented a client against a former client in a matter that was substantially factually related to the matter in which the attorney represented the former client and the former client did not consent to waive the conflict of interest.

# *Discipline Corner*

**ADMONITION**

On February 25, 2003, an attorney was admonished by the Chair of the Ethics and Discipline Committee for violation of Rules 1.3 (Diligence), 1.5(b) (Fees), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
An attorney was retained to represent a client concerning a child custody matter, but did not file an appearance of counsel until three years later. Hearings were stricken because of the attorney's lack of diligence and failure to appear. The attorney also failed to pursue a formal hearing as requested by the client. The attorney filed a Petition to Modify the Decree of Divorce seven years after retention. The attorney filed a Notice to Submit for Decision and a day later, a Motion for Leave of Counsel to Withdraw. The client collected the file from the attorney and learned that the attorney had done no legal work in the matter for four years. In exchange for legal work, the client performed repairs on the attorney's home. The attorney failed to establish with the client the basis upon which fees would be charged, and/or how the client's work would be credited towards the bill, and failed to advise the client of tax consequences of their barter arrangement.

**ADMONITION**

On February 14, 2003, an attorney was admonished by the Chair of the Ethics and Discipline Committee for violation of Rules 8.1(b) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
An attorney was retained to represent a client in a divorce modification matter. The client filed a bar complaint against the attorney. The Office of Professional Conduct ("OPC") requested information from the attorney. The attorney failed to respond to the OPC's requests for information and Notice of Informal Complaint.

**ADMONITION**

On February 14, 2003, an attorney was admonished by the Chair of the Ethics and Discipline Committee for violation of Rules 1.1 (Competence), 1.5(a) and (b) (Fees), 3.1 (Meritorious Claims and Contentions), and 8.4(a) and (d) (Misconduct) of the Rules of Professional Conduct.

In summary:
An attorney was retained to represent a client seeking post-conviction relief and to assist in a civil rights action. The attorney failed to provide competent representation with the thoroughness and skillful preparation necessary for the work undertaken. The attorney charged the client an excessive fee, failed to communicate the basis for the fee, and failed to obtain a written fee agreement. The attorney brought claims on behalf of the client that were dismissed as frivolous and procedurally barred.

**ADMONITION**

On February 14, 2003, an attorney was admonished by the Chair of the Ethics and Discipline Committee for violation of Rules 1.15(a) and (b) (Safekeeping Property), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
While representing the interests of an investment company, an attorney used funds deposited in the attorney's trust account by a third party for the benefit of a client before the client had given the consideration due the third party. The attorney failed to provide the requested accounting to the third party.

**PUBLIC REPRIMAND**

On February 7, 2003, the Honorable Gordon J. Low, First Judicial District Court, entered an Order of Discipline: Public Reprimand, reprimanding Robert W. Gutke for violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.4(a) (Communication), 1.15(b) (Safekeeping Property), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct. Mr. Gutke was also placed on six months unsupervised probation.

In summary:
In one matter, Mr. Gutke was retained to represent a client in a civil lawsuit and was paid a portion of the legal fees. Mr. Gutke obtained a trust deed against the client's house to secure future legal fees. The client requested an accounting of charges incurred for the legal services, but Mr. Gutke failed to provide it. Mr. Gutke also failed to keep the client reasonably informed of the status of the case. In another matter, Mr. Gutke was retained to represent a client in a divorce. He failed to promptly finalize the client's divorce and failed to keep the client reasonably informed of the status of the case. As to each complaint, Mr. Gutke failed to cooperate with the Office of Professional Conduct's requests for information. Mr. Gutke also failed to comply with an order of the First Judicial District Court concerning discovery.

**PUBLIC REPRIMAND**

On February 26, 2003, the Chair of the Ethics and Discipline

Committee entered an Order of Discipline: Public Reprimand, reprimanding Jerald N. Engstrom for violation of Rules 1.1 (Competence) and 8.4(a), (c), and (d) (Misconduct) of the Rules of Professional Conduct.

In summary:
Mr. Engstrom was retained to assist another attorney in criminal appeals for the Weber County Public Defenders Office. Mr. Engstrom researched and drafted the appellants' briefs, which the other attorney reviewed. The attorneys decided together which issues to raise in the appeals. Mr. Engstrom failed to provide competent representation to his clients: he lacked the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the completion of the appellate briefs. Errors in the appellate briefs included failing to cite the proper standard of review, failing to marshal the evidence, failing to provide legal authority and meaningful legal analysis, and failing to identify the relief sought. Mr. Engstrom negligently mischaracterized the record evidence in one brief. Mr. Engstrom engaged in conduct prejudicial to the administration of justice by repeatedly failing to provide competent representation as a court-appointed attorney for indigent clients after receiving warning from the court that the briefs previously submitted had been inadequately briefed.

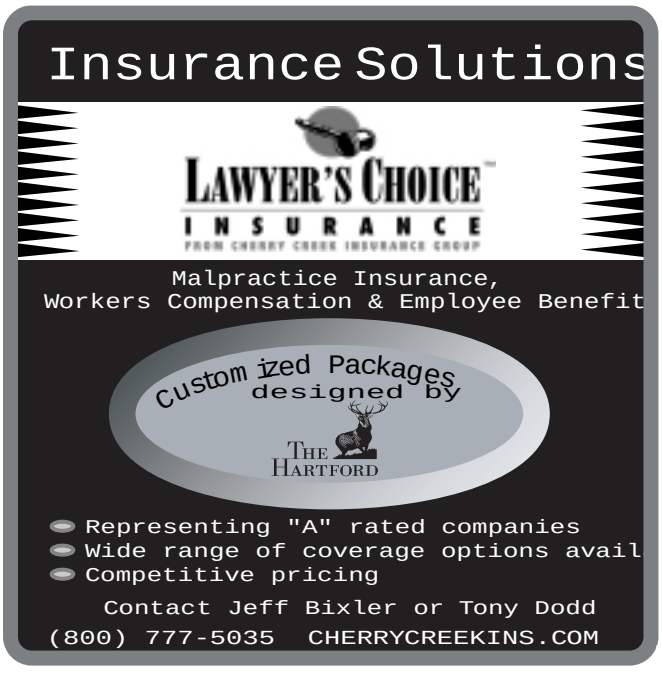
Mitigating factors include: cooperation with the Office of Professional Conduct.

**PUBLIC REPRIMAND**

On February 26, 2003, the Chair of the Ethics and Discipline Committee entered an Order of Discipline: Public Reprimand, reprimanding B. Maurice Richards for violation of Rules 1.1 (Competence) and 8.4(a), (c), and (d) (Misconduct) of the Rules of Professional Conduct.

In summary:
Mr. Richards was retained, with the assistance of another attorney, to handle appeals for the Weber County Public Defenders Office. The attorneys decided together which issues to raise in the appeals. The other attorney drafted the briefs, which Mr. Richards reviewed. Mr. Richards failed to provide competent representation to his clients: he lacked the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the completion of the appellate briefs. Errors in the appellate briefs included failing to cite the proper standard of review, failing to marshal the evidence, failing to provide legal authority and meaningful legal analysis, and failing to identify the relief sought. Mr. Richards negligently mischaracterized the record evidence in one brief. Mr. Richards engaged in conduct prejudicial to the administration of justice by repeatedly failing to provide competent representation as a court-appointed attorney for indigent clients.

Mitigating factors include: absence of prior record of discipline and cooperation with the Office of Professional Conduct.



# *Discipline Corner*

**PUBLIC REPRIMAND**

On June 23, 2003, Michael R. Loveridge was publicly reprimanded by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.3 (Diligence), 1.4(b) (Communication), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
A judgment was entered against Mr. Loveridge following a lawsuit by his former clients. The causes of action alleged Mr. Loveridge's negligence and breach of fiduciary duty. Mr. Loveridge developed an estate plan for his former clients, incorrectly advising them that there were no adverse tax consequences of implementing the estate plan.

Mitigating factors include: absence of a dishonest or selfish motive, cooperation with disciplinary proceedings, imposition of other sanctions in the form of a substantial monetary judgment against him, remorse, and reliance on the assurance of client's accountant that there would be no adverse consequences in following Mr. Loveridge's recommendation.

Aggravating factors include: prior record of discipline and substantial experience in the practice of law.

**PUBLIC REPRIMAND**

On June 20, 2003, M. Joy Jelte was publicly reprimanded by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.4(b) (Communication), 1.5(b) (Fees), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
Ms. Jelte was retained to represent a new client in a divorce and child custody matter. The client understood the matter would cost $500, but a month after retention Ms. Jelte asked for several thousand dollars. Ms. Jelte had no written fee agreement with the client until the day of trial when she asked the client to sign such an agreement without the opportunity to read the document. Ms. Jelte did not provide the client invoices for her services from July 2000, the point of retention, until after trial in April 2002. The client was unsophisticated and required, but did not receive, a significant effort from Ms. Jelte to explain the client's case to the extent necessary to permit this client to make an informed decision regarding the representation. Ms. Jelte did not timely respond to the Office of Professional Conduct's requests for information.

**PUBLIC REPRIMAND**

On June 17, 2003, Ted K. Godfrey was publicly reprimanded by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.4(a) and (b) (Communication), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
Mr. Godfrey was appointed to represent a client on appeal to the Utah Court of Appeals. The client filed the Notice of Appeal pro se; Mr. Godfrey failed to review it. Mr. Godfrey filed briefs that did not meet the requirements of the Utah Rules of Appellate Procedure. Mr. Godfrey failed to consult with his client regarding the issues to be appealed. Mr. Godfrey failed to keep the client properly informed about the status of the case, and failed to adequately consult with the client.

**ADMONITION**

On June 18, 2003, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.3 (Diligence) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
An attorney was retained to represent a client in a matter before the Labor Commission. The Administrative Law Judge ordered the client to attend a medical panel examination and to produce for the panel all medical records relating to the workers' compensation claim. The client delivered the medical records to the client's attorney. Approximately three months later, the Administrative Law Judge requested the medical films from the client's attorney. Three months later, the case was dismissed without prejudice for failure to cooperate with discovery. The attorney filed a motion to reinstate the client's claim and provided all medical records. However, since the medical films which were essential to the claim were not included, and one year had passed since the evidentiary hearing, the motion was denied.

**PUBLIC REPRIMAND**

On June 17, 2003, Ruth Wagner was publicly reprimanded by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.3 (Diligence), 1.16(d) (Declining or Terminating Representation), 8.1(b) (Bar Admission and Disciplinary Matters), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
Ms. Wagner was retained to represent a client in a divorce matter. The parties' settlement stipulation was read into the court record. The court directed Ms. Wagner to prepare findings, conclusions

and a decree of divorce. Opposing counsel filed an objection to the pleadings prepared by Ms. Wagner. The court ordered Ms. Wagner to prepare new documents adding the court's ruling. Ms. Wagner did not prepare the new pleadings. Ms. Wagner's client remarried and later found out the divorce had not been finalized. The opposing party sought and was granted a divorce nunc pro tunc as of a date prior to Ms. Wagner's client's remarriage. Ms. Wagner failed to comply with the Office of Professional Conduct's requests for information.

**PUBLIC REPRIMAND**

On June 17, 2003, Ruth Wagner was publicly reprimanded by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.3 (Diligence), 1.4 (Communication), 1.16(d) (Declining or Terminating Representation), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
Ms. Wagner was retained to enforce her client's interest in an automobile purchase and trade-in. Ms. Wagner filed a complaint and requested temporary and permanent injunctive relief. The defendant filed an answer and counterclaim. Ms. Wagner did not reply to the counterclaim and a default judgment was entered against her client. The defendant began to enforce the judgment against Ms. Wagner's client. Ms. Wagner told her client that she was retiring but would complete the representation. Ms. Wagner thereafter failed to respond to her client's letters, e-mails and telephone calls. Only after the client filed an Informal Bar Complaint did Ms. Wagner deliver the file. Ms. Wagner failed to comply with the Office of Professional Conduct's requests for information.

**PUBLIC REPRIMAND**

On June 12, 2003, Richard G. Cook was publicly reprimanded by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.5(d)(2) (Fees), 1.8(a) (Conflict of Interest: Prohibited Transactions), 1.15(c) (Safekeeping Property), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
Mr. Cook was retained to represent two clients based on a contingency fee agreement in a bankruptcy matter. Pursuant to the same contingency fee agreement, Mr. Cook agreed to represent one of the clients in a criminal matter as associate local counsel. When the bankruptcy matter concluded Mr. Cook deposited the settlement check into his trust account. Meanwhile, additional issues in the bankruptcy became apparent that required Mr. Cook to continue legal representation of the clients. Eight months later, Mr. Cook prepared for his clients a revocable living trust. Mr. Cook was named as a second successor trustee. The following year, Mr. Cook's clients deposited their settlement proceeds into money market accounts in the name of their trusts. Mr. Cook did not disclose to his clients how the disbursement and accounting of the trusts would occur or how he would bill for work as trustee in writing in a manner that his clients could reasonably understand. Mr. Cook did not advise his clients to seek the advice of independent counsel regarding the trustee appointment. Mr. Cook's client authorized him to withdraw money from the client's trust to pay attorney fees for himself and another attorney. Mr. Cook did not keep the money separate before he made an accounting and severance of all interests involved.

Mitigating circumstances include: absence of prior record of discipline, absence of dishonest or selfish motive, and good character or reputation.

**ADMONITION**

On June 11, 2003, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 5.5(a) (Unauthorized Practice of Law) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
The attorney changed the attorney's Utah State Bar's membership status to inactive. The attorney represented a client in mediation and in a Small Claims Court trial. The attorney did not inform the client, opposing counsel, or the court that the attorney was an inactive member of the Utah State Bar.

**ADMONITION**

On June 5, 2003, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.3 (Diligence) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
An attorney was retained to represent defendants in a quiet title action. The attorney did not file an answer on behalf of the clients. The opposing counsel contacted the attorney's office and was told by the office manager that the attorney was withdrawing as the defendant's counsel. The clients retained a new attorney, but the deadlines had expired and a default judgment had entered. The attorney did not file a notice of withdrawal of counsel until two weeks before trial, and did not provide a copy to opposing counsel until eight days before trial. The court did not sanction the attorney. The attorney refunded attorney fees to the clients and an amount they likely would have recovered had they prevailed in the quiet title action.

**ADMONITION**

On May 28, 2003, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.1 (Competence), 1.4(a) (Communication), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:

An attorney was retained to represent a client in a civil rights action. The attorney failed to provide competent representation regarding collection of evidence for the civil rights case. The attorney failed to have all parties sign the retainer agreement. When the attorney withdrew from the representation, the attorney sent the client's file to another attorney who once worked for the attorney. The client assumed that the new attorney still worked with the attorney, but was later informed by the new attorney that this was not the case. The attorney failed to communicate fees in an effective manner.

**ADMONITION**

On May 28, 2003, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.1 (Competence), 1.3 (Diligence), 3.3(a) (Candor Toward the Tribunal), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:

An attorney was retained to represent a client in a civil action, seven weeks before trial. The attorney failed to prepare for trial, failed to timely raise an issue concerning an expert witness, failed to timely review the file, failed to locate experts, and failed to talk to witnesses. The attorney made a false statement to the court regarding the date of retention. The attorney made misrepresentations to the Office of Professional Conduct by failing to admit that the attorney had not talked to witnesses.

**PUBLIC REPRIMAND**

On May 28, 2003, Nathan N. Jardine was publicly reprimanded by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.7(b) (Conflict of Interest: General Rule), 8.4(g)(1) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.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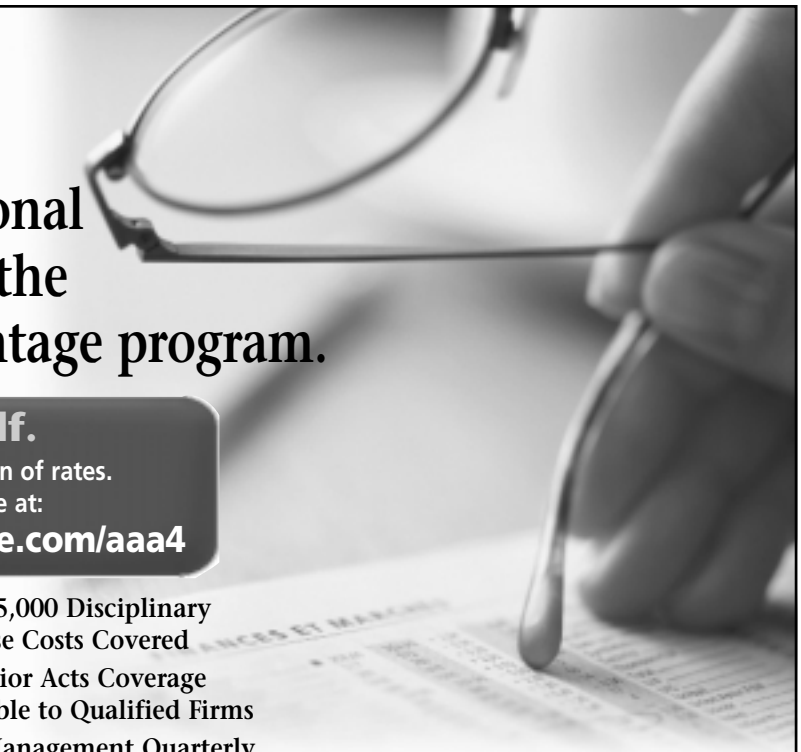

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In summary:
Mr. Jardine was retained by a married couple for defense against citations for violations of mutual protective orders. One year later, after the parties divorced, one of the parties entered into a contingency fee agreement with Mr. Jardine in a sexual harassment case against the client's former employer. Later, Mr. Jardine also represented the client in connection with a DUI citation. No separate fee agreement exists for the DUI representation. Mr. Jardine's client was vulnerable because of the stressful situations created by the litigation. One month later, Mr. Jardine and his client commenced a romantic relationship. Mr. Jardine had his client sign an affidavit stating the client was aware of the ethical rule prohibiting sexual relations with a client that exploit the attorney-client relationship, but that Mr. Jardine had not exploited the attorney-client relationship in order to have sexual relations with the client. Mr. Jardine's sexual relations with his client had the potential to limit his representation of his client in the sexual harassment case in that the client's emotional condition was at issue and evidence of consensual relationships may have been raised.

**ADMONITION**
On May 19, 2003, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
An attorney was retained to represent a client to file a petition to modify a decree of divorce. Opposing counsel objected to the petition. The attorneys were unable to reach a settlement and the attorney did nothing on the matter for three years. The attorney did not keep the client reasonably informed of the status of the matter and did not return the client's telephone calls.

**ADMONITION**
On May 19, 2003, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 4.1(a) (Truthfulness in Statements to Others), 5.3 (Responsibilities Regarding Nonlawyer Assistants), 8.1 (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
An attorney was retained by a collections agency. The attorney served the debtor's employer with garnishment papers. The debtor satisfied the debt and the employer contacted the attorney to release the garnishment. The employer telephoned the attorney, but spoke to the attorney's non-lawyer assistant, who untruthfully stated to the employer that the release had been sent out. The release was sent out two weeks later. The attorney also failed to comply with the Office of Professional Conduct's requests for information.

**ADMONITION**
On May 13, 2003, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court

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for violation of Rules 1.1 (Competence), 1.3 (Diligence), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
An attorney was retained to represent a client concerning the possibility of modifying the client's child support payments. The attorney calculated an amount of child support based on the client's current income. The attorney failed to inform the client that it would be a violation of the court's order if the client did not pay the required amount of child support as stated in the decree of divorce absent a subsequent court order modifying the decree. The attorney left it to the client to decide what amount to pay. The client opted to pay the amount calculated by the attorney before obtaining a modification of the child support amount ordered in the divorce decree. The attorney filed a petition to modify the decree of divorce. The attorney mailed a copy of the petition and a request for a waiver of service to the client's spouse and the spouse's attorney, but the spouse refused to waive service, and the spouse's attorney did not return an acceptance of service. The attorney's staff submitted two default certificates to court without prior review by the attorney. The court refused to sign the default order because of insufficient proof of service. The attorney was provided a new address for the spouse, but failed to timely forward the petition to a constable for service.

**ADMONITION**
On June 26, 2003, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.16(d) (Declining or Terminating Representation), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
An attorney was retained to represent a client in a personal injury case. The attorney's services were terminated by the client for the attorney's failure to communicate with the client. The client's new attorney contacted the attorney and requested a copy of the client's file. The new attorney received a file, but believed it was incomplete and contacted the attorney. The attorney did not respond to any of the new attorney's telephone calls or letters. The new attorney contacted opposing counsel who stated that the client's case had been dismissed because of the attorney's failure to prosecute the case. The attorney did not make any attempts to oppose the dismissal and did not provide any dismissal documents to the new attorney. The statute of limitations expired two months after the dismissal. The new attorney filed a motion to set aside the dismissal and the attorney appeared at the hearing and was open and honest with the court with regard to events that led to the dismissal. The attorney's presence at the trial was integral to the client's success in having the dismissal set aside.

Mitigating factors include: absence of prior record of discipline, absence of a dishonest or selfish motive, timely good faith effort to rectify consequences of misconduct, cooperative attitude toward disciplinary proceedings.

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## *Discipline Corner*

**ADMONITION**

On October 23, 2003, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rule 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

In summary:
An attorney was hired to represent a client in a criminal matter. The client filed a complaint against the attorney. The attorney did not timely respond to the Office of Professional Conduct's requests for information.

**ADMONITION**

On October 23, 2003, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 8.4(a) and (d) (Misconduct) of the Rules of Professional Conduct.

In summary:
An attorney represented a client in a criminal matter. The attorney did not know the whereabouts of the client. The attorney requested, but was denied a continuance. The court ordered the attorney to cross-examine, but the attorney continued to argue for a continuance. The attorney was escorted to the judge's chambers from the court in handcuffs and the hearing was continued because of the attorney's conduct.

Mitigating factors include: no prior record of discipline, no dishonest or selfish motive, cooperative attitude towards proceedings, experienced interim reform, and experienced humiliation and distress when handcuffed.


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# *Discipline Corner*

**PUBLIC REPRIMAND**
On November 15, 2002, the Honorable James L. Shumate, Fifth Judicial District Court, entered an Order of Discipline: Public Reprimand, reprimanding Douglas D. Terry for violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.4(a)(Communication), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
Mr. Terry was retained to represent a client in a personal injury matter. Mr. Terry prepared and filed a Complaint on behalf of his client, but failed to serve it upon the defendant. The case was dismissed for failure to prosecute; Mr. Terry refiled it. Mr. Terry received discovery requests from the defendant, but failed to file discovery responses, claiming he could not locate his client, although the client had provided her new address. The case was eventually dismissed with prejudice against Mr. Terry's client. A few months later, Mr. Terry met his client by chance and told her that he would attempt to rectify the matter. Afterthat meeting, Mr. Terry did not return his client's telephone calls, or rectify the matter, or compensate her for any errors he made.

Mitigating factors include: absence of prior record of discipline; absence of dishonest or selfish motive; and remorse.

Mr. Terry also has made restitution to his client.

**ADMONITION**
On November 5, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee for violation of Rules 1.2(b) (Scope of Representation), 1.3 (Diligence), 1.4 (Communication), 1.5 (Fees), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
In one matter, the attorney was retained to negotiate a settlement in a client's divorce. The fee agreement stated that the client's fee was non-refundable. When the attorney did not obtain a settlement, the attorney did not alert the client that an answer to the divorce petition needed to be filed, and the attorney did not answer the divorce complaint on behalf of the client by the deadline. The client received a default notice and immediately went to the attorney's office for advice. The attorney did not advise the client that the attorney would not attend the default hearing and that the client should attend; an order of default was entered against the client. After the default was entered, the attorney would only agree to attempt to negotiate the matter for an extra fee. The client retained a new attorney to seek to set aside the default, and eventually reached a settlement with the former spouse. The attorney refunded the client's fees, and agreed to change the non-refundable clause in future fee agreements.

In another matter, the attorney was retained to represent a client in a divorce and child custody matter. The attorney's fee agreement stated that the client's fee was non-refundable. The attorney did not keep the client informed about the case and did not consult with the client about matters as they arose. The parties agreed to hire an independent child custody evaluator but the evaluator was not retained. The attorney failed to keep the client reasonably informed about the case and to explain the matter to the extent reasonably necessary to enable the client to make informed decisions regarding the appointment of a child custody evaluator. The attorney also failed to inform the client that the opposing party filed a motion to bifurcate the divorce from the other issues in the case until after the court granted the motion and the time for an appeal had run.

Mitigating factors include: absence of a prior record of discipline; absence of a dishonest or selfish motive; full and free disclosure to the client or the disciplinary authority prior to the discovery of any misconduct or cooperative attitude toward proceedings; good character or reputation.

**ADMONITION**
On November 12, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee for violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.4 (Communication), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
An attorney represented a client in a criminal matter. The client entered a guilty plea and, as advised by the attorney, waived his right to a pre-sentence investigation. After sentencing, the client moved to withdraw the guilty plea. The court ordered an alienist report. For the next thirty months and despite three court orders, the attorney failed to arrange for and obtain the report. Throughout this time the attorney failed to communicate with the client, who remained jailed. The client finally requested new counsel and the court, finding ineffective assistance of counsel, granted the request.

**ADMONITION**
On November 15, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee for violation of Rules 1.3 (Diligence), 3.4 (Fairness to Opposing Party and Counsel), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
The attorney was retained to represent a client in a probate matter. The attorney performed work for three months, but thereafter failed to give the matter the attention it required. When the client attempted to terminate the attorney's services, the attorney convinced the client to continue the representation. The attorney provided limited services and again stopped giving the matter appropriate attention. The attorney changed employment during representation of this client and failed to timely and formally withdraw from the client's matter.

Mitigating factors include: absence of a prior record of discipline; absence of a dishonest or selfish motive; full cooperation with the Office of Professional Conduct; and good character and reputation.

**ADMONITION**
On November 21, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee for violation of Rules 8.4(a) (Misconduct), 8.4(c) (Misconduct), and 8.4(d)

(Misconduct) of the Rules of Professional Conduct.

In summary:
An attorney was paying alimony to a former spouse, who was involved in a new relationship. The attorney completed magazine subscriptions in the name of the former spouse's new partner, addressed to the former spouse's home. The attorney did not introduce, or attempt to introduce the magazine subscriptions as evidence during an action concerning alimony; the conduct served no purpose other than to inconvenience the magazine businesses, the former spouse, and the spouse's partner.

Aggravating factors include: substantial experience in the practice of law.

Mitigating factors include: no prior record of discipline; suffering from personal or emotional circumstances; demonstrated a cooperative attitude towards the proceedings by admitting to the underlying conduct; good character or reputation in the legal community; and remorse.

**DISBARMENT**
On December 31, 2002, the Honorable L. A. Dever, Third Judicial District Court, entered an Order of Disbarment, disbarring Mark C. Jahne from the practice of law for violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.15(a) (Safekeeping Property), 1.16(d) (Declining or Terminating Representation), 3.1 (Meritorious Claims and Contentions), 4.4 (Respect for Rights of Third Persons), 8.1 (Bar Admission and Disciplinary Matters), 8.4(c) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
In one case, Mr. Jahne was retained to represent a client in a workman's compensation case with the federal government. The client gave Mr. Jahne a retainer of $750. Mr. Jahne did not provide any meaningful legal services on behalf of the client. Mr. Jahne sent the client a refund check from his trust account, but the trust account check was returned because of insufficient funds. Mr. Jahne responded to the OPC's investigative letter and indicated that he had repaid the funds and that he did not have a trust account. Subsequently, in a personal bankruptcy filing, Mr. Jahne listed the money owed to this client as an outstanding debt. The personal bankruptcy filing also indicated that Mr. Jahne had not filed income taxes for several years.

In another case, Mr. Jahne was opposing counsel in a small claims matter. A settlement agreement had been reached in the case, but as a condition, the defendant was to provide the address of the defendant's sister so that she could be served with a summons. The defendant provided the information, but the information provided to Mr. Jahne was incorrect. The defendant immediately attempted to rectify the error. However, despite the earlier agreement, the defendant still was required to appear at court because Mr. Jahne did not dismiss the suit, although he had sufficient time to do so. At court, Mr. Jahne directed the defendant into the wrong courtroom. The defendant realized the deception and proceeded to the correct courtroom, however, Mr. Jahne and his client did not appear for the hearing and the matter was dismissed. Mr. Jahne failed to respond to the Office of Professional Conduct's ("OPC's") Notice of Informal Complaint ("NOIC").

In a third case, Mr. Jahne was retained to represent a client in a divorce matter. Mr. Jahne failed to answer the divorce complaint. As a result, a default judgment was entered against his client. Mr. Jahne entered into a settlement agreement with his client to compensate the client for his loss due to Mr. Jahne's failure to represent him. Mr. Jahne missed several payments and then stopped paying the client. Mr. Jahne failed to respond to the OPC's NOIC.

Aggravating factors include: dishonest or selfish motive, pattern of misconduct, multiple offenses, obstruction of the disciplinary proceeding, submission of false evidence, false statements or other deceptive practices, lack of good faith effort to make restitution or rectify consequences of misconduct, illegal conduct, and substantial experience in the practice of law.Mitigating factors include: absence of prior discipline.

**RESIGNATION PENDING DISCIPLINE**
On November 20, 2002, the Honorable Christine Durham, Chief Justice, Utah Supreme Court, executed an Order Accepting Resignation Pending Discipline concerning Bryan C. Robinson.

In summary:
Mr. Robinson issued checks in his capacity as a licensed insurance agent. The checks were returned because there were insufficient funds in the Title Escrow Account. Additionally, Mr. Robinson did not properly disburse funds he held in trust. Mr. Robinson failed to respond in writing to the Office of Professional Conduct's Notices of Informal Complaint concerning ten complaints against him.

**ADMONITION**
On December 12, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.5(a) (Fees), 1.7(b) (Conflict of Interest: General Rule), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
An attorney was retained to represent a client to secure a release from prison, or a firm parole date or parole hearing. The attorney was the managing director of a prison reform corporation. The attorney agreed to hold the client's retainer in trust until research into the merits of the claim was concluded, and agreed the prison reform corporation would cover some of the legal fees. The client subsequently learned that the attorney was barred from having contact visits with inmates because the attorney had violated Utah State Prison regulations. The attorney charged the client to lift the attorney's contact restrictions. The prison reform corporation was not funded and could not contribute to the legal fees. The attorney's ability to represent the client was compromised because of his interest in the prison reform corporation.

**ADMONITION**
On December 30, 2002, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.16(d) (Declining or Terminating Representation), 8.1(b) (Bar Admission and Disciplinary Matters),

and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
An attorney was retained to represent a client in negotiating a settlement with the IRS or to represent the client at trial. The attorney failed to keep the client advised of notice of a trial, and did not properly withdraw from the representation. The attorney failed to respond to the Office of Professional Conduct's specific request for information concerning why the client was not advised of the notice of trial setting.

**ADMONITION**
On January 6, 2003, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.16(d) (Declining or Terminating Representation) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
An attorney was retained to represent a client in a criminal matter. The client paid the attorney a fee to cover the case, excluding any appeal. The client entered into a plea agreement, agreeing to obtain counseling and within six months provide proof of counseling and file a motion to dismiss. The attorney failed to file a motion to dismiss at the end of the six month period and the court issued an order to show cause. The order to show cause was mailed to the attorney, who forwarded it to the client. The attorney did not appear at the show cause hearing, and although the client provided proof of counseling, the court ordered a bench trial. During the show cause hearing, the court noted that the attorney was still counsel of record. The prosecutor prepared an order dismissing the case, which was signed by the judge.

**ADMONITION**
On January 6, 2003, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.1 (Competence), 1.2 (Scope of Representation), 1.16(d) (Declining or Terminating Representation), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
An attorney was retained to represent a client to recover back wages. The attorney filed a complaint on behalf of the client. The client did not receive any communication from the attorney concerning the status of the case. Approximately one year later, the client contacted the court and learned that an order to show cause for failure to prosecute had been issued and the case was to be dismissed in one week. On the day the case was dismissed, the attorney filed a response to the court's order to show cause. One month later, the attorney filed a motion to set aside the dismissal and for a scheduling conference. No opposition was filed to the motion, no notice to submit for decision was filed, and no further action was taken on the motion. The case remains dismissed and the attorney did not file a withdrawal of counsel.

**ADMONITION**
On January 6, 2003, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.4 (Communication), 1.16(d) (Declining or Terminating Representation), and 8.4(a) and (d) (Misconduct) of the Rules of Professional Conduct.

In summary:
An attorney was retained to represent a client to prepare a citizenship application for the client's minor adopted child. Approximately one year later, the attorney told the client the application had been filed and to wait eighteen to twenty-four months for a reply. The client contacted the attorney nearly three years later to ascertain the status of the application. The attorney advised the client to contact the Immigration and Naturalization Service ("INS") directly. The INS told the client it had not received the application. The client contacted the attorney, who agreed to investigate the matter. Thereafter, the attorney failed to return numerous telephone calls from the client. When the client spoke to the attorney, the attorney informed the client there was nothing to report. The client requested a refund and the return of the file within two weeks. When the refund and file were not returned promptly, the client attempted to contact the attorney, without success. The client later learned the child became a citizen under the Child Citizenship Act of 2000. The attorney did not inform the client of the new legislation during their previous telephone conversation. The attorney eventually refunded the retainer fee to the client.

**ADMONITION**
On January 6, 2003, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 8.4(a) and (d) (Misconduct) of the Rules of Professional Conduct.

In summary:
An attorney filed an appearance to represent a defendant in a criminal matter pending in Justice Court. The attorney failed to appear at court for a hearing on a motion to suppress, and failed to request a continuance of the proceedings, or make other alternate arrangements with the court and the prosecutor.

**ADMONITION**
On January 7, 2003, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.3 (Diligence), 1.4(b) (Communication), 1.5(c) (Fees), 3.2 (Expediting Litigation), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
An attorney was retained to represent a client in a personal injury matter who was assaulted. The attorney accepted the case for a contingent fee, but did not prepare a written contingency fee agreement. The attorney served a complaint on the employer of the assailant. The attorney did not timely pursue discovery to identify the assailant. The attorney did not communicate with the client regarding the case status. The attorney allowed the client's case to be dismissed because of failure to prosecute. Additionally, the attorney did not explain the client's rights to the client to the extent necessary for the client to properly protect the client's ability to reverse the dismissal.

# *Discipline Corner*

**ADMONITION**

On March 27, 2003, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.6 (Confidentiality of Information), 1.16(d) (Declining or Terminating Representation), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
An attorney was retained to represent a client in a personal injury matter. The attorney intended to offer a settlement demand but failed to follow through. The client did not receive any written communication about the status of the case. The attorney asked another attorney to take over the case. The other attorney shared office space with the attorney, but was not associated with the attorney's law firm. The attorney telephoned the client concerning withdrawal of representation from the case, but did not send written communication to the client. The attorney did not consult with the client before referring the case to another attorney.

Mitigating factors include: absence of prior record of discipline, absence of dishonest or selfish motive, and personal or emotional problems.

**ADMONITION**

On April 9, 2003, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.3 (Diligence) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
An attorney was retained to represent clients regarding a debt collection matter. The clients provided the attorney with a Summons and Complaint that had been served upon the clients. The attorney failed to answer the Complaint. The court entered a default judgment against the clients. The clients became aware of the default judgment when the plaintiff tried to collect on a garnishment. The attorney assisted the clients with their request to have the default judgment set aside and continued to represent the clients in the matter.

**PUBLIC REPRIMAND**

On April 9, 2003, Brenda L. Flanders was publicly reprimanded by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.15 (Safekeeping Property) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
Ms. Flanders was retained to represent a company in a debt collection matter. Ms. Flanders was paid a retainer by check and deposited it into her trust account. Ms. Flanders erred on her billing statement to the company in the debt collection matter by stating that she had earned the retainer fee and withdrew the remainder of the retainer from her trust account for legal work she did for another client. Thus, she paid herself for legal work from the wrong client. Ms. Flanders took several months to correct the error.

**ADMONITION**

On April 14, 2003, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.4 (Communication), 1.5(b) (Fees), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
An attorney was retained to represent a client in a divorce action. The client paid a retainer to the attorney. The attorney did not provide a bill or written explanation of the attorney's hourly rate. The attorney failed to keep the client reasonably informed of the status of the case; the attorney failed to inform the client that a pretrial conference had been scheduled. The attorney failed to comply with the Office of Professional Conduct's requests for information.

**ADMONITION**

On April 14, 2003, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.3 (Diligence), 1.5(a) (Fees), 3.2 (Expediting Litigation), and 8.4(a) and (d) (Misconduct) of the Rules of Professional Conduct.

In summary:
An attorney represented a client in an immigration matter. The attorney was late for a hearing and failed to timely file documents with the immigration court. The attorney accepted a fee and thereafter failed to timely and effectively perform the necessary legal services. The attorney requested continuances, thereby failing to expedite the case. The attorney eventually refunded to the client all fees received.

Mitigating factors include: absence of prior record of discipline; absence of dishonest or selfish motive; timely good faith effort to make restitution or to rectify the consequences of the misconduct involved; cooperative attitude toward the Office of Professional Conduct's proceedings; and remorse.

**SUSPENSION**

On April 16, 2003, the Honorable William W. Barrett, Third Judicial District Court, entered Findings of Fact, Conclusions of Law, and Order of Suspension, suspending Robert L. Booker for a period of eighteen months. Mr. Booker's suspension is effective May 21, 2003.

In summary:

Mr. Booker represented a client in a criminal matter before the Federal District Court. Mr. Booker failed to appear for trial. Mr. Booker failed to accede to the Court's verbal order to be at a pre-trial conference. At another pre-trial conference, Mr. Booker made repeated arguments to the Court for continuance of the trial, and repeatedly spoke after the judge told him to be quiet. The Court issued a finding of contempt because of Mr. Booker's conduct and placed him in jail. Mr. Booker was subsequently disqualified and removed because of his conduct. In another case, Mr. Booker was retained to represent a client in a criminal matter. Mr. Booker communicated with his client's co-accused without the consent of the co-accused's attorney. This communication with Mr. Booker caused the co-accused to stop cooperating with his counsel. Mr. Booker was unprepared to go forward at his client's sentencing hearing.

**RESIGNATION PENDING DISCIPLINE**

On April 17, 2003, the Honorable Chief Justice Christine Durham, Utah Supreme Court, entered an Order Accepting Resignation Pending Discipline concerning Randall D. Lund.

In summary:

From January 1999 through May 1999 Mr. Lund obtained prescriptions from several doctors without disclosing to the doctors that he had received prescriptions from others. Mr. Lund was charged with nine counts of Obtaining a Controlled Substance by Fraud. Mr. Lund entered a guilty plea in abeyance to three counts of Falsely Obtaining/Dispensing Prescriptions and was convicted of Falsely Obtaining/Dispensing Prescriptions, a Third Degree Felony. Mr. Lund was placed on supervised probation and failed to stay in contact with his probation case manager. Additionally, Mr. Lund failed to comply with the Office of Professional Conduct's requests for information in this matter.


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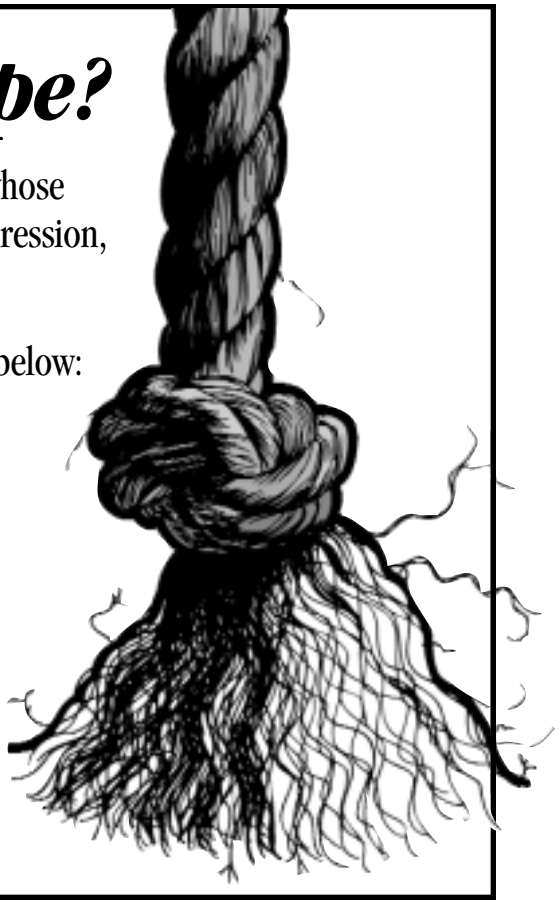

**RECIPROCAL DISCIPLINE**

On April 22, 2003, the Honorable Robin W. Reese, Third Judicial District Court, entered an Order of Reciprocal Discipline, suspending H. Delbert Welker from the practice of law for a period of eighteen months. Mr. Welker's suspension is effective as of March 28, 2003.

In summary:

On May 31, 2002, the Supreme Court of California entered an order suspending Mr. Welker from the practice of law for a period of three years, placed on probation for four years, on the condition that he be actually suspended for 18 months. In a personal injury/workers' compensation matter, Mr. Welker failed to conduct formal discovery or arrange for a qualified medical exam, and allowed mediation to proceed before medical information was available. Mr. Welker misrepresented the client's authorization to settle a claim in a sworn declaration filed with the court. In another matter, Mr. Welker failed to pay medical service provider liens as directed by his client, the funds for which having been deposited in his client trust account for this purpose. In a third matter, Mr. Welker issued checks out of his clients trust account for personal and family expenses. In a fourth matter, Mr. Welker failed to inform the State Bar of California of a January 29, 2001 order entered by the Third Judicial District Court, Salt Lake County, Utah, suspending Mr. Welker from the practice of law in Utah.

**ADMONITION**

On April 28, 2003, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.4(a) (Communication) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:

An attorney was retained to finalize a Qualified Domestic Relations Order and to collect money pursuant to the client's Decree of Divorce. The attorney failed to keep the client informed of the status of the case, either by returning telephone calls or written correspondence. The attorney's billing records reflected that no work was done during many months in which the client waited, without word of the progress in the case. The client requested assistance from the Utah State Bar and the attorney withdrew from the client's case.


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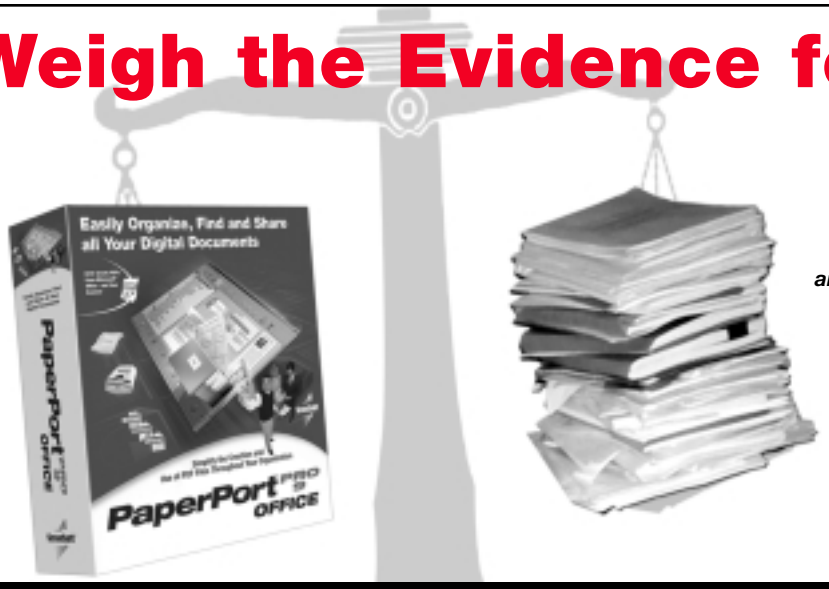


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**ADMONITION**

On May 8, 2003, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.15 (Safekeeping Property) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:

The Office of Professional Conduct received an overdraft notice from a bank concerning an attorney's trust account. The overdraft was caused by accounting errors the attorney made in the management of the trust account. The attorney mistakenly made an overpayment to a client. The attorney returned sufficient funds to cover only part of the full amount paid to the client. The deficit was not discovered until the overdraft occurred, at which time the attorney returned sufficient funds to cover the deficit. Attorneys fees were also withdrawn from the trust account for services performed by the attorney for clients who had agreed to pay retainers, but failed to do so. The attorney mistakenly added the anticipated retainers to the accounting on the trust account ledgers. The attorney negligently forgot to withdraw earned attorney fees from the trust account in several cases. The funds that were mistakenly withdrawn against the anticipated retainers were offset by the attorney fees mistakenly left in the trust account. The attorney corrected the accounting errors once the errors were discovered.

Mitigating factors include: absence of a prior record of discipline; cooperation with the Office of Professional Conduct.

**PUBLIC REPRIMAND**

On May 8, 2003, Thomas R. Blonquist was publicly reprimanded by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.4(b) (Communication), 1.8(a) and (b) (Conflict of Interest: Prohibited Transactions), 1.15(a) and (b) (Safekeeping Property), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:

Mr. Blonquist was retained to represent a client in a divorce matter. The client received a cash settlement at the conclusion of the divorce. At, or shortly after settlement, Mr. Blonquist solicited the client's investment in a company in which he acted as counsel and had a financial interest. Mr. Blonquist personally guaranteed the investment. The client had limited knowledge concerning the transaction. Mr. Blonquist failed to explain the risks of his client's decision to invest, and to make the client fully aware of other options. Mr. Blonquist comingled his client's money with his own or that of his business funds. Mr. Blonquist failed to comply with the Office of Professional Conduct's requests for information.

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# *Discipline Corner*

**RESIGNATION WITH DISCIPLINE PENDING**

On January 21, 2003, the Honorable Christine Durham, Chief Justice, Utah Supreme Court, entered an Order Accepting Resignation Pending Discipline concerning Ronald W. Flater.

In summary:
The Office of Professional Conduct received three complaints against Mr. Flater concerning immigration matters. The complaints allege that Mr. Flater incorrectly completed or failed to complete immigration petitions on behalf of the clients. All three clients primarily dealt with Mr. Flater's assistant, although Mr. Flater reviewed and signed the documents. In two cases, Mr. Flater failed to respond to the clients or their attorney. In two of the cases, Mr. Flater failed to respond to the OPC's requests for information.

**ADMONITION**

On January 13, 2003, an attorney was admonished by the Chair of the Ethics and Discipline Committee for violation of Rules 1.15(b) and (c) (Safekeeping Property), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
The attorney was retained to represent a client in a personal injury matter, which occurred during the course of the client's employment. The Workers' Compensation Insurance providers had a statutory lien claim against any funds received as a result of the personal injury case. The attorney advised the client to set up attorney liens with the client's medical providers. The personal injury claim was resolved through arbitration. As a result of arbitration, the attorney received a check for the arbitration award. The attorney failed to notify the lien holders about the arbitration award. The attorney also failed to hold the award funds until there was an accounting and severance of the interests of the lien holders, the client, and the attorney. Instead, the attorney deducted attorney's fees and costs and issued a check to the client for the remainder of the award.

**ADMONITION**

On February 3, 2003, an attorney was admonished by the Chair of the Ethics and Discipline Committee for violation of Rules 1.4(b) (Communication), 1.5(a) (Fees), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
An attorney was retained to represent a client in a criminal matter. The client required to communicate with the attorney through a family member, as the client was in jail and was not fluent in English. The attorney failed to take adequate steps to ensure that there was an understanding with respect to the representation between the client and the attorney. The attorney failed to send letters to the client and failed to determine whether the family members served as adequate and appropriate conveyors of information. The attorney failed to refund the unearned portion of the fee to the client, and failed to include refund language in the fee agreement in the event of termination or withdrawal. The attorney failed to respond to the Office of Professional Conduct's Notice of Informal Complaint.

**STAYED SUSPENSION**

On December 31, 2002, the Honorable J. Brent West, Second Judicial District Court, entered an Order of Discipline suspending Stuwert B. Johnson, from the practice of law for six months for violation of Rule 1.1 (Competence), 1.2(a) (Scope of Representation), 1.3 (Diligence), 1.4(a) (Communication), and 8.4(a) and (c) (Misconduct) of the Rules of Professional Conduct. The suspension was stayed in favor of unsupervised probation for a period of six months. Mr. Johnson was also ordered to attend Ethics School within one year.

In summary:
In one matter, Mr. Johnson was retained by a client to prepare and file a request for a restraining order against the client's ex-husband. Mr. Johnson failed to file the request in a timely fashion, and failed to promptly return the client's retainer fee. In a second matter, Mr. Johnson filed a Complaint in the United States District Court on behalf of a client. Mr. Johnson failed to diligently prosecute the matter, failed to keep the client reasonably informed of the status of the case, and made misleading statements concerning the status of the case. In a third matter, Mr. Johnson represented a client in a personal injury matter. Mr. Johnson allowed a member of his staff to take the client's file home to work on the case. The staff member kept the file, delaying resolution of the matter. When the file was returned, Mr. Johnson failed to act with reasonable diligence in concluding the case, and delayed in paying medical providers. In another two matters, Mr. Johnson resolved the bar complaints by forgiving any outstanding attorney's fees he claims are owed by the clients.

Aggravating factors include: prior record of discipline, pattern of misconduct, multiple offenses, and substantial experience in the practice of law.

Mitigating factors include: substantial efforts to correct his office procedures so as to improve client communications, and more diligent representation.

# *Discipline Corner*

**PUBLIC REPRIMAND**

On September 24, 2003, Blaine P. McBride was publicly reprimanded by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.3 (Diligence), 1.4(b) (Communication), and 8.4(a) (Communication) of the Rules of Professional Conduct.

In summary:
Mr. McBride was retained to assist a client to establish paternity and seek visitation with the client's child. Opposing counsel stalled negotiation and other discussions and eventually claimed that the file had been misplaced, and Mr. McBride believed that time should have been given for opposing counsel to find the file. After Mr. McBride encountered communication difficulties with opposing counsel for one year, Mr. McBride failed to either pursue mediation ordered by the court, or to set the matter for a scheduling conference with the court to pursue the unresolved issues. Mr. McBride also failed to fully explain the options available to his client.

Mitigating factors include: absence of dishonest or selfish motive and remorse.

Aggravating factors include: prior record of discipline.

**INTERIM SUSPENSION**

On September 25, 2003, the Honorable L. A. Dever, Third Judicial District Court, entered a Ruling on Motion for Interim Suspension Pursuant to Rule 19, placing E. Keith Howick on interim suspension.

In summary:
Mr. Howick was convicted of three federal offenses that directly reflect on his honesty and fitness as a lawyer.

**ADMONITION**

On September 26, 2003, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 8.2(a) (Judicial Officials) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
An attorney was retained to represent the defendants in a civil case. After the case concluded, the attorney filed a motion to disqualify the judge presiding over the case. The attorney made public statements about the judge's qualifications and integrity with reckless disregard for the truth or falsity of those statements.

**ADMONITION**

On September 26, 2003, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.2(a) (Scope of Representation), 1.3 (Diligence), and 1.4(a) (Communication) of the Rules of Professional Conduct.

In summary:
An attorney was retained to prepare living trusts, a quit claim deed for real property, and to place the property in the trusts for the clients. The clients became aware that one of their properties had not been included, and one they did not own had been included. The attorney represented to the clients that the attorney would provide continuing support, but did not fulfill the commitment when the attorney ceased practicing law.

**PUBLIC REPRIMAND**

On September 29, 2003, William C. Halls was publicly reprimanded by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rule 8.4(c) (Misconduct) of the Rules of Professional Conduct.

In summary:
Mr. Halls served as general counsel and manager of a company. The company intended to go public through merger with a publicly traded company. Financial information was provided to investors. Mr. Halls was aware that financial information was provided and it was ultimately discovered that the financial information was inaccurate. The investors filed a civil lawsuit. Additionally, discovery revealed that the principal supporter in the company had told Mr. Halls that the company was in default under significant obligations. Mr. Halls wrote to the investor to request forbearance of any financial proceeding and a withdrawal of a note of default so he could search out and obtain new investors. Thus, the financial information provided to the publicly traded company did not adequately disclose the money owed to the principal supporter. A summary judgment was obtained against Mr. Halls by the investors based upon the strict liability imposed on a manager by the Utah Securities Act.

**ADMONITION**

On September 29, 2003, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.4(a) (Communication) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
An attorney was retained to obtain dissolution of the client's marriage. The attorney's contract with the client stated no services would be provided until the quoted fee was paid. Two months

later, the attorney reviewed the client file and finding no record of the client having paid a retainer, believed no payment had been received. At that time, the attorney was not aware that an employee was embezzling from the law firm. Believing no fees had been received, the attorney took no further action on behalf of the client, but did not close the file. A year later, the attorney reviewed the client file and attempted, unsuccessfully, to locate the client. The client and the client's spouse believed they were divorced and each remarried. When the attorney finally located the client, the attorney learned of the second marriages and immediately took the initial steps to obtain dissolution of the first marriage. The client retained new counsel to complete this process.

**ADMONITION**

On September 29, 2003, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.5(a) and (b) (Fees), 1.15(b) (Safekeeping Property), and 1.16(d) (Declining or Terminating Representation) of the Rules of Professional Conduct.

In summary:
An attorney was retained to represent a client in a criminal case. The attorney did not provide a written fee agreement to the client to explain the flat fee agreement. Approximately two years later, the client requested a copy of the file, but was told that the file had been shredded. The client requested an itemized statement from the attorney, but it has never been provided.

**PUBLIC REPRIMAND**

On October 2, 2003, E. Kent Winward was publicly reprimanded by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.3 (Diligence), 1.4(a) and (b) (Communication), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
Mr. Winward was retained to file a chapter 7 bankruptcy petition. The clients had purchased two used cars prior to the bankruptcy filing and Mr. Winward told his clients a redemption of the vehicles would not affect their credit. He had the clients sign a document titled "redemption agreement". The clients thought this was the agreement with the creditor but it was an agreement with Mr. Winward concerning payment for his services related to the redemption agreement. After the meeting of creditors, the clients telephoned Mr. Winward's office, spoke with his secretary concerning the amounts to offer for redemption and assumed Mr. Winward was handling the redemption. The clients made repairs to the vehicles in the amount of $5,188. Four months later, the creditor repossessed the clients' vehicles. Mr. Winward assumed the clients were no longer interested in the redemption and did nothing further in that regard. Mr. Winward did not follow up with the clients. After the repossessions, the clients attempted to contact Mr. Winward several times, but he did not return their calls.

**PUBLIC REPRIMAND**

On October 2, 2003, E. Kent Winward was publicly reprimanded by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.3 (Diligence), 1.4(b) (Communication), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
Mr. Winward filed a chapter 13 bankruptcy petition primarily to stop a foreclosure on the clients' residence. The clients' mortgagee filed a motion for relief from stay. The clients stopped making chapter 13 plan payments and the case was dismissed. When the case was dismissed, the mortgagee resumed foreclosure. The clients went to Mr. Winward to file a second chapter 13 bankruptcy petition. After meeting with Mr. Winward's office, the clients, though unable to pay the filing fee for several days, believed their petition would be filed the next day. Mr. Winward decided he would not file the petition until the clients delivered to him the filing fee but did not inform the clients of this decision. The mortgagee conducted the foreclosure sale, after which Mr. Winward's office filed the clients' second chapter 13 petition, which was no longer necessary.

**ADMONITION**

On October 2, 2003, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.3 (Diligence) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
The attorney filed three chapter 13 bankruptcy petitions on behalf of the client to forestall foreclosure on a residential loan. Each case was dismissed prior to plan confirmation. In the third case, the mortgagee on the residence persuaded the bankruptcy court to dismiss the case with prejudice on the basis that the client's three filings had been made in bad faith. The attorney did not appear for the hearing which resulted in the order of dismissal with prejudice, but does appear on the certificate of service for the order. The attorney did not at that time have any record keeping system to track client cases which were dismissed with prejudice. The attorney filed a fourth chapter 13 bankruptcy on behalf of the client, in violation of the bankruptcy court order. The mortgagee filed a Motion to Dismiss Void Ab Initio and for Sanctions. The attorney did not attend the hearing on this motion. The court granted the motion and sanctioned the attorney with an order to pay the mortgagee's attorney fees and lost interest.

# *Discipline Corner*

**INTERIM SUSPENSION**

On July 14, 2003, the Honorable Gary D. Stott, Fourth Judicial District Court, entered a Ruling on Motion for Interim Suspension Pursuant to Rule 19, placing Dean N. Zabriskie on interim suspension.

In summary:
Mr. Zabriskie was convicted of two federal offenses that directly reflect on his honesty and fitness as a lawyer.

**ADMONITION**

On July 23, 2003, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.3 (Diligence) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
An attorney was retained to represent a client in a personal injury claim. The attorney failed to file a complaint or resolve the client's complaint before the expiration of the statute of limitations. When the attorney discovered the statute of limitations for the client's claim had run, the attorney informed the client and provided contact information for the attorney's malpractice insurance carrier.

**ADMONITION**

On July 31, 2003, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.5(a) (Fees) and 1.16(d) (Declining or Terminating Representation) of the Rules of Professional Conduct.

In summary:
An attorney was retained to represent a client in a criminal case. The client paid a retainer to the attorney. The attorney sent a fee agreement, but the client did not return the fee agreement to the attorney. The attorney did not return the unearned portion of the retainer within a reasonable time after terminating the representation.

Mitigating factors include: no prior record of discipline, no dishonest or selfish motive, promptly rectified the consequences of the misconduct, and cooperated with the OPC.

**ADMONITION**

On August 4, 2003, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 8.4(a) (Misconduct), and 8.4(d) (Misconduct) of the Rules of Professional Conduct.

In summary:
An attorney was retained to represent a client to seek a temporary restraining order and a child custody order. The attorney was directed by the court to prepare an order. The attorney did not prepare the order and did not keep the client reasonably informed of the status of the case. The court issued an order to show cause why the case should not be dismissed for lack of prosecution.

Mitigating factors include: no prior record of discipline, lacked dishonest or selfish motive, cooperative attitude toward proceedings, inexperience in the practice of law at the time of misconduct, and mental disability or impairment.

**ADMONITION**

On August 7, 2003, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 5.5(a) (Unauthorized Practice of Law) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
As an inactive member of the Utah State Bar, the attorney was asked by a family member to send a letter to a debtor. The attorney represented to the debtor that the attorney was licensed to practice law in the State of Utah, despite being an inactive member of the Utah State Bar.

Mitigating factors include: absence of prior record of discipline, cooperative attitude toward proceedings, remorse, and inexperience in the practice of law.

**ADMONITION**

On August 25, 2003, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rule 1.15(b) (Safekeeping Property) of the Rules of Professional Conduct.

In summary:
The attorney withdrew from representing a company. The company was a plaintiff in a lawsuit. The defendant in the lawsuit sent a check to the attorney. The attorney did not promptly notify the company upon receiving the check in which the company had

an interest. The attorney's failure to properly manage the client's payment was based on inattention and was not knowingly or intentional. Further, the attorney's action caused little or no injury to the client.

Mitigating factors include: inexperience, no record of discipline, no dishonest or selfish motive, promptly rectified the consequences of the misconduct, cooperated with the OPC.

**SUSPENSION**

On August 20, 2003, the Honorable Frank G. Noel, Third Judicial District Court, entered a Judgment and Order of Suspension, suspending Daniel R. Boone for a period of ninety days. Mr. Boone's suspension is effective September 19, 2003.

In summary:

Mr. Boone was retained to assist a client in recouping a judgment against an ex-spouse who had filed bankruptcy. Mr. Boone thereafter failed to respond to his client's requests for information, failed to communicate with the client, and failed to provide the file to the client. Mr. Boone failed to comply with the Office of Professional Conduct's requests for information.

Mitigating factors include: Mr. Boone asserted physical disability and the Court agreed that this may have accounted for some of the delay in responding to his client. However, the physical disability did not show a causal relationship in Mr. Boone's failure to cooperate with the disciplinary investigation.

Aggravating factors include: prior discipline, multiple offenses, substantial experience as a lawyer, and injury to the legal system.

## *Discipline Corner*

**ADMONITION**

On March 10, 2003, an attorney was admonished by the Chair of the Ethics and Discipline Committee for violation of Rules 1.1 (Competence), 5.5 (Unauthorized Practice of Law), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:

An attorney was retained to represent a client in a divorce matter. The divorce complaint was filed first by the client's spouse in another state. The attorney filed a Notice of Appearance, Memorandum in Support of Special Appearance, and Motion to Dismiss in the other state. The attorney was not licensed to practice law in that state, and did not file a motion to appear pro hac vice. The attorney's Motion to Dismiss was dismissed.

**RESIGNATION WITH DISCIPLINE PENDING**

On March 16, 2003, the Honorable Christine Durham, Chief Justice, Utah Supreme Court, entered an Order Accepting Resignation Pending Discipline concerning Walter Thomas Harris.

In summary:

The Office of Professional Conduct ("OPC") received eight complaints against Mr. Harris which were the basis of a Complaint filed against him in District Court. Mr. Harris submitted a Petition for Resignation with Discipline Pending to the Utah Supreme Court on February 26, 2003 in which he admitted "many of the facts upon which the allegations of misconduct set forth in the Complaint filed against him." Although the facts were not adjudicated, Mr. Harris's default was entered and the matter set for a sanctions hearing because of Mr. Harris's failure to cooperate with discovery


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in violation of a court order compelling his cooperation. Mr. Harris's petition admits that these facts constitute grounds for discipline. The facts established by default are that Mr. Harris failed to communicate with clients, and in some cases, an opposing party and creditors; failed to diligently pursue his clients' cases; accepted fees from clients without performing legal work; failed to refund unearned fees; failed to keep retainers separate from his own funds, and failed to respond to the OPC's requests for information.

**ADMONITION**

On March 27, 2003, an attorney was admonished by the Chair of the Ethics and Discipline Committee for violation of Rules 1.16(d) (Declining or Terminating Representation) and 8.4(a) and (d) (Misconduct) of the Rules of Professional Conduct.

In summary:

The attorney was retained to represent a company in a collection matter. The attorney withdrew from representation a little over a week before a hearing on a summary judgment motion that the attorney had filed for the company. The attorney did not seek a continuance of the hearing. The attorney did not justify the late date of withdrawal.

**ADMONITION**

On March 27, 2003, an attorney was admonished by the Chair of the Ethics and Discipline Committee for violation of Rules 1.5(b) (Fees) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:

An attorney was retained to represent a client in a divorce matter. The attorney failed to communicate the basis for calculating fees when fees exceeded $750. The attorney recalculated fees to bill retroactively on an hourly basis without explaining this in advance to the client.

**PUBLIC REPRIMAND**

On March 31, 2003, Ned P. Siegfried was publicly reprimanded by the Chair of the Ethics and Discipline Committee for violation of Rules 1.7(b) (Conflict of Interest-General Rule), 1.8(e) (Conflict of Interest-Prohibited Transactions), 1.8(j) (Conflict of Interest-Prohibited Transactions), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:

While representing four clients, Mr. Siegfried provided financial assistance in the form of cash advances and paying personal and family expenses, in anticipation of recovering damages in personal injury claims or lawsuits. In one of the cases Mr. Siegfried provided an amount of financial assistance so great as to create a proprietary interest in the matter of the litigation and so great as to materially limit the representation of the client by his own interests.

**PUBLIC REPRIMAND**

On March 25, 2003, the Honorable J. Dennis Frederick, Third Judicial District Court, entered an Order of Discipline: Reprimand, reprimanding Timothy Miguel Willardson, for violation of Rules 3.3(a)(1) (Candor Toward the Tribunal) and 8.4(a) and (d) (Misconduct), Rules of Professional Conduct.

In summary:

Mr. Willardson was retained to represent a client in a lawsuit alleging slander and intentional interference with business relations. During representation of his client, Mr. Willardson made three misrepresentations of fact before the District Court although he had access to information which refuted his representations before he instituted an action. The Supreme Court further found that his actions had violated Rule 11 of the Utah Rules of Civil Procedure.

Aggravating factors include: substantial experience in the practice of law.

Mitigating factors include: absence of prior record of discipline and restitution.

# *Discipline Corner*

**ADMONITION**

On January 16, 2004, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.5(a) (Fees), 1.16(d) (Declining or Terminating Representation), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

An attorney was retained to represent a client in a divorce case. The client paid the attorney a retainer fee. The attorney failed to promptly file the divorce action consistent with the client's instructions, failed to complete the case, and failed to keep the client informed of the status of the case. The attorney also failed to perform meaningful legal services for the retainer fee collected, failed to return the unearned portion of the fee, and abandoned representation of the client.

Mitigating factors include: absence of dishonest or selfish motive, timely good faith effort to make restitution or to rectify the consequences of the misconduct involved, cooperative attitude toward OPC's proceedings, and remorse.

**PUBLIC REPRIMAND**

On February 7, 2004, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court publicly reprimanded James Gilland for violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.6(a) (Confidentiality of Information), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Gilland represented a client in a personal injury claim. Mr. Gilland did not file a complaint or pursue the client's claim before the statute of limitations expired. Mr. Gilland gave the client's file to another attorney to review. The attorney was not Mr. Gilland's partner or otherwise associated with Mr. Gilland's law office. Mr. Gilland failed to consult with the client or obtain the client's consent to reveal information relating to the case before giving the attorney the client's file.

Mitigating factors include: absence of a prior record of discipline and full and free disclosure to the client.

**ADMONITION**

On February 9, 2004, the Honorable Frank G. Noel, Third Judicial District Court, admonished an attorney for violation of Rules 4.2(a) and (d)(2) (Communication with Person Represented by Counsel) and 8.4(a) and (d) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

An attorney represented a client in a case involving custody and visitation issues concerning a minor child. The opposing party was changing counsel. The opposing party's new counsel at the time had not filed a substitution of counsel. The attorney was aware of the opposing party's change of counsel, but contacted the opposing party directly without the opposing party's substitute counsel's consent. The court disqualified the attorney from the case based upon the telephone conversation with the opposing party.

Mitigating factors include: No prior record of discipline, lacked a dishonest of selfish motive, displayed a cooperative attitude toward the proceedings, responded promptly and candidly to the Office of Professional Conduct's inquiries, inexperienced in the practice of law at the time of the misconduct, which contributed to calling the opposing party without consent of the opposing party's counsel and continuing the call after the opposing party stated the opposing party was represented, remorseful concerning the intemperate content of the comments made to the opposing party, and apologized to the opposing party, the opposing counsel, and to the court. The attorney also acknowledged the call was improper.

**ORDER OF SUSPENSION**

On February 12, 2004, the Honorable Christine M. Durham, Chief Justice, Utah Supreme Court, entered an Order of Suspension, suspending Ray Harding, Jr. from the practice of law pending final disposition by the Utah Supreme Court.

**PUBLIC REPRIMAND**

On February 13, 2004, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court publicly reprimanded Brent E. Johns for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 3.2 (Expediting Litigation, 5.3(b) (Responsibilities Regarding Nonlawyer Assistants), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Johns was retained to modify a client's divorce decree. Approximately one month later, Mr. Johns told the client the paperwork was ready to be signed. There were errors on the

paperwork and approximately one month later, the paperwork was ready again for the client's signature. The attorney's office told the client it would be signed by the judge in approximately a week or so. Two months later, the paperwork was signed by the judge. By this time, the client's child had turned eighteen years of age. The Office of Recovery Services ("ORS") informed the client that the client was ineligible for child support for the four month period it took to modify the divorce decree. Mr. Johns sent a letter to the ORS informing them of the error. The client was still not receiving child support six months later. The client was subsequently informed by ORS that the court ordered amount on the modification had been omitted. The ORS informed the client that it had informed Mr. Johns's office of the error five months earlier. The client attempted to contact Mr. Johns, but Mr. Johns did not promptly contact the client. The client was then informed by Mr. Johns's office that Mr. Johns would make the necessary corrections as soon as possible. As of the date of the client's complaint to the OPC, the error had not been corrected.

**PUBLIC REPRIMAND**

On February 20, 2004, the Chair of the Ethics and Discipline Committee of Utah Supreme Court publicly reprimanded Bruce Embry for violation of Rules 1.4(b) (Communication), 1.5(b) (Fees), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Embry was retained to file a Chapter 13 bankruptcy petition. The clients paid a retainer fee exceeding $750. Mr. Embry did not provide a written fee agreement to the clients. The plan was confirmed but a creditor sought relief from the stay. Following a dispute over the valuation of stock, the plan confirmation was overturned by the Bankruptcy Court. Mr. Embry agreed to appeal the dismissal and mailed a notice of appeal to the trustee and clients. However, Mr. Embry required the clients to pre-pay the filing fee for the notice of appeal before he would file it with the court. Mr. Embry delegated to his secretary the responsibility to call the clients to inform them of this requirement. The notice of appeal was never filed in court because Mr. Embry did not ask his clients for the filing fee until after the deadline had expired.

**ADMONITION**

On February 20, 2004, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court admonished an attorney for violation of Rules 1.4(a) (Communication), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

An attorney represented a client to prevent the client's former spouse from leaving the state with their child, or file a petition to modify the divorce decree. The attorney failed to respond to the client's requests for information and failed to explain the strategy issues when the client clearly did not understand the proceedings. The attorney also failed to respond to the Office of Professional Conduct's lawful requests for information.

**ADMONITION**

On February 20, 2004, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court admonished an attorney for violation of Rules 1.3 (Diligence), 1.4(a) and (b) (Communication), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

An attorney represented a client in an uncontested divorce. The attorney did not return the client's calls and failed to keep the client informed about the status of the case. As time went on, the client's informal settlement agreement with the client's spouse was no longer applicable and the divorce became contested. The attorney failed to advise the client of the client's options in the contested divorce. The attorney also failed to respond to the Office of Professional Conduct's lawful requests for information.

**INTERIM SUSPENSION**

On February 25, 2004, the Honorable Lynn W. Davis, Fourth Judicial District Court, entered an Order of Interim Suspension, suspending Richard S. Clark II from the practice of law pending final disposition of the Complaint pending against him.

*In summary:*

On January 24, 2001, the Honorable Donald J. Eyre, Fourth Judicial District Court entered a Sentence, Judgment, Commitment Notice in the case, *State of Utah v. Richard S. Clark.* Mr. Clark was adjudged guilty under the judgment for Driving Under the Influence of Alc/Drugs based on a guilty plea taken November 29, 2000. The interim suspension is based upon this conviction.

# *Discipline Corner*

**ADMONITION**

On June 23, 2004, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court admonished an attorney for violation of Rules 5.3(a) (Responsibilities Regarding Nonlawyer Assistants) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

A client asked the attorney's law firm to prepare and file the paperwork required to establish a charitable 501(c)(3) organization. The attorney did not make reasonable efforts to ensure that the attorney's law firm had in effect measures which would give reasonable assurances that the attorney's paralegals' conduct was compatible with the attorney's professional obligations. The attorney's paralegals accepted payment on behalf of the firm for the client's legal work. The work performed by the attorney's paralegals for the client was not directed or supervised by counsel. As part of the work performed for the client, the attorney's paralegals generated and signed correspondence to the client on firm letterhead in the attorney's name, which was not authorized by supervising attorneys.

**PUBLIC REPRIMAND**

On July 8, 2004, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court publicly reprimanded William J. Middleton for violation of Rules 1.1 (Competence) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Middleton was retained to represent a client with respect to a civil lawsuit. After foreclosure proceedings were initiated against the client, Mr. Middleton advised the client to file for Chapter 7 bankruptcy. Mr. Middleton prepared the petition for Chapter 7 bankruptcy. The client's bankruptcy was filed incorrectly because the pending civil lawsuit and counterclaim were omitted. Several months later Mr. Middleton withdrew from representation with regard to the civil litigation.

**DISBARMENT**

On June 11, 2004, the Honorable Frank G. Noel, Third Judicial District Court Judge entered Findings of Fact, Conclusions of Law, and Order of Disbarment disbarring Francis Angley from the practice of law.

*In summary:*

During 2001-2002, the Office of Professional Conduct ("OPC") received four insufficient funds notices from Mr. Angley's bank concerning his trust account. The OPC sent Notices of Informal Complaint ("NOIC") in each of the matters to Mr. Angley. Mr. Angley responded to the NOICs, but did not fully explain the overdraft or provide documents requested by the OPC.

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In another matter, Mr. Angley was retained to represent a client in a criminal matter. Mr. Angley provided to the client a nonrefundable flat-rate contract, but failed to inform the client that the client would be entitled to a disgorgement of all or part of the nonrefundable flat fee. The client entered into a plea in abeyance upon condition that the client provide a psychiatric evaluation. Mr. Angley obtained the evaluation, but failed to submit it on his client's behalf to the prosecutor. Mr. Angley thereafter failed to communicate with the client. In a second matter, Mr. Angley represented a client in a civil matter while he was on an administrative suspension. In a third matter, Mr. Angley was retained to represent a client in a divorce matter. Mr. Angley failed to inform the client of hearings, he failed to forward discovery requests to the client in a timely manner, he failed to attend two hearings, and he failed to provide the client with an accounting of fees earned.

Mr. Angley failed to comply with an Order of Interim Suspension. Specifically, he failed to comply with Rule 26 of the Rules of Lawyer Discipline and Disability ("RLDD"), which required that Mr. Angley inform clients of his interim suspension and file an affidavit of compliance of Rule 26 RLDD with the OPC. Also, in his application for admission to the Utah State Bar, Mr. Angley failed to disclose that he was cited in two criminal traffic complaints.

Aggravating factors include: Dishonest or selfish motive; pattern of misconduct, including misuse of funds held in trust; multiple offenses; obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary authority, engaging in deceptive practices during the disciplinary process when he made misrepresentations to the Court concerning winding down his practice; refusing to acknowledge the wrongful nature of the misconduct involved; failing to make any effort to rectify the consequences of his misconduct; engaging in illegal conduct in connection with misuse of his trust account; and unsatisfied tax lien against him.

Mitigating factors include: no prior record of discipline; inexperience in the practice of law; and some honest conduct in specific cases.

**RESIGNATION WITH DISCIPLINE PENDING**

On July 19, 2004, the Honorable Christine M. Durham, Chief Justice, Utah Supreme Court, entered an Order Accepting Resignation with Discipline Pending concerning Michael N. Behunin.

*In summary:*

On June 6, 2000, Mr. Behunin entered a guilty plea to Conspiracy to Defraud the Government/Conspiracy to Commit Mail Fraud, Wire Fraud and Conspiracy to Defraud the United States. Mr. Behunin submitted a Petition for Resignation with Discipline Pending to the Utah Supreme Court on June 15, 2004. Mr. Behunin's petition admits that the facts constitute grounds for discipline.

**INTERIM SUSPENSION**

On July 2, 2004, the Honorable J. Dennis Frederick, Third Judicial District Court entered an Order of Interim Suspension, suspending James H. Tily from the practice of law pending final disposition of the Complaint pending against him.

*In summary:*

On March 9, 2004, Tily entered a plea of guilty to robbery, Utah Code § 76-6-301, a second-degree felony. The interim suspension is based upon this conviction.

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# *Discipline Corner*

**PUBLIC REPRIMAND**

On October 22, 2004, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand reprimanding John Bucher for violation of Rules 1.3 (Diligence), 1.4 (Communication), 1.5(b) (Fees), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Bucher was retained to represent a mother and daughter in a Department of Child and Family Services matter and to file a petition to change custody of the mother's grandchild from the mother's daughter to the mother. The mother initially paid Mr. Bucher $500. Mr. Bucher did not file the petition for three months. The mother subsequently paid Mr. Bucher another $400. Mr. Bucher did not communicate in writing the basis and rate of his fee within a reasonable time of the representation to the mother or the mother's daughter. Mr. Bucher did not explain to the mother or the mother's daughter the nature of the legal proceedings or how the proceedings might affect them.

**ADMONITION**

On October 22, 2004, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition admonishing an attorney for violation of Rules 1.2(a) (Scope of Representation), 1.3 (Diligence), 1.4(a) (Communication), 1.5(a) (Fees), 1.16(d) (Declining or Terminating Representation), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

An attorney was retained to seek a reduction of felony convictions. The attorney was paid $1500. The attorney performed no meaningful work on behalf of the client. The attorney failed to keep the client reasonably informed of the status of the case and did not promptly comply with reasonable requests for information. The attorney abandoned the representation without providing notice to the client, and without returning the unearned retainer.

Mitigating factors include: The client is willing to have the attorney complete the matter. The attorney was very candid with the Screening Panel. The attorney is receiving professional help for depression. The attorney is now in an office with other lawyers and support staff.

**PUBLIC REPRIMAND**

On October 22, 2004, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand reprimanding John Bucher for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Bucher was retained to represent a client in a misdemeanor

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case. Mr. Bucher did not find out the nature of the hearing he needed to attend. Mr. Bucher thought it was a sentencing, but it was a trial. Mr. Bucher filed a motion to continue the trial, but did not file the correct paperwork with the court for the motion to continue, and did not attend the trial. The client was found guilty and a sentencing hearing was scheduled. Mr. Bucher attended the sentencing hearing, and after the client was sentenced, informed the client he would assist with an appeal, but failed to do so.

**PUBLIC REPRIMAND**

On October 22, 2004, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand reprimanding John Bucher for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.5(b) (Fees), 1.16(a)(3) (Declining or Terminating Representation), and Rule 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Bucher represented a client in a criminal matter. The client paid Mr. Bucher $10,000. Mr. Bucher failed to communicate the basis of his fee in writing within a reasonable time after commencing representation. Mr. Bucher did not properly handle the case and did not keep the client informed of the status of the case. Mr. Bucher did not explain the matter to the extent reasonably necessary to enable the client to make informed decisions regarding representation. The client terminated the representation by letter, but Mr. Bucher delayed in terminating his representation of the client. Mr. Bucher refunded $1500 to the client.

**ADMONITION**

On November 8, 2004, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition admonishing an attorney for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 5.5(a) (Unauthorized Practice of Law), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

An attorney was retained to represent a client's grandchild in a criminal matter. The attorney did not appear for one of the court hearings in the case. The attorney did not return telephone calls requesting information about the case. In another matter, the attorney received a certified letter from the Board of Continuing Legal Education stating that the attorney had not demonstrated compliance with the Mandatory Continuing Legal Education requirements. The letter informed the attorney that if the attorney did not demonstrate compliance within thirty days a petition for suspension from the practice of law would be forwarded to the Utah Supreme Court. The attorney did not comply and was administratively suspended. Thereafter, the attorney appeared in court on behalf of three different clients.

Mitigating factors include: Absence of prior record of discipline and cooperative attitude toward the disciplinary proceedings. The attorney also agreed to participate in binding fee arbitration through the Utah State Bar's Fee Arbitration Program.


# Lawyers Helping Lawyers 4th Annual Ethics Seminar

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# *Discipline Corner*

**PUBLIC REPRIMAND**

On December 31, 2003, the Honorable Roger S. Dutson, Second Judicial District Court, publicly reprimanded Samuel J. Conklin for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.5(b) and (c) (Fees), 1.15(b) (Safekeeping Property), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Conklin was retained to represent a client in an employment matter. The time spent by Mr. Conklin on the client's case was not accurately reflected on the client's bill. Mr. Conklin admitted to the client that the work was overcharged, but he did not have time to look into the matter. Mr. Conklin did not respond to the client's inquiries concerning the bill and failed to promptly deliver the settlement funds to the client. Mr. Conklin also failed to respond to the Office of Professional Conduct's ("OPC's") requests for information.

In another matter, Mr. Conklin was retained to negotiate a settlement with a title company. The client was the spokesperson for the client's family. There was no written communication regarding the basis and rate of Mr. Conklin's fee, although it was reasonably foreseeable that the attorney's fees would exceed $750. The case was settled and Mr. Conklin received the settlement check. The client inquired as to why the settlement check had not been forwarded to the client. Mr. Conklin did not promptly respond to the client and later claimed that the settlement check had not been forwarded to the client because it was being held against an outstanding debt owed to Mr. Conklin by the client's sibling for services rendered in another matter. Mr. Conklin charged the client a contingent fee based upon a percentage of the settlement amount, without a written statement. Mr. Conklin sent a letter to the OPC concerning health problems, but failed to respond to the OPC's requests for information.

Mitigating factors include: Mr. Conklin experienced personal problems during the period relevant to the complaints against him.

Aggravating factors include: Mr. Conklin has a prior record of discipline; there are multiple offenses; and Mr. Conklin has substantial experience in the practice of law.

**RECIPROCAL DISCIPLINE**

On March 15, 2004, the Honorable Ernie Jones, Second Judicial District Court, entered Findings of Fact, Conclusions of Law, and Order of Discipline: Probation, placing Mark H. Gould on probation for a period of one year.

*In summary:*

In a disciplinary order of the United States Tenth Circuit Court of Appeals ("the Court") Mr. Gould was ordered to either pay a $100 sanction or resign from the bar. Mr. Gould did not submit the sanction amount to the Court, nor did he tender a letter of resignation. The court issued a show cause order, but Mr. Gould did not respond. The Court then concluded that Mr. Gould should be disbarred. As a result of this, the United States District Court of Utah ("U.S. District Court") issued an order to show cause for reciprocal discipline. Mr. Gould responded. The U.S. District Court found that there was no evidence of misconduct involving fraud, dishonesty, or moral turpitude, and in consideration of Mr. Gould's mitigation of a psychological condition, the U.S. District Court concluded that Mr. Gould should be placed on one year probation and ordered not to commit any further violation of the Rules of Professional Responsibility or engage in other unprofessional conduct.

Mitigating factors include: Mr. Gould's personal and emotional problems are causally connected to the misconduct, other penalties and sanctions, and cooperative attitude toward proceedings.

**ADMONITION**

On March 16, 2004, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court admonished an attorney for violation of Rules 8.1 (Bar Admission and Disciplinary Matters) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

An attorney was retained to represent a client in a divorce modification. A trial was held and the court ordered opposing counsel to prepare the Findings of Fact, Conclusions of Law, and Order ("findings"), but opposing counsel did not do so. Several months later the attorney drafted and submitted findings to the court. The findings were entered by the court. Therefore, the opposing counsel also filed findings with the court. The two findings were inadvertently signed by the court. The attorney was still counsel of record at the time the two sets of findings were entered and a letter reflects that opposing counsel notified the attorney of the two signed findings. In response to requests for information from the bar and in initial testimony at the disciplinary hearing, the attorney denied knowledge of the other order, until the Bar complaint was received by the attorney. However, in subsequent testimony from the attorney at the disciplinary hearing, the attorney admitted to a conversation with the complainant prior to the filing of the Bar complaint, "Do you want me to take care of this other order?"

**ADMONITION**

On March 22, 2004, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court admonished an attorney for violation of Rules 1.1 (Competence) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

An attorney was retained to represent a client charged with serious multiple felonies. The attorney was also instructed to prepare a counterclaim in the client's civil case. The client retained the attorney's services in the criminal and civil matters concurrently. The client claimed that evidence of fraud on the part of the opposing party in the civil case was provided to the attorney, but the attorney failed to amend the client's civil pleadings to include a requested cause of action for fraud.

**SUSPENSION**

On March 29, 2004, the Honorable David L. Mower, Sixth Judicial District Court suspended Jeffrey P. Gleave from the practice of law for a period of three years for violation of 1.1 (Competence), 1.3 (Diligence), 1.4 (Communication), 1.16(d) (Declining or Termination Representation), 8.1(b) (Bar Admission and Disciplinary Matters), 8.4(a), (b), and (c) (Misconduct) of the Rules of Professional Conduct. On March 19, 2002 the Court had previously entered an order placing Mr. Gleave on interim suspension pending final disposition of this disciplinary matter. The effective of date of the Court's Order of Suspension is therefore March 19, 2002.

*In summary:*

Mr. Gleave had three client Bar complaints, where the Court found that Mr. Gleave had violated the Rules of Professional Conduct Rules 1.1 (Competence), 1.3 (Diligence), 1.4 (Communication), 1.16 (Declining or Terminating Representation), 8.1 (b) (Bar Admission and Disciplinary Matters), 8.4(c) (Misconduct). However, the most serious misconduct that the Court found was with respect to Mr. Gleave's criminal convictions leading to a violation of Rule 8.4(b) of the Rules of Professional Conduct. Mr. Gleave was convicted of Damage To Or Interruption Of A Communication Device, a Class B Misdemeanor, Assault, Domestic Violence, a Class A Misdemeanor, Child Abuse, a Class A Misdemeanor, Aggravated Assault Against A Peace Officer, a Third Degree Felony, and Possession Of A Controlled Substance, a Third Degree Felony. On February 23, 2001, Mr. Gleave was sentenced to one year in the Sevier County Jail with credit for time served. The statutory sentence for the conviction of each count was stayed with a thirty-six month probation period and numerous probationary requirements.

Mitigating factors include: Mr. Gleave is affected by a mental disability or impairment, and that mental disability or impairment causally contributed to his misconduct.

**RESIGNATION WITH DISCIPLINE PENDING**

On April 18, 2004, the Honorable Christine M. Durham, Chief Justice, Utah Supreme Court, entered an Order Accepting Resignation with Discipline Pending concerning Richard K. Crandall.

*In summary:*

The Office of Professional Conduct ("OPC") received four complaints against Mr. Crandall. Mr. Crandall submitted a Petition for Resignation with Discipline Pending to the Utah Supreme Court on March 18, 2004. Mr. Crandall's petition admits that the facts constitute grounds for discipline.

The OPC filed a formal complaint in the Third District Judicial Court on September 1, 1998 concerning two of the complaints. On March 21, 2003, the Third District Judicial Court entered an Order for Sanctions as a result of Mr. Crandall's failure to comply with discovery. In his Petition for Resignation with Discipline Pending, Mr. Crandall admits to the merits of the earlier default against him and also admits to the merits of the two pending complaints against him. In one pending complaint, Mr. Crandall was retained by a company, accepted fees, but did no work on behalf of the company. Mr. Crandall misrepresented the status of the case, failed to communicate with the company, and did not return the unearned portion of the fees. Mr. Crandall also failed to respond to the OPC's requests for information. In the other pending complaint, Mr. Crandall was retained by a client and the client's colleague to file a claim against their former employer. Although an action was filed, the case was dismissed for failure to prosecute. Mr. Crandall misrepresented the status of the case, as well as his actions in pursuing it, and thereafter failed to communicate with his clients.

**ADMONITION**

On May 14, 2004, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court admonished an attorney for violation of Rules 1.5(b) (Fees), 8.1 (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

An attorney was retained to represent a client in a criminal case. The client paid the attorney a fixed fee for the representation. The client terminated the services of the attorney because they could not agree on an appropriate defense strategy. The client requested an itemized billing of services and requested a refund of the unearned portion of the fee. The attorney did not provide the client with a written fee agreement that communicated the basis of the fee and failed to indicate how a refund, if any, might be calculated. The attorney also failed to respond to the OPC's lawful

requests for information by failing to disclose a fact necessary to correct a misapprehension, and failed to provide an adequate explanation of the accounting and billing statement.

**PUBLIC REPRIMAND**

On May 30, 2004, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court publicly reprimanded Sanford L. Beshear for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.16(a)(3) and (d) (Declining or Terminating Representation), 8.1 (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Beshear was retained to represent a client in a personal injury claim. Mr. Beshear did little or no work on the case. Mr. Beshear did not return most of his client's telephone calls and did not keep the client informed of the status of the case. Approximately two weeks before the expiration of the statute of limitations in the case, the client terminated Mr. Beshear's services and retained new counsel. The client's new counsel attempted to call Mr. Beshear to inform him his services had been terminated and to obtain the client's file. Mr. Beshear failed to forward the file to the client's new counsel. Mr. Beshear then proceeded to file a complaint in court on behalf of the client when he knew, or should have known, that his services had been terminated. Mr. Beshear also failed to respond to the OPC's lawful requests for information.

**PUBLIC REPRIMAND**

On May 30, 2004, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court publicly reprimanded Sanford L. Beshear for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Beshear was retained to represent a client in a personal injury case. There were long periods, even years, when Mr. Beshear provided no real or substantial work on the client's case. Mr. Beshear failed to respond to the client's requests for information in a reasonable and timely manner.


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**ADMONITION**

On May 25, 2004, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court admonished an attorney for violation of Rules 1.2(a) (Scope of Representation), 1.4 (Communication), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

An attorney was retained to represent a client in a divorce case. On the day of trial, the Court was informed that it appeared the parties had reached a settlement, and opposing counsel was directed to prepare the stipulation for submission to the Court. The attorney failed to discuss the options in the case with the client after settlement stalled, and the Court issued an Order to Show Cause why the case should not be dismissed for failure to prosecute. The case was dismissed for lack of prosecution when the attorney and opposing counsel did not appear. The dismissal of the divorce case resulted in the dismissal of a protective order restricting the opposing party's contact with the children. The attorney discussed the dismissal of the case with opposing counsel and agreed to take no steps to reinstate the case until the parties were able to agree to a written settlement. The attorney did not consult with the client about this agreement. The attorney did not inform the client about the dismissal of the divorce and possible effects the dismissal and agreement could have on the status of the protective order.

**INTERIM SUSPENSION**

On May 14, 2004, the Honorable Robert K. Hilder, Third Judicial District Court entered an Order of Interim Suspension, suspending Carlos Chavez from the practice of law pending final disposition of the Complaint pending against him.

*In summary:*

Mr. Chavez entered an appearance in a criminal case before the West Valley City Justice Court, but failed to appear for pre-trial hearing, did not return the Court's telephone calls, and to a letter requiring him to show cause why he failed to appear. The Court set two other hearing dates, but Mr. Chavez failed to appear. During a show cause hearing, Mr. Chavez admitted three counts of contempt of court, and on April 18, 2004, the Justice Court entered Findings of Fact and Conclusions of Law Re: Contempt of Court concerning Mr. Chavez's conduct.


## United States Supreme Court Justice Stephen G. Breyer to address the Utah State Bar

**July 21, 2004 • 12:00–1:30 pm**

**City Center Marriott**
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***U.S. Supreme Court Justice Stephen G. Breyer*** *is a graduate of Stanford University, Oxford University (Magdalen College), and Harvard Law School. During the United States Supreme Court's 1964 Term he was law clerk to Justice Arthur J. Goldberg. In 1965–67 he worked as Special Assistant to the head of the Justice Department's Antitrust Division. From 1967 through 1980 he taught at Harvard University, as Professor of Law and at Harvard's Kennedy School of Government. He also worked as an Assistant Watergate Special Prosecutor (1973), as a Special Counsel to the Senate Judiciary Committee (1975), and as the Judiciary Committee's Chief Counsel (1979–80). In 1980 he was appointed Judge of the United States Court of Appeals for the First Circuit. He became the Circuit's Chief Judge in 1990. He has also served as a Member of the Judicial Conference of the United States and of the United States Sentencing Commission. He has written books and articles in the field of administrative law and government regulation. President Clinton nominated him as an Associate Justice, and he took office in August 1994.*

**To reserve your place visit www.utahbar.org/cle or call 257-5515**

# *Discipline Corner*

**ADMONITION**

On December 15, 2003, an attorney was admonished by the Honorable Timothy R. Hanson, Third Judicial District Court for violation of the Rules of Professional Conduct. (The Order was not explicit about which Rule was violated).

In summary:

The attorney represented a plaintiff in a civil matter. The defendant in the case intended to call the plaintiff's attorney as a fact witness at trial, and notified the plaintiff's attorney shortly before trial. A few days prior to the scheduled trial, the plaintiff's attorney and the defendant's attorney filed a joint motion for continuance of the trial date, based in part on the grounds that the defendant intended to call the plaintiff's attorney as a witness. The joint motion required the plaintiff's attorney to withdraw from representation, requiring the plaintiff to obtain new counsel. The court granted the joint motion to continue the trial date. Thereafter, the plaintiff's attorney did not withdraw, but rather filed a certificate of readiness for trial. A second trial date was scheduled, and again, it became apparent that the plaintiff's attorney would be a witness at trial. The plaintiff's attorney therefore sought another postponement, which the trial court granted. The court entered an order allowing withdrawal. Thereafter, the plaintiff's attorney continued to act as counsel for the plaintiff until another attorney filed a formal appearance on behalf of the plaintiff.

Aggravating factors include: prior sanctions.

Mitigating factors include: the rule requiring withdrawal is not explicit concerning the time for withdrawal; the attorney was continuing to assist his client.

**ADMONITION**

On January 5, 2004, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.3 (Diligence), 1.5(a) and (b) (Fees), 1.15(b) (Safekeeping Property), and 8.4(a) and (c) (Misconduct) of the Rules of Professional Conduct.

In summary:

An attorney was retained to file a writ of habeas corpus on behalf of the clients' adult child. The clients paid the attorney more than $750. The attorney did not provide a written fee agreement outlining the basis and rate of his fee. The attorney failed to send billing statements to the clients. The attorney failed to take steps to advance the petition. The attorney gave the clients fictitious court dates and later told the clients the court dates were canceled. The attorney failed to file an appearance in the case and the court did not know the attorney was involved. The attorney did not make corrections to the petition as directed by the court.

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EQUAL HOUSING LENDER

**PUBLIC REPRIMAND**

On January 5, 2004, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court publicly reprimanded Craig R. Chlarson for violation of Rules 8.4(a), (b), and (c) (Misconduct) of the Rules of Professional Conduct.

In summary:
Mr. Chlarson obtained unemployment benefits from the State of Utah's Department of Workforce Services, to which he was not entitled, while he was employed and earning wages. The funds went principally to Mr. Chlarson's ex-wife, but Mr. Chlarson endorsed and cashed some of the benefit checks issued. On March 17, 2003, Mr. Chlarson entered a plea in abeyance to one count of Unemployment Compensation – False Statement, a Second Degree Felony.

Mitigating factors over the objections of the Office of Professional Conduct include: the wrongdoing is unrelated to the practice of law; financial distress; the funds primarily went to Mr. Chlarson's ex-wife; his inactive status with the Bar; his entry of a plea in abeyance (which will result in dismissal of the criminal proceedings); payment of restitution, and community service; and his willingness to express regret and accept responsibility.

**ADMONITION**

On January 5, 2004, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.4 (Communication), 3.1 (Meritorious Claims and Contentions), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
An attorney was retained to represent a client in a child visitation case. The attorney failed to adequately communicate the cost of pursuing the case to the client. The attorney did not send a billing statement to the client until a Bar complaint was filed. The billing statement was inaccurate because the attorney did not keep accurate time records. The attorney filed a collection action against the client although the attorney agreed to do the work for less than the amount of the collection action.

**ADMONITION**

On January 5, 2004, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 5.5(a) (Unauthorized Practice of Law) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
An attorney was suspended from the practice of law for non-payment of Bar dues. While on suspension for non-payment of fees, the attorney filed two response briefs in two different cases pending before the court.

Mitigating factors include: absence of prior record of discipline and cooperative attitude toward the Office of Professional Conduct's proceedings.

**ADMONITION**

On January 7, 2004, an attorney was admonished by the Chair of the Ethics and Discipline Committee of the Utah Supreme Court for violation of Rules 1.1 (Competence) and 8.4 (Misconduct) of the Rules of Professional Conduct.

In summary:
An attorney was retained to represent a client in a disability compensation claim. Two days before the hearing, the attorney requested that the hearing be rescheduled because the witnesses the attorney had subpoenaed were out of town. An administrative law judge ("ALJ") informed the attorney by faxed letter that if proof of service of the subpoenas were provided, the ALJ would decide the issue of continuance at the hearing. Approximately one hour after the ALJ faxed the letter to the attorney, the attorney called another administrative law judge to sign subpoenas for the witnesses. The attorney had subpoenaed the witnesses pursuant to district court procedure, and not in accordance with administrative procedure.

**PUBLIC REPRIMAND**

On January 14, 2004, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court publicly reprimanded Brian C. Harrison for violation of Rules 1.3 (Diligence), 1.4(a) and (b) (Communication), 1.5(a) and (b) (Fees), 1.16(a) (Declining or Terminating Representation), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

In summary:
Mr. Harrison was retained to enforce two private agreements reached between his client and the client's former spouse. Mr. Harrison took six months to appropriately respond to the client, and then informed the client that there were no grounds to enforce the agreements. Mr. Harrison also failed to follow up on a request from the client to secure the signature of the client's former spouse to sell their trailer. Mr. Harrison failed to return the client's telephone calls or respond to the client's letters. Mr. Harrison's fee was excessive in light of what was accomplished and the level of communication provided. Mr. Harrison failed to provide a written fee agreement although the retainer he requested exceeded $750. Mr. Harrison unreasonably delayed in providing the client with a billing statement, and did not provide sufficient information to communicate the basis of the fee. Mr. Harrison failed to withdraw from the representation until five months after his services were terminated.

# *Discipline Corner*

**PUBLIC REPRIMAND**

On December 31, 2003, the Honorable Roger S. Dutson, Second Judicial District Court, publicly reprimanded Samuel J. Conklin for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.5(b) and (c) (Fees), 1.15(b) (Safekeeping Property), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Conklin was retained to represent a client in an employment matter. The time spent by Mr. Conklin on the client's case was not accurately reflected on the client's bill. Mr. Conklin admitted to the client that the work was over-charged, but he did not have time to look into the matter. Mr. Conklin did not respond to the client's inquiries concerning the bill and failed to promptly deliver the settlement funds to the client. Mr. Conklin also failed to respond to the Office of Professional Conduct's ("OPC's") requests for information.

In another matter, Mr. Conklin was retained to negotiate a settlement with a title company. The client was the spokesperson for the client's family. There was no written communication regarding the basis and rate of Mr. Conklin's fee, although it was reasonably foreseeable that the attorney's fees would exceed $750. The case was settled and Mr. Conklin received the settlement check. The client inquired as to why the settlement check had not been forwarded to the client. Mr. Conklin did not promptly respond to the client and later claimed that the settlement check had not been forwarded to the client because it was being held against an outstanding debt owed to Mr. Conklin by the client's sibling for services rendered in another matter. Mr. Conklin charged the client a contingent fee based upon a percentage of the settlement amount, without a written statement. Mr. Conklin sent a letter to the OPC concerning health problems, but failed to respond to the OPC's requests for information.

Mitigating factors include: Mr. Conklin experienced personal problems during the period relevant to the complaints against him.

Aggravating factors include: Mr. Conklin has a prior record of discipline; there are multiple offenses; and Mr. Conklin has substantial experience in the practice of law.

**RECIPROCAL DISCIPLINE**

On March 15, 2004, the Honorable Ernie Jones, Second Judicial District Court, entered Findings of Fact, Conclusions of Law, and Order of Discipline: Probation, placing Mark H. Gould on probation for a period of one year.

*In summary:*

In a disciplinary order of the United States Tenth Circuit Court of Appeals ("the Court") Mr. Gould was ordered to either pay a $100 sanction or resign from the Bar. Mr. Gould did not submit the sanction amount to the Court, nor did he tender a letter of resignation. The court issued a show cause order, but Mr. Gould did not respond. The Court then concluded that Mr. Gould should be disbarred. As a result of this, the United States District Court of Utah ("U.S. District Court") issued an order to show cause for reciprocal discipline. Mr. Gould responded. The U.S. District Court found that there was no evidence of misconduct involving fraud, dishonesty, or moral turpitude, and in consideration of Mr. Gould's mitigation of a psychological condition, the U.S. District Court concluded that Mr. Gould should be placed on one year of probation and ordered not to commit any further violation of the Rules of Professional Responsibility or engage in other unprofessional conduct.

Mitigating factors include: Mr. Gould's personal and emotional problems are causally connected to the misconduct, other penalties and sanctions, and cooperative attitude toward proceedings.

**ADMONITION**

On March 16, 2004, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court admonished an attorney for violation of Rules 8.1 (Bar Admission and Disciplinary Matters) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

An attorney was retained to represent a client in a divorce modification. A trial was held and the court ordered opposing counsel to prepare the Findings of Fact, Conclusions of Law, and Order ("findings"), but opposing counsel did not do so. Several months later the attorney drafted and submitted findings to the court. The findings were entered by the court. Therefore, the opposing counsel also filed findings with the court. The two findings were inadvertently signed by the court. The attorney was still counsel of record at the time the two sets of findings were entered and a letter reflects that opposing counsel notified the attorney of the two signed findings. In response to requests for information from the Bar and in initial testimony at the disciplinary hearing, the attorney denied knowledge of the other order, until the Bar complaint was received by the attorney. However, in subsequent testimony from the attorney at the disciplinary hearing, the attorney admitted to a conversation with the complainant prior to the filing of the Bar complaint "Do you want me to take care of this other order?"

**ADMONITION**

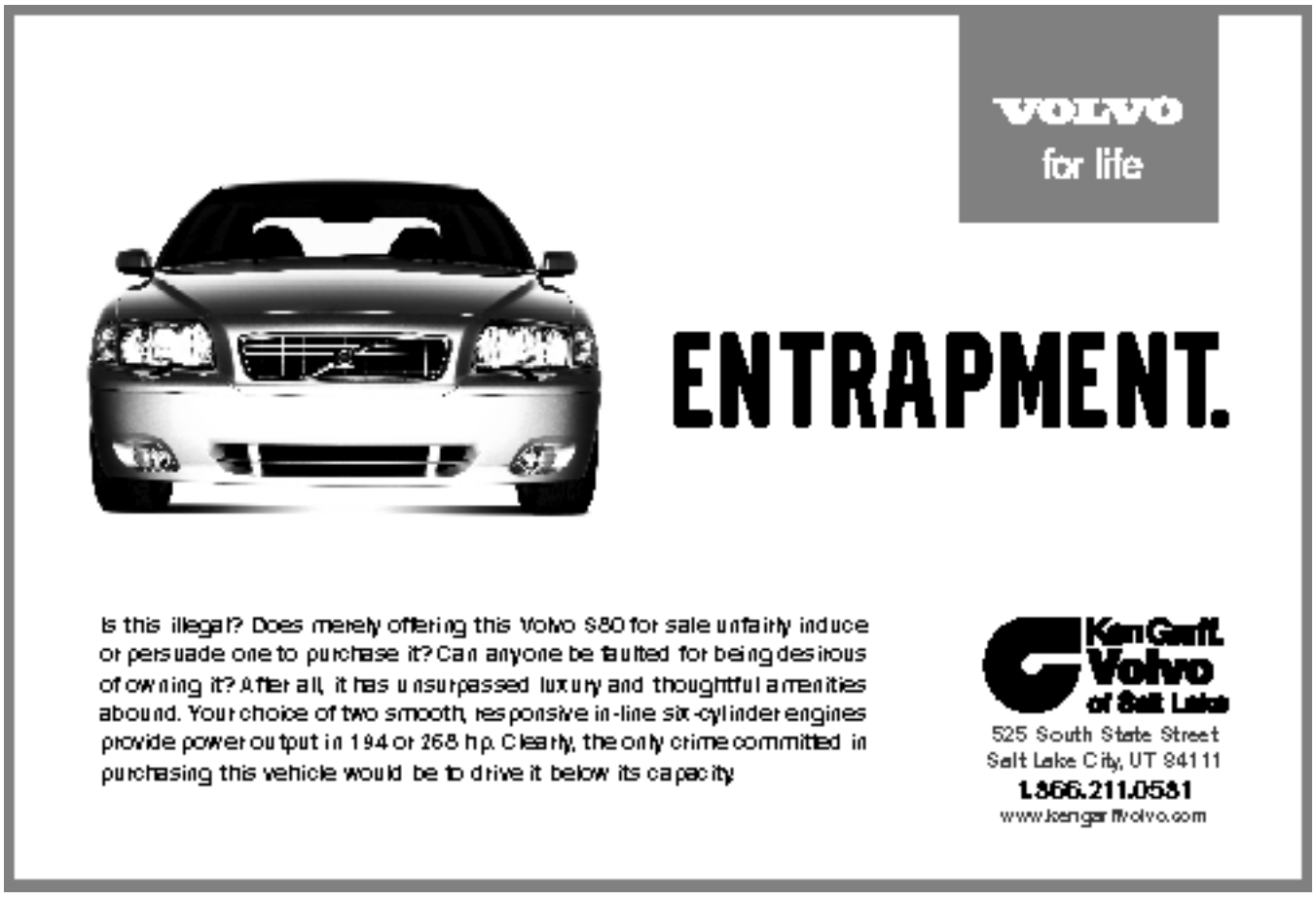
On March 22, 2004, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court admonished an attorney for violation of Rules 1.1 (Competence) and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
An attorney was retained to represent a client charged with serious multiple felonies. The attorney was also instructed to prepare a counterclaim in the client's civil case. The client retained the attorney's services in the criminal and civil matters concurrently. The client claimed that evidence of fraud on the part of the opposing party in the civil case was provided to the attorney, but the attorney failed to amend the client's civil pleadings to include a requested cause of action for fraud.

**SUSPENSION**
On March 29, 2004, the Honorable David L. Mower, Sixth Judicial District Court suspended Jeffrey P. Gleave from the practice of law for a period of three years for violation of 1.1 (Competence), 1.3 (Diligence), 1.4 (Communication), 1.16(d) (Declining or Termination Representation), 8.1(b) (Bar Admission and Disciplinary Matters), 8.4(a), (b), and (c) (Misconduct) of the Rules of Professional Conduct. On March 19, 2002 the Court had previously entered an order placing Mr. Gleave on interim suspension pending final disposition of this disciplinary matter. The effective of date of the Court's Order of Suspension is therefore March 19, 2002.

*In summary:*
Mr. Gleave had three client Bar complaints, where the Court found that Mr. Gleave violated Rules 1.1 (Competence), 1.3 (Diligence), 1.4 (Communication), 1.16 (Declining or Terminating Representation), 8.1 (b) (Bar Admission and Disciplinary Matters), 8.4(c) (Misconduct) of the Rules of Professional Conduct. However, the most serious misconduct that the Court found was with respect to Mr. Gleave's criminal convictions leading to a violation of Rule 8.4(b) of the Rules of Professional Conduct. Mr. Gleave was convicted of Damage To Or Interruption Of A Communication Device, a Class B Misdemeanor, Assault, Domestic Violence, a Class A Misdemeanor, Child Abuse, a Class A Misdemeanor, Aggravated Assault Against A Peace Officer, a Third Degree Felony, and Possession Of A Controlled Substance, a Third Degree Felony. On February 23, 2001, Mr. Gleave was sentenced to one year in the Sevier County Jail with credit for time served. The statutory sentence for the conviction of each count was stayed with a thirty-six month probation period and numerous probationary requirements.

Mitigating factors include: Mr. Gleave is affected by a mental disability or impairment, and that mental disability or impairment causally contributed to his misconduct.

# *Discipline Corner*

**DISBARMENT**

On September 8, 2004, the Honorable Joseph C. Fratto, Third Judicial District Court, entered an Order of Discipline: Disbarment, disbarring Jerry Crist from the practice of law in the State of Utah pursuant to Rule 22 (Reciprocal Discipline) of the Rules of Lawyer Discipline and Disability.

*In summary:*

Mr. Crist was disbarred by the Supreme Court of Colorado for abandoning his law practice and his clients, and for his unlawful use of methamphetamine. Mr. Crist missed numerous pretrial conferences, motions hearings, trial dates, and other client appointments in criminal and civil matters.

**ADMONITION**

On September 16, 2004, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court admonished an attorney for violation of Rules 1.5(a) (Fees), 1.16(d) (Declining or Terminating Representation), and 8.4(a) and (c) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

An attorney was retained by a client to represent the client's interests in the client's deceased spouse's estate. The attorney indicated to the client that the deceased spouse's children should retain an attorney to represent the children, because the attorney intended to sue the children. The client's parent informed the attorney not to sue the children. The client terminated the attorney's services, but the attorney would not cease the representation. The attorney attempted to have the client sign a contract, but the client would not sign it. The attorney billed the client for services after termination of the representation, but later claimed it was an error. The attorney filed a motion in court in an attempt to avoid termination of representation from the case. The attorney finally withdrew from the case.

**SUSPENSION**

On September 22, 2004, the Honorable Frank G. Noel, Third Judicial District Court, entered an Order of Discipline: Suspension, suspending Charles C. Brown from the practice of law for six

months and one day for violation of Rules 1.7 (Conflict of Interest: General Rule), 1.8(a) (Conflict of Interest: Prohibited Transactions), 1.9(a) (Conflict of Interest: Former Client), and 8.4(a) (Misconduct), Rules of Professional Conduct. The effective date of suspension is November 24, 1998.

*In summary:*
On November 24, 1998, Mr. Brown was voluntarily placed on interim suspension pursuant to Rule 18 of the Rules of Lawyer Discipline and Disability.

Mr. Brown represented a client who held a business interest in a company while simultaneously serving on the board of directors, holding an ownership interest, and entering into an employment agreement with the company. In an action brought against the client, Mr. Brown's law firm also represented the opposing party until the court prohibited that representation.

**PUBLIC REPRIMAND**
On September 23, 2004, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand reprimanding Victor Lawrence for violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.4(a) (Communication), 3.3 (Candor Toward the Tribunal), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Lawrence represented debtors in a bankruptcy matter. In a ruling, the bankruptcy court stated that the debtors did not give the notice required to the creditors. Mr. Lawrence failed to list all creditors on the court's mailing matrix of interested parties, even after receiving the trustee's objection. Mr. Lawrence's lack of competence denied the debtors their day in court. Mr. Lawrence also failed to pursue with the bankruptcy court issues of allowances and reimbursements due to the debtors and a creditor, and failed to communicate with the debtors regarding management of the cash collateral necessary to continue the debtors' business. The court stated that Mr. Lawrence admitted to filing a false certificate of mailing with the court regarding the creditors.

**RESIGNATION WITH DISCIPLINE PENDING**
On September 27, 2004, the Honorable Christine M. Durham, Chief Justice, Utah Supreme Court, entered an Order Accepting Resignation with Discipline Pending concerning Todd R. Cannon.

*In summary:*
On March 18, 2004, Mr. Cannon entered a guilty plea to a charge of Conspiracy to Commit Offense or Defraud the United States. Mr. Cannon submitted a Petition for Resignation with Discipline Pending to the Utah Supreme Court on August 18, 2004. Mr. Cannon's petition admits that the facts underlying his guilty plea constitute grounds for discipline.

Mr. Cannon participated in an ongoing conspiracy to promote and sell a fraudulent trust scheme designed to evade federal income taxes, defeat the lawful functioning of the Internal Revenue Service, and to fraudulently obtain money or property from United States citizens by use of the mails and wires.

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# *Attorney Discipline*

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**ADMONITION**

On June 1, 2012, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.1 (Competence), 1.3 (Diligence), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

While representing a client on a criminal matter, the attorney failed to comply with the Appellate Court's rules and procedures in the appeal of the client's case resulting in a failure to provide competent representation to the client. While the attorney's failures did not result in injury to the client's legal interests, such failures did expose the client to potential injury and did cause harm to the public, the legal system and the profession. The attorney acted negligently and the repeated failures in connection with the appeal displayed a lack of reasonable diligence and promptness in representing the client.

**ADMONITION**

On June 7, 2012, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.15(a) (Safekeeping Property), 1.15(b) (Safekeeping Property), 1.15(c) (Safekeeping Property), 5.3(b) (Responsibilities Regarding Nonlawyer Assistants), 5.3(c) (Responsibilities Regarding Nonlawyer Assistants), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

The attorney deposited unearned fees into his general operating account. The attorney did not maintain a ledger for his attorney trust account. The attorney neglected to review his firm's accounting records. The attorney kept excess earned funds in his trust account. The attorney provided inadequate instructions to the nonlawyer staff regarding the obligation to safekeep client funds and property; the attorney simply told the assistant the account could never be overdrawn.

**ADMONITION**

On June 21, 2012, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.2(c) (Scope of Representation and Allocation of Authority Between Client and Lawyer), 1.4(a)(2),(3) and (4) (Communication), 1.5(b) (Fees), 5.3(a) (Responsibilities Regarding Nonlawyer Assistants), 5.3(b) (Responsibilities Regarding Nonlawyer Assistants), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

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*In summary:*
The fee agreement provided that the attorney "agreed to render legal service for all aspects of the bankruptcy case, including certain listed tasks." The attorney claims that practitioners understand that a "bankruptcy case" only extends through confirmation. The attorney did not timely explain his understanding of the limited nature of his representation to the client and failed to properly limit the scope of his representation to exclude seeking sanctions. The client raised a mortgage company's collections contacts with the attorney's assistant early in the relationship. The assistant told the client in several conversations to document and inform the attorney's office of all contacts with the mortgage company so the attorney could pursue sanctions on the client's behalf. The client repeatedly provided responsive information to the assistant, who told the client the assistant was maintaining a file so that the attorney could file for sanctions. The client repeatedly asked the attorney's office over a period of almost two years to seek sanctions, not only for monetary recovery, but also to stop the harassment by the mortgage company. However, it was not until almost two years later that the assistant informed the client that the attorney would not seek sanctions against the mortgage company because of doubtful collectability of any judgment. A disagreement ultimately arose between the attorney and the client as to sanctions. The attorney did not consult with the client in a timely manner to resolve the disagreement over pursuit of sanctions.

The attorney's nonlawyer assistants had most of the contact with the client, including the preparation and review of legal documents, with only limited contact between the attorney and the client. There was little or no injury from the attorney's violations.

*Mitigating factors:*
Absence of prior record or discipline; absence of a dishonest or selfish motive; difficulties of a small practice representing the general public at reasonable, accessible rates.

*Aggravating factor:*
Committed multiple offenses with regard to the clients; refused to acknowledge the wrongful nature of his misconduct, either to the client or the disciplinary authority; restrictions against nonlawyer assistants of practicing law; substantial experience in the practice of law.

**PUBLIC REPRIMAND**
On June 7, 2012, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against C. Danny Frazier, for violation of Rules 1.3 (Diligence), 3.2 (Expediting Litigation), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Frazier represented a client in a criminal matter. Mr. Frazier failed to appear at a jury trial scheduled in the matter. Mr. Frazier represented another client in a criminal matter and failed to appear at a pre-trial conference in that matter. Mr. Frazier failed to act with reasonable diligence and failed to act with commitment and dedication to the interests of his clients by failing to appear at a jury trial in one matter and a pre-trial conference in another. Mr. Frazier's failure to appear at the trial and pretrial conference caused injury to the public, the legal system and the profession. Mr. Frazier's failure to appear in court for the jury trial and pre-trial conference resulted in a failure to reasonably expedite his client's cases. Mr. Frazier's mental state was negligent.

**PUBLIC REPRIMAND**
On June 6, 2012, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered four Orders of Discipline: Public Reprimand against James H. Deans, for violation of Rules 1.15(a) (Safekeeping Property), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary, in four separate cases:*
Mr. Deans presented a check to a financial institution to be paid from his IOLTA trust account. The check was returned for insufficient funds. The financial institution sent to Mr. Deans a notice that he had insufficient funds in his IOLTA trust account. The OPC sent Mr. Deans an insufficient funds letter requiring a response. Mr. Deans did not respond to the OPC's letter. Mr. Deans did not separate his client's funds from funds of other clients by accounting properly for each client's funds. Mr. Deans's negligence led to insufficient funds in his IOLTA trust account. Mr. Deans failed to provide information as properly requested by the OPC.

**PUBLIC REPRIMAND**
On June 28, 2012, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Ryan R. West, for violation of Rules 1.1 (Competence), 1.4(a) (Communication), 1.4(b) (Communication), 1.5(a) (Fees), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. West failed to provide competent representation to his client. Mr. West did not have a good understanding of IRS appellate procedure and as such missed opportunities to advance his clients' interest. Mr. West lacked a good understanding of Tax Court procedure. This resulted in Mr. West being unable to appear in court because of his failure to gain admission to the Bar of the Tax Court. It also resulted in Mr. West failing to challenge adequately penalties that had been assessed against his client. Mr. West's involvement of a trained tax lawyer was inadequate; he did not involve the lawyer enough in the case. Mr. West failed to communicate adequately with his client and to keep him informed about developments. There were numerous emails from the client asking for updates. The client reached out to IRS counsel because he could not obtain information from Mr. West. Mr. West admitted that earlier he had reached the conclusion that the case was unwinnable yet he failed to communicate that to the client before the eve of trial. Mr. West's waiting until the eve of the trial to explain to his clients his assessment of the case resulted in his clients feeling compelled to capitulate to the IRS's demands. In light of Mr. West's lack of experience in tax cases, the fee charged was unreasonable. The unreasonable fee caused actual injury to the client. Actual injury to the client also occurred in the form of additional lawyer fees incurred, the loss of an opportunity to challenge alleged penalties and the inability to reassess the case and perhaps settle earlier and cut off interest accrual. Mr. West's state of mind was general negligence.

## INTERIM SUSPENSION

On July 6, 2012, the Honorable Marvin D. Bagley, Fifth Judicial District Court, entered an Order on Rule 14-518 Hearing granting the OPC's Petition for Interim Suspension against JoAnn S. Secrist.

*In summary:*
Respondent filed numerous pleadings in district and appellate courts containing statements of personal opinion that were neither relevant nor helpful to the case. The pleadings raised concerns about whether Respondent was providing adequate representation for her clients.

## STAYED SUSPENSION AND PROBATION

On May 11, 2012, the Honorable Fred D. Howard, Fourth Judicial District Court, entered a Findings of Fact, Conclusions of Law, and Order of Discipline suspending Michael Humiston from the practice of law for one year, with all but three months of the suspension stayed in favor of probation for a period of nine months in violation of Rules 1.1 (Competence), 1.2(a) (Scope of Representation), 1.4(a) (Communication), 1.4(b) (Communication), 1.6(a) (Confidentiality of Information), 1.7(b) (Conflict of Interest: General Rule), 1.14(a) (Client Under a Disability), 1.15(a) (Safekeeping Property), 1.15(b) (Safekeeping Property), 1.16(d) (Declining or Terminating Representation), 5.3(b) (Responsibilities Regarding Nonlawyer Assistants), 8.1 (Bar Admission and Disciplinary Matters), 8.4(c) (Misconduct), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

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*In summary, there are three matters.*
*In the first and second matters:*
A tribe retained Mr. Humiston to help it establish itself as an American Indian tribe recognized by the U.S. Government. Mr. Humiston represented the tribe and the Chief Executive of the tribe, as an individual, in several lawsuits. After receiving from the Chief Executive fishing citations received by members of the tribe as evidence of encroachment on tribal sovereignty rights, Mr. Humiston entered appearances in court to defend several of the members regarding the citation prosecutions. In two cases, Mr. Humiston did not meet with the members or otherwise contact them about the citations to notify them about the individual representation. Mr. Humiston tried to remove the first member's fishing citation case to federal court without consulting with the client. Mr. Humiston did not keep the client informed or explain the removal. The state stipulated to stay prosecution of the first member's citation pending a ruling on a motion in one of the tribe's cases. Later Mr. Humiston withdrew the motion but did not notify the client about the withdrawal of the motion and the effects it could have on the prosecution stay.

Mr. Humiston filed a complaint on behalf of the second tribal member in federal court. During this time, Mr. Humiston disagreed with the Chief Executive about litigation tactics and other aspects related to the representation of the tribe and the Chief Executive. Mr. Humiston did not inform the member about the federal lawsuit until about seven months later in part because he did not want the Chief Executive to know about the lawsuit. The second tribal member eventually agreed to the representation to defend the citation case with conditions. Mr. Humiston did not advise the client that he believed one of the conditions would be inappropriate and he did not comply with all of the conditions. Later, Mr. Humiston filed an affidavit to support his motion to withdraw as counsel for the tribe. In the affidavit and later when speaking to a reporter, Mr. Humiston made statements against his client's interests. Before filing the affidavit and speaking to the media, Mr. Humiston failed to consult with his client, the Tribe, as to the veracity of the statements he made in the affidavit and to the media and he failed to consult with and obtain his client's consent to reveal information related to the representation.

While representing a client in a divorce, Mr. Humiston and his assistant took over all of the client's finances because he believed the client was unable to care for herself. Mr. Humiston and the assistant paid the client's bills but did not maintain the client's money in his trust account until the bills were paid. Although requested, the assistant and Mr. Humiston did not provide the client an accounting of her money and expenses. Mr. Humiston or his staff took possession of the client's car. The client was initially led to believe the car was repossessed to teach her to refer debt collection calls to her attorney to handle. After the car broke down while the assistant was driving it, Mr. Humiston arranged for a mechanic to repair the car in exchange for legal work he agreed to perform for the mechanic. Mr. Humiston disclosed information about the client's family history to the mechanic without the client's permission. The client moved out of the living arrangements made by Mr. Humiston's assistant with her father's assistance. Mr. Humiston disliked the father's influence on the client. Mr. Humiston advised his new client, the mechanic, to place a lien on the client's car and refused to tell the divorce client the location of the mechanic who had the car. Mr. Humiston received settlement funds from the ex-husband for the client but he did not place the funds in his trust account or deliver them to the client. Without consulting with his client, Mr. Humiston advised the ex-husband to stop payment on the settlement funds and told him he could consider the obligation to pay suspended until he received reasonable assurance from Mr. Humiston that the client and not her father would receive the money. After the client terminated the representation and requested her file, Mr. Humiston refused to return the file directly to the client and she had to hire new counsel to get her file. In response to the client's bar complaint, Mr. Humiston informed the OPC that the ex-husband had place a stop payment order on the settlement check and did not inform the OPC that he requested that the ex-husband place the stop payment order.

## RECIPROCAL DISCIPLINE

On June 6, 2012, the Honorable Tyrone Medley, Third Judicial District Court, entered an Order of Reciprocal Discipline: Suspension suspending Richard A. Bednar from the practice of law to run concurrently with his Virginia suspension. Mr. Bednar violated the following Rules 1.3 (Diligence), 1.4 (Communication), 1.15(a) (Safekeeping Property), 1.15(c) (Safekeeping Property), 1.16 (Declining or Terminating Representation), 8.1(a) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

Mr. Bednar is a member of the Utah State Bar and is also licensed to practice law in Virginia. The Virginia State Bar Disciplinary Board issued a Memorandum Order suspending Mr. Bednar from practicing law for three years. An Order was entered in Utah based upon the discipline order in Virginia.

*In summary:*
In the first matter, the Complainant retained Mr. Bednar with regard to an issue relating to the Complainant's military discharge. The Complainant paid Mr. Bednar's firm a fee. Initially, Mr.

Bednar performed services but then failed to finish the work. The client called the Naval Discharge Review Board and determined that nothing had been submitted on his behalf. The Complainant filed a complaint with the Virginia State Bar. Mr. Bednar failed to file a written response to the bar complaint.

In the second matter, the Complainant alleged that over the five months preceding the filing of his complaint, he had tried without success, to have Mr. Bednar reply to him concerning having his military records submitted to the applicable military review board. Bar Counsel sent a copy of the Complainant's Bar complaint to Mr. Bednar, demanding that a written answer thereto. Mr. Bednar failed to file a written response and failed to comply with demands for information.

In the third matter, the Complainant engaged Mr. Bednar to evaluate his legal matter regarding his military discharge. The Complainant paid Mr. Bednar an advanced fee and then was unable to reach Mr. Bednar. Bar Counsel sent a copy of the Complainant's Bar complaint to Mr. Bednar, with a letter demanding that a written answer be filed. Mr. Bednar failed to file a written response.

In the fourth matter, the Complainant hired Mr. Bednar regarding a medical discharge issue involving the Navy. The Complainant was made aware that Mr. Bednar's law partner was accepting federal employment and therefore Mr. Bednar would continue with the Complainant's representation, however, the Complainant received an adverse decision from the Board for Correction of Naval Records. Mr. Bednar agreed to file a Petition with the Naval Discharge Review but never did. Mr. Bednar closed his office and moved to Utah. The Complainant did not receive notification of Mr. Bednar closing his office. An audit found that Mr. Bednar's escrow account had computational and other discrepancies.

**DISBARMENT**

On May 1, 2012, the Honorable Randall Skanchy, Third Judicial District Court, entered a Findings of Fact, Conclusions of Law, and Order of Disbarment against Jeremy M. Rogers for violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.4(a) (Communication), 1.5(a) (Fees), 1.15(a) (Safekeeping Property), 1.15(d) (Safekeeping Property), 1.16(d) (Declining Representation), 3.14 (Meritorious Claims and Contentions), 5.3(b) and (c) (Responsibilities Regarding Nonlawyer Assistants), 8.1(b) (Bar

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Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Rogers's case was the result of four complaints that were filed against him.

In the first matter, Mr. Rogers was hired to represent a client after she was injured in a car accident. The client was treated by a Chiropractor. Mr. Rogers signed a lien for payment. He failed to put the money in his client trust account and failed to distribute funds to his client and to the Chiropractor even though numerous attempts were made to retrieve the money by both parties.

In the second matter, the clients hired Mr. Rogers and his company HELP, LLC to assist them in taking steps to delay or stop the foreclosure of their home. The fee agreement indicated that HELP would negotiate with the lender and file a case against the lender among numerous other things. The clients paid Mr. Rogers a flat fee for his services. Besides the flat fee there was also a contingency fee of 1% of any reduction in principal on the property that occurred as a result of HELP's services. Mr. Rogers advised the clients to discontinue making their monthly mortgage payments and that he would file a Complaint. For approximately six months the clients tried to communicate with Mr. Rogers with no response. Although a Complaint was eventually filed, Mr. Rogers failed to serve it and the Complaint was dismissed along with numerous other Complaints that Mr. Rogers's filed. The clients notified Mr. Rogers that their home would be sold at auction, but Mr. Rogers did not respond and the home was eventually sold at auction. Sanctions were assessed against Mr. Rogers for filing frivolous actions. The clients asked for their files and for a full refund. Mr. Rogers did not refund any money.

In the third matter, the clients hired Mr. Rogers and his company, HELP Law who promised to file legal action within fifteen days or the client would receive his money back. The clients met with Mr. Rogers and signed a Retainer Agreement with HELP Law and with Mr. Rogers as its attorney. The clients paid a fee to Mr. Rogers. In addition to the fee, Mr. Rogers and HELP Law would receive a contingency fee of 20%. The clients attempted to contact Mr. Rogers many times to determine the status of their case. He failed to respond. The clients decided to contact the federal court and learned that no case had been filed on their behalf. After trying to reach Mr. Rogers on several occasions without response, the clients told Mr. Rogers that they did not want to proceed and wanted their money returned. The clients' home went into foreclosure and was ultimately sold in a short sale for a loss. Mr. Rogers failed to return any of the fees paid by the clients.

In the fourth matter, the clients built a home but began to experience financial difficulties and hired Mr. Rogers. A non-lawyer acting on behalf of Mr. Rogers sent the clients a Retainer Agreement. The clients paid a fee to Mr. Rogers for his representation. Numerous contacts were made with the non-lawyer over several months with the non-lawyer giving legal advice to the clients. Mr. Rogers failed to contact the clients himself. Numerous requests for information followed with no response. The clients informed Mr. Rogers of the impending sale of their home at auction with no response. A non-lawyer working for Mr. Rogers gave legal advice to the clients including attempting to assist them in filing a Bankruptcy. The clients' Petition was denied because of an improper filing. The clients' home was sold at auction. Mr. Rogers refused to return any of the clients' money even though they requested a refund.

The court found that Mr. Rogers intentionally misappropriated client funds and that there was no evidence of a truly compelling mitigating factor. The court found that the following aggravating circumstances applied: dishonest or selfish motive; pattern of misconduct; multiple offenses; refusal to acknowledge the wrongful nature of the misconduct involved, and lack of good faith effort to make restitution.


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# Attorney Discipline

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## SUSPENSION/PROBATION

On January 8, 2013, the Honorable Judge David M. Connors, Second District Court entered an Order of Discipline suspending D. Michael Nielsen for one year, with the one year stayed and three years probation for violation of Rules 8.4(b) (Misconduct), 8.4(d) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Nielsen attempted to purchase cocaine from an undercover police officer in Salt Lake City, Utah. Mr. Nielsen was a city prosecutor for two cities at the time he attempted to purchase cocaine.

*Aggravating factors:*

Dishonest or Selfish Motive; Substantial Experience in the Practice of Law; Illegal Conduct, Including the Use of Controlled Substances; Mr. Nielsen was a prosecuting attorney at the time of his misconduct.

*Mitigating factors:*

Absence of a prior record of discipline; full and free disclosure to the client or the disciplinary authority prior to the discovery of any misconduct or cooperative attitude toward proceedings; good character or reputation; mental disability or impairment, including substance abuse; interim reform; imposition of other penalties or sanctions; and remorse.

## PUBLIC REPRIMAND AND PROBATION

On February 4, 2013, the Honorable Judge Fred D. Howard, Fourth Judicial District Court entered an Order of Discipline: Public Reprimand and Probation against John W. Maddox for violation of Rules 1.2(a) (Scope of Representation and Allocation of Authority Between Client and Lawyer), 1.4(b) (Communication), 1.8(f)(1) (Conflict of Interest: Current Clients: Specific Rules), 1.8(f)(2) (Conflict of Interest: Current Clients: Specific Rules), 3.3(a)(1) (Meritorious Claims and Contentions), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Maddox was asked to represent the husband of a client by a fellow attorney. The client of the attorney was seeking a guardian and conservatorship of her husband. At the attorney's request, Mr. Maddox met with the husband. Mr. Maddox was paid by the wife to represent the husband. The wife asked Mr. Maddox not to disclose to the husband the reason for the meeting, explaining that she feared that her husband would be violent with her if he understood that she was seeking a guardian and conservator for

him. Prior to meeting, Mr. Maddox had reviewed the report from the husband's medical doctor in which the doctor opined that the husband was in need of a guardian and conservator. Mr. Maddox met with the husband to assess his need for a guardian and conservator. When Mr. Maddox met with the husband, Mr. Maddox did not identify himself as an attorney, explain his role, or discuss the pending court proceedings. The husband did not directly hire Mr. Maddox as his attorney. Though it was not his intent, Mr. Maddox's conduct furthered the interests of the wife. A hearing was held, at which time the wife was appointed as guardian and conservator. The husband was not notified of the hearing by Mr. Maddox. Mr. Maddox appeared on behalf of the husband at the guardianship hearing and advised the court with respect to his observations from having met with the husband. Because Mr. Maddox did not explain to the court the nature of his visit with the husband nor the wife's requests about disclosure to the husband, the court was under the impression that Mr. Maddox was hired by the husband to be his attorney. Mr. Maddox did not correct the impression of the court. Mr. Maddox reported to the court his impression that the husband was in need of a guardian and conservator. The husband was not present at the hearing.

**ADMONITION**

On February 26, 2013, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 5.5(a) (Unauthorized Practice of Law; Multijurisdictional Practice of Law), 7.5(b) (Firm Name and Letterheads), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

The attorney is licensed in other states, but is not licensed to practice law in Utah. The attorney's name was put on a Utah client's bank account in which several checks were issued to the attorney's firm. The owner of the bank account was found to be in need of a Guardian and Conservatorship. The attorney identified a licensed Utah attorney as having oversight of the attorney's work. The Utah licensed attorney denied having such oversight or otherwise being actively involved. There was no evidence that the Utah licensed attorney actually reviewed or evaluated the legal work being done. The attorney's mental state was generally negligent. There was no evidence of injury to any of the parties due to the attorney's misconduct and the harm to the legal system was minimal.

**ADMONITION**

On January 22, 2013, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violation of Rules 1.4(a) (Communication), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(a) (Misconduct) of the Rules of Professional Conduct.

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*In summary:*
An attorney's firm was retained to represent a client in a criminal matter. The attorney's firm failed to adequately communicate with the client regarding the representation. The OPC sent the attorney a Notice of Informal Complaint ("NOIC"). By rule, the attorney was required to respond to the NOIC within twenty days. The attorney did not timely respond to the NOIC. There was no injury and that the attorney acted without intent.

*Mitigating factors:*
Absence of prior discipline; lack of dishonest or selfish motive; inexperience in practice.

**SUSPENSION AND PROBATION**

On February 1, 2013, the Honorable Judge Samuel D. McVey, Fourth Judicial District Court entered Findings of Fact, Conclusions of Law and Order of Discipline against Bruce L. Nelson for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.5(a) (Fees), 1.16(d) (Declining or Terminating Representation), 8.1(b) (Bar Admission and Disciplinary Matters), 8.4(c) (Misconduct), and 8.4(a) (Misconduct) of the Rules of Professional Conduct. Mr. Nelson was suspended for one year with ninety days of the suspension stayed. He was also placed on probation for one year.

*In summary, there are three matters:*
In the first matter, Mr. Nelson was hired to represent a client in a civil matter. The client retained Mr. Nelson previously and had remaining funds from that retainer. Those funds were used to pay for the civil matter. Mr. Nelson filed an Answer for his client, but did nothing else. Mr. Nelson did not provide any billings to his client for work performed in the matter and did not provide any written billings or accountings to the client for the previous matter. Mr. Nelson did not provide copies of paperwork from the case to the client. The client left several telephone messages for Mr. Nelson requesting information about the case. Mr. Nelson did not communicate with the client about developments in the case. The plaintiff filed a Motion for Summary Judgment in the client's case. Mr. Nelson did not inform the client about the Motion. Mr. Nelson did not oppose the Motion and the court granted summary judgment to the plaintiff. Mr. Nelson did not notify his client about the ruling and a judgment was entered against Mr. Nelson's client. The OPC served a Notice of Informal Complaint upon Mr. Nelson requesting information from him concerning the client's informal complaint against him. Mr. Nelson failed to respond. Mr. Nelson also failed to appear at the Screening Panel hearing.

In the second matter, a client hired Mr. Nelson to oppose a request for modification of a Divorce Decree. The client paid Mr. Nelson an advanced fee. The client made numerous requests for status updates about the work Mr. Nelson had performed on the case. Mr. Nelson did not respond to many of his client's requests and did not keep the client informed about what was happening in the case. Mr. Nelson did not diligently pursue settlement and missed an opportunity to schedule mediation in the case. Opposing counsel tried to contact Mr. Nelson, however Mr. Nelson did not respond to many of opposing counsel's messages. Opposing counsel left several messages for Mr. Nelson to contact him to clarify whether Mr. Nelson was still representing the client. Mr. Nelson did not return these calls. The client eventually terminated Mr. Nelson's representation but Mr. Nelson never filed a withdrawal notice with the court. The client requested a refund and Mr. Nelson failed to respond. Mr. Nelson did not refund any unearned fees to the client until just before the Screening Panel hearing.

In the third matter, a client hired Mr. Nelson for representation in a divorce. The client paid Mr. Nelson an advanced fee. The client requested that Mr. Nelson file an Answer in his divorce case. Mr. Nelson did not file the Answer. Mr. Nelson did not keep the client informed about the status of his case. The client telephoned the court clerk about his case and learned that Mr. Nelson had not filed an Answer in his case. The client called Mr. Nelson and confronted him about failing to file an Answer. When the client called Mr. Nelson, Mr. Nelson lied about the Answer being filed. Opposing counsel filed a Motion for Entry of Default Judgment. Mr. Nelson did not oppose the Motion and a Default Judgment was entered against the client.

*Aggravating factors:*
Prior record of discipline; a pattern of misconduct; multiple offenses; obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary authority; submission of false evidence, false statements; and lack of good faith effort to make restitution or to rectify the consequences of the misconduct involved.

*Mitigating factors:*

Personal or emotional problems; inexperience in the practice of law; physical disability; and remorse.

**SUSPENSION**

On January 24, 2013, the Honorable Judge Paul G. Maughan, Third Judicial District Court entered Findings of Fact, Conclusions of Law and Order of Suspension against Shayne R. Kohler for violation of Rules 3.2 (Expediting Litigation), 3.4(c) (Fairness to Opposing Party and Counsel), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(d) (Misconduct) of the Rules of Professional Conduct. Mr. Kohler was suspended for one year.

*In summary:*

Mr. Kohler represented a client in a civil matter. The court held a Law and Motion hearing wherein Mr. Kohler was ordered to prepare the Order from the hearing. Mr. Kohler never prepared the Order. The court held a Telephone Conference. Mr. Kohler was not in attendance at the court hearing, however, another attorney participated as counsel on his behalf. At the Telephone Conference the court stated, "A motion to allow Mr. Kohler to withdraw will be filed forthwith." Mr. Kohler never filed a Motion to Withdraw. At that same hearing, a new date for trial was set. Mr. Kohler did not appear at the Bench Trial. Mr. Kohler's client insisted on going forward pro se, without the benefit of counsel. The OPC issued a Notice of Informal Complaint ("NOIC"). The NOIC was sent to Mr. Kohler's address of record with the Utah State Bar. The NOIC was also sent to Mr. Kohler's home address. Mr. Kohler did not respond to the NOIC. A Calendar Notice of the setting of the Screening Panel hearing was sent to Mr. Kohler's address of record with the Utah State Bar. Mr. Kohler did not attend the Screening Panel hearing.

*Aggravating factors:*

Obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary authority; refusal to acknowledge the wrongful nature of the misconduct involved, either to the client or to the disciplinary authority; and substantial experience in the practice of law.

# *Attorney Discipline*

## UTAH STATE BAR ETHICS HOTLINE

Call the Bar's Ethics Hotline at 801-531-9110 Monday through Friday from 8:00 a.m. to 5:00 p.m. for fast, informal ethics advice. Leave a detailed message describing the problem and within a twenty-four-hour workday period, a lawyer from the Office of Professional Conduct will give you ethical help about small everyday matters and larger complex issues.

**More information about the Bar's Ethics Hotline may be found at:**
www.utahbar.org/opc/office-of-professional-conduct-ethics-hotline/

**Information about the formal Ethics Advisory Opinion process can be found at:**
www.utahbar.org/opc/bar-committee-ethics-advisory-opinions/eaoc-rules-of-governance/.

## ADMONITION

On August 17, 2017, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Admonition against an attorney for violating Rule 1.15(d) (Safekeeping Property) of the Rules of Professional Conduct.

*In summary:*
The attorney was retained to represent a client regarding a civil dispute. The matter was sent to arbitration and the client paid fees for the arbitration. The arbitration was cancelled. After the arbitration was cancelled, the remaining unused fees were refunded to the attorney. Approximately four months passed and the client requested a status update on the unused fees and a final accounting. The attorney requested additional time into the following month to complete the final accounting. Approximately five more months passed and the client still had not received a final accounting of the refund. The attorney failed to notify the client that the unused arbitration funds had been received, and failed to promptly provide the client with an accounting upon request.

## PROBATION

On August 8, 2017, the Honorable James T. Blanch, Third Judicial District Court, entered an Order of Discipline: Probation, against Amy L. Butters, placing her on probation for a period of one year for Ms. Butters's violation of Rule 1.1 (Competence), Rule 1.3 (Diligence), Rule 1.4(a) (Communication), Rule 1.15(a) and 1.5(c) (Safekeeping Property), Rule 1.16(e) (Declining or Terminating Representation), Rule 8.1(b) (Bar Admission and Disciplinary Matters, and 8.4(d) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
In one matter, Ms. Butters was retained by clients to represent them in a bankruptcy matter. The clients paid Ms. Butters up front an amount which included attorney fees and filing fees for their bankruptcy

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proceedings. Ms. Butters deposited the clients' funds in her operating account before earning the funds. Months after receiving the clients' funds, Ms. Butters filed the petition and a deficiency notice went out the next day. Twice the case was dismissed for failure to pay the filing fees. Two months later, Ms. Butters filed a Chapter 13 Bankruptcy Petition on behalf of the clients. The Trustee filed a Motion to Dismiss. Ms. Butters filed an objection to the dismissal and a motion to abate four days after the deadline to file the objection had passed. After Ms. Butters filed a Chapter 13 bankruptcy petition on behalf of the clients, a hearing was held regarding the Motion to Dismiss and Objection. The court sustained the Objection to the Motion to Dismiss and required that Ms. Butters write the order and submit it to the court by a specified date. Two days after the deadline for filing the proposed order, the court issued an Order to Show Cause because of Ms. Butters's failure to submit a proposed order on the clients' Objection. The court denied the Objection to the dismissal, ordering the case dismissed for failure to prosecute. The court issued an Order to Show Cause for the petitioner to show why the case should not be dismissed on or before a specified date. Ms. Butters failed to file the requisite documents and the case was dismissed for failure to prosecute. More than two years after retaining Ms. Butters, the clients sent Ms. Butters a letter regarding their opinions about the handling of their case. A week later the clients retained new counsel to finish their case. Ms. Butters also deposited client funds in her operating account and failed to keep her funds separate from client funds. Ms. Butters deposited funds in her operating account when the funds had not been earned and the costs had not been incurred.

In another matter, Ms. Butters was retained to represent the client in a Chapter 7 bankruptcy matter. The client paid an amount of money to Ms. Butters for her representation. Ms. Butters filed a Chapter 7 Voluntary Petition on behalf of the client. The bankruptcy court sent a 341 Meeting Notice with a meeting date. Neither Ms. Butters nor the client attended the 341 meeting. The Trustee filed a Recommendation for Dismissal. Ms. Butters failed to file a timely objection and the case was closed. Ms. Butters filed another Chapter 7 Voluntary Petition on behalf of the client. The client contacted Ms. Butters regarding his move to Texas and the impact such a move would have on his bankruptcy proceedings. Ms. Butters indicated she would file a motion to allow the client to appear telephonically. No such motion was filed according to the court's docket. The client received three email notifications regarding the 341 meeting, each indicating he was to appear by telephone in front of a Notary. During communications with the client the day before the 341 Meeting, Ms. Butters indicated she was to appear in person and because the client was in Colorado, Ms. Butters indicated she would discuss the case with the Trustee and file a motion to reschedule the hearing. Two days after the hearing date, the Trustee filed a Recommendation of Dismissal. Ms. Butters failed to file any objection to the dismissal and the Court issued an Order dismissing the case. Ms. Butters contacted the client after the Bar Complaint had been filed and indicated she would refund part of the money owed to the client if the client would agree to withdraw the complaint against her.

Ms. Butters also failed to respond to the Office of Professional Conduct's (OPC) request for information and failed to cooperate in OPC's investigation.

## DISBARMENT

On February 22, 2017, the Honorable Kara Pettit, Third Judicial District Court, entered Findings of Fact, Conclusions of Law and Order disbarring Robert H. Copier from the practice of law for his violation of Rule 3.1 (Meritorious Claims and Contentions), Rule 3.3(a) (Candor Toward the Tribunal), and Rules 8.4(c) and 8.4(d) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Copier was retained to represent several clients in a variety of litigation matters. Over a period of several years, Mr. Copier filed numerous meritless pleadings, motions, and papers. Mr. Copier filed hundreds of frivolous motions in the underlying litigation matters, and was ordered to cease filing frivolous motions. Mr. Copier caused actual serious injury to the parties of the underlying litigation matters because of the hundreds of thousands of dollars of legal expenses, time, and resources they were forced to incur in light of Mr. Copier's repeated frivolous filings. The courts awarded judgments against Mr. Copier for at least a portion of the fees but Mr. Copier had not satisfied the judgments. The hundreds of filings caused serious interference with the legal proceedings. Mr. Copier's intentional disregard of multiple court orders caused serious injury to the legal profession, legal system, and the public by creating a general mistrust of attorneys and the operation of the legal system.

## *Discipline Process Information Office Update*

The Discipline Process Information Office is available to all attorneys who find themselves the subject of a Bar complaint, and Jeannine Timothy is the person to contact. Most attorneys who contact Jeannine do so in the early stages of a Bar complaint. Keep in mind Jeannine is available to assist and explain the process at any stage of a Bar complaint. Call Jeannine with all your questions.

DISCIPLINE PROCESS INFORMATION OFFICE

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Mr. Copier falsely asserted to the court in a district court case that opposing counsel agreed with him in connection with a Settlement Agreement. Mr. Copier caused injury to the legal system and interfered with the legal proceeding by creating a general mistrust of attorneys and the operation of the legal system.

Additionally, Mr. Copier purportedly transferred treasury stock shares to companies he owned even though in one case the court had declared the stock void ab initio. Mr. Copier falsely claimed that an attorney's lien had been recorded in the official records of Salt Lake County, and was seeking to foreclose on two parcels of land pursuant to the lien. Mr. Copier further purported to transfer portions of the alleged lien to other parties in four separate transfers. Mr. Copier caused harm to the parties involved in the stock transfers, injured the tribunal and interfered with the legal proceedings before the Court. Mr. Copier's misconduct contributes to a general mistrust of attorneys and the operation of the legal system. By engaging in these activities, Mr. Copier engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, which seriously, adversely reflects on Mr. Copier's fitness to practice law.

Mr. Copier caused the parties and courts to incur unnecessary time and costs, through hundreds of frivolous motions and redundant or harassing filings. Mr. Copier violated courts' orders to not file motions or other papers without prior court approval, and failed to comply with the trial courts' orders that he appear in court for hearings. Mr. Copier's tactics delayed litigation and harassed parties. Mr. Copier was held in contempt by courts on two different occasions yet his misconduct continued. Mr. Copier's conduct caused serious interference with the legal proceedings and his intentional disregard of multiple court orders caused serious injury to the legal profession.

*The following aggravating factors were found:* patterns of misconduct, multiple offenses, substantial experience in the practice of law, lack of good faith effort to make restitution or to rectify the consequences of the misconduct involved, and refusal to acknowledge the wrongful nature of misconduct involved.

*The following mitigating factor was found:* absence of prior record of discipline.

## DISBARMENT

On July 3, 2017, the Honorable Bruce C. Lubeck, Third Judicial District Court, entered Findings of Fact, Conclusions of Law and Order of Disbarment, disbarring J. Wesley Robinson from the practice of law for his violation of Rule 8.4(b) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
On December 12, 2014, Mr. Robinson pleaded guilty to a second-degree felony of Clandestine Laboratory Precursors; a third-degree felony of Possession of a Controlled Substance with Intent to Distribute; and a third-degree felony of Possession of a Firearm by a Restricted Person. The facts of Mr. Robinson's conviction based on a guilty plea were as follows: On February 18, 2014, Mr. Robinson aided and abetted others by providing them with a residence and utilities necessary to possess laboratory equipment with the intent to operate a clandestine laboratory and to knowingly possess marijuana with the intent to distribute it. Mr. Robinson agreed and stipulated by the plea that those facts provide a basis for the plea of guilty and described his conduct and the conduct of others for which he was criminally liable.

There existed some mitigating factors. However, the mitigating factors did not outweigh Mr. Robinson's guilty pleas.

## DISBARMENT

On August 11, 2017, the Honorable M. James Brady, Fifth Judicial District Court, entered an Order of Discipline: Disbarment, disbarring John E. Hummel from the practice of law for his violation of Rules 8.4(b) (Misconduct) and 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Hummel contracted with Garfield County to provide legal representation to indigent defendants. Based on the contract, Mr. Hummel was aware that he would receive a certain sum of money for providing legal services to indigents without any additional compensation or remuneration. Mr. Hummel accepted firearms and other property as payment from indigent clients. The clients were told by Mr. Hummel that they would get a better deal, less jail time, or that Mr. Hummel could do a better job if additional fees were paid. Criminal charges were filed against Mr. Hummel. A jury trial


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was held and Mr. Hummel was found guilty of three counts of theft, second-degree felonies – and two counts of theft and attempted theft, third-degree felonies.

Mr. Hummel engaged in the criminal acts of theft and attempted theft, which reflect adversely on his honesty, trustworthiness or fitness as a lawyer in other respects. Mr. Hummel knew that his compensation was to come from the County, only. He deceived indigent clients and took money and property from them even though he was already receiving compensation for legal services from the County.

## RESIGNATION WITH DISCIPLINE PENDING

On August 24, 2017, the Utah Supreme Court entered an Order Accepting Resignation with Discipline Pending concerning Walter T. Merrill, for violation of Rules 1.15(a), 1.15(c), and 1.15(d) (Safekeeping Property), Rule 3.3(a) (Candor Toward the Tribunal), 8.4(b), 8.4(c), and 8.4(d) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Merrill's firm obtained approximately 1,400 debt collection cases from a law office that sold its collections practice. Immediately after the transfer, one of the clients expressed dissatisfaction with Mr. Merrill's firm. A representative from the client's office informed another attorney at Mr. Merrill's firm (Firm Attorney) that it was terminating the firm's representation of them on all cases. The Firm Attorney removed the client from the case management software and told the entire office about the termination, including Mr. Merrill. Mr. Merrill continued to work on the cases despite acknowledging that client had fired the firm.

Mr. Merrill informed the Firm Attorney that by looking on the court's Xchange he had discovered a list of cases filed by the prior law office where no work had been completed since early that year when the collection cases had been transferred. The cases were all from one client. The Firm Attorney offered to call the prior law office to get the missing files. Mr. Merrill declined indicating he found everything he needed on Xchange. Mr. Merrill instructed his receptionist to enter the cases into the case management software. When the receptionist was entering the cases, it was discovered that these cases were from the same client that had fired Mr. Merrill's office earlier in the year. The Firm Attorney confronted Mr. Merrill and Mr. Merrill explained that nobody had been working the cases since the prior law office sold their collection practice, and if someone didn't work the cases it would be a disservice to the former client. Mr. Merrill hoped that the former client would be happy he had rescued the cases and forgive his "transgressions."

A few months later, the Firm Attorney was covering a hearing in district court. While reviewing the docket, the Firm Attorney discovered a substitution of counsel by Mr. Merrill for the prior law firm; however, the prior law firm was never the attorney of record. The Firm Attorney told the court there had been a mistake and withdrew immediately.

Approximately two weeks later, the receptionist asked the Firm Attorney a question about a garnishment in which the debtor had proof that the entire judgment had already been garnished. The receptionist also indicated the creditor/client was a payday loan company. The Firm Attorney knew there was a mistake since Mr. Merrill's firm did not represent any payday loan clients. The Firm Attorney looked up the docket and discovered that Mr. Merrill had inexplicably entered an appearance. The Firm Attorney learned from the firm case management software that Mr. Merrill had just recently closed a different case against the debtor. The case had been satisfied through garnishment. The Firm Attorney realized that when Mr. Merrill could no longer garnish the debtor on the case, Mr. Merrill had gone onto Xchange and found another judgment against the same debtor and entered an appearance for a creditor that had never retained him.

A few weeks later, the staff at Mr. Merrill's office brought to the attention of the Firm Attorney a list of newly-opened case files where Mr. Merrill had entered appearances for "unknown" plaintiffs. In each case there was a judgment creditor not previously represented by counsel that had not pursued their debt in some time.

In one case, Mr. Merrill entered his appearance and a month later filed an application for a writ of continuing garnishment. The judgment was sold to a judgment recovery company. When the judgment recovery company tried to collect on the judgment, the company discovered that Mr. Merrill had entered an appearance on behalf of the original plaintiff and had accepted the garnishment payments without the original plaintiff's knowledge or consent. The judgment recovery company contacted the original plaintiff about the matter, and the original plaintiff indicated he did not have an attorney and had never heard of Mr. Merrill. The judgment recovery company then confronted Mr. Merrill. Mr. Merrill offered to send the company the money he collected but offered no explanation for his unauthorized work on the case or the collection of the improper garnishments. Mr. Merrill did not immediately pay the judgment recovery company the full amount of the funds he improperly garnished, and did not release the garnishment until a month after the judgment recovery company initially contacted him.

Mr. Merrill engaged in a pattern of locating cases on Xchange where the judgment creditors were not represented by counsel, and entering appearances on their behalf without first being retained by them or obtaining their consent.

Mr. Merrill engaged in a pattern of collecting funds on behalf of creditors who had not retained his services, and then failed to turn over the funds he collected to their rightful owner.

Mr. Merrill forged signatures on Declarations in order to enter appearances in cases where the creditors had not hired him and did not know he was working on their cases. In other cases, Mr. Merrill forged signatures on Declarations for existing clients.

Mr. Merrill deposited unearned funds into a personal checking account and on at least one occasion withdrew unearned funds from the trust account.

# *Attorney Discipline*

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www.utahbar.org/opc/bar-committee-ethics-advisory-opinions/eaoc-rules-of-governance/.

## ADMONITION

On June 5, 2017, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rule 1.4(a) (Communication) of the Rules of Professional Conduct.

*In summary:*
The attorney was retained by a client to prepare, file, and serve a complaint. The attorney drafted the complaint on behalf of the client but was unable to serve the defendant. The complaint was not filed with the court. The client attempted to contact the attorney regarding the status of the case but was unable to speak with the attorney. Several months passed, then the attorney wrote to the client informing the client the next step would be to attempt to serve the defendant through publication. Approximately a month later, the client withdrew representation from the attorney. The attorney failed to provide appropriate documentation or status reports to the client.

## ADMONITION

On July 7, 2017, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rule 1.4(a) (Communication) and 1.4(b) (Communication) of the Rules of Professional Conduct.

*In summary:*
A client retained the attorney for representation in an eviction matter. The attorney filed a complaint and the court scheduled an immediate occupancy/eviction hearing on a certain date. The attorney had arranged for an alternate attorney to attend the client's hearing as well as a hearing for a second client the same day. The attorney did not inform the client that an alternate attorney would be attending the hearing. The client informed the attorney that the client would be out of town on the date of the hearing and asked if the client should change the client's plane ticket to attend the hearing. The attorney informed the client that as long as the client could contact the attorney by telephone, the client did not need to attend the hearing. The client changed the plane ticket in order to attend the hearing, and emailed the attorney informing the attorney the client would be at the hearing. The client tried to contact the attorney several times to find out where the hearing was being held but the attorney was out of town without access to email and did not respond. The attorney did not appear at the hearing and the alternate attorney appeared for the second client but failed to represent the client at the client's hearing. The client met with the mediator and the client's tenant without legal counsel.

## ADMONITION

On July 10, 2017, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rule 1.15(c) (Safekeeping Property) of the Rules of Professional Conduct.

*In summary:*
The attorney was retained by two separate clients for legal services. The attorney did not deposit the retainer funds from either client into the trust account and instead, deposited the funds into the attorney's operating account before they were earned. The attorney did not fully understand that even though the attorney agreed to a flat fee with the clients, the attorney should have deposited the funds in the trust account and withdrawn the funds as earned, because a flat fee agreement does not, per se, make the funds earned upon receipt. There was no injury to either client, as the funds were eventually earned.

## ADMONITION

On June 29, 2017, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rules 1.15(a) and 1.15(c) (Communication) of the Rules of Professional Conduct.

*In summary:*
The attorney was retained by a client to represent a relative in a criminal matter. The relative who was being represented requested that the retainer funds the client paid not be placed in the attorney's trust account, and the attorney subsequently placed the funds in the attorney's operating account. The attorney did not have a written agreement with the client that explained the benefits to the client of treating the funds as earned-upon-receipt and not refundable.

The attorney drafted the complaint on behalf of the client but was unable to serve the defendant. The complaint was not filed with the court. The client attempted to contact the attorney regarding the status of the case but was unable to speak with the attorney. Several months passed, then the attorney wrote to the client informing the client that the next step would be to attempt to serve the defendant through publication. Approximately a month later, the client withdrew representation from the attorney. All the funds were eventually earned, and the client suffered no injury as a result of the improper accounting.

## PUBLIC REPRIMAND

On April 25, 2017, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Kerry F. Willets for violating Rules 1.1 (Competence), 1.3 (Diligence), 1.4(a) (Communication), and 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

*In summary:*
Mr. Willets was retained to file a bankruptcy petition for a client. Over a year later Mr. Willets filed a Chapter 13 petition. The client provided Mr. Willets with her creditor information but Mr. Willets only included one creditor on the matrix he filed with the court. Two years after retaining Mr. Willets, the client attempted to contact Mr. Willets regarding a motion she wanted to file with the court but was unable to reach him for many weeks and had no way of leaving a message.

Almost three years after retaining Mr. Willets the client hired new attorneys to represent her. The new attorneys moved the court to allow them to be substituted as counsel for the client. The court granted their motion and the new attorneys filed a motion to extend the deadline to file a proof of claim, which the court also granted.

The OPC sent letters and a Notice of Informal Complaint (NOIC) over a period of several months requesting Mr. Willet's response to the client's allegations but the OPC received no response to the letters or the NOIC.

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## PUBLIC REPRIMAND

On June 29, 2017, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Christopher B. Cannon for violating Rule 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

*In summary:*
The OPC received non-sufficient funds (NSF) notification from the bank that holds Mr. Cannon's trust account. Over a period of approximately four months, the OPC sent two letters and a Notice of Informal Complaint (NOIC) to Mr. Cannon requesting his explanation for the deficiency. Mr. Cannon did not respond to the letters or the NOIC nor was any mail returned. Almost three months after mailing the NOIC and receiving no response, the Clerk of the Ethics and Discipline Committee mailed a calendar notice notifying Mr. Cannon of a screening panel hearing date that had been scheduled. Approximately a month and a half later, and two days prior to the hearing, Mr. Cannon responded to the NOIC.

Underlying charges concerning Mr. Cannon's NSF were dismissed due to documentation that explained the trust account issue. However, it was determined that Mr. Cannon should receive a public reprimand for his knowing failure to respond to the OPC, which caused unnecessary delay and cost in resolving the matter. The OPC was required to expend unnecessary time and resources in preparing the file for the Committee, and the Committee had to spend time preparing for and conducting the hearing. Attorneys are cautioned that failure to cooperate and provide information to the OPC may result in disciplinary action even if the underlying allegations are dismissed.

## PROBATION

On June 6, 2017, the Honorable Matthew D. Bates, Third Judicial District Court, entered an Order of Discipline: Probation, against Steve S. Christensen, placing him on probation for a period of one year for Mr. Christensen's violation of Rule 1.15(a) (Safekeeping Property) of the Rules of Professional Conduct. A Final Judgment was issued on June 13, 2017.

*In summary:*
Mr. Christensen was hired to represent a client in a divorce proceeding and also a legal malpractice claim against the client's former lawyer. Mr. Christensen initiated a loan application to purchase a home formerly owned by the client. The transaction for the home was originally proposed to close on a certain date but the closing date was extended twice by thirty days while a final price was being agreed upon. The bank required a down payment to finance the purchase of the home. Mr. Christensen did not have all of the required amount in his personal bank account.

There were ongoing settlement negotiations regarding the client's legal malpractice claim during the time of Mr. Christensen's loan application. The client had accumulated legal fees which were owing to the firm in connection with the divorce proceedings, and she had agreed to half of any funds she obtained from settling the legal malpractice claim would be used to pay the legal fees charged by the firm.

In order to demonstrate to the bank that he would have adequate funds to make the required down payment on the home, and in anticipation of extending the home closing date when the necessary funds from the firm's trust account had been earned, Mr. Christensen transferred a portion of the additional amount needed for his down payment from the firm's trust account on a Friday, leaving a very nominal balance. A check that had been written on the trust account a week prior presented to the bank for payment but there were insufficient funds to honor the check. OPC received a non-sufficient funds (NSF) notice from the bank for the firm's trust account. Within twelve hours of transferring the money from the firm's trust account, Mr. Christensen restored the money back to the firm's trust account by electronic transfer. Due to a Monday holiday, the electronic transfer was credited on Tuesday. By that day, the firm had sufficient funds to cover the check written the week prior and the client received payment and the check was not bounced. Mr. Christensen transferred the remaining amount needed for proof of his down payment on the home loan from the firm's operating account on the same Friday to his personal account. Twelve hours later Mr. Christensen also returned the money to the operating account but it was not credited back to the firm's operating account until Tuesday after the holiday.

Mr. Christensen used funds belonging to individuals or entities other than himself. The funds in the trust account were a combination of earned and unearned funds. Mr. Christensen's law partners did not authorize and were unaware of the transfer of funds from the firm's trust account to Mr. Christensen's personal account. Mr. Christensen's law partners did not authorize and were unaware of the transfer of funds from the firm's operating account to Mr. Christensen's personal account.

## SUSPENSION

On April 5, 2017, the Honorable Robert J. Dale, Second Judicial District Court for Davis County, entered an Order of Suspension, against Stanford A. Graham, suspending his license to practice law for a period of six months and one day for Mr. Graham's violations of Rule 1.3 (Diligence), Rule 1.4(a) (Communication, Rule 1.5(a)

(Fees), and Rule 8.1(b) (Bar Disciplinary Matters) of the Rules of Professional Conduct.

*In summary:*
Mr. Graham was hired to represent a client's company by assisting with a lawsuit against some members of the corporation. Mr. Graham was also hired to represent the client in a bankruptcy. The client was to pay an amount for representation in the company matter and an additional amount for representation in the bankruptcy. Mr. Graham, the client, and others were subsequently named as defendants in a lawsuit filed in Third District Court (civil matter). The work performed by Mr. Graham on the case did not justify the fee charged.

More than six months after being retained, Mr. Graham filed a Petition for Bankruptcy on behalf of the client. Mr. Graham prepared a list of creditors but it was not timely filed with the bankruptcy court. A 341 Meeting of Creditors was scheduled, but Mr. Graham did not appear at the hearing. Respondents in the matter filed a motion to dismiss but Mr. Graham did not respond to the motion and did not appear at the hearing. Consequently, the motion to dismiss in the bankruptcy was granted.

About a year after being retained, a default judgment was entered against the client and Mr. Graham in the civil matter. The court ultimately set aside the judgment against the client, and entered the entire judgment against Mr. Graham for his delay and failure to comply.

The OPC sent a Notice of Informal Complaint to Mr. Graham. Mr. Graham did not respond. The OPC filed a complaint against Mr. Graham in district court. Mr. Graham did not file an Answer to the Complaint. The court entered a Default Judgment against Mr. Graham.

*Aggravating Factors:*
Dishonest or selfish motive; multiple offenses; obstruction of the disciplinary proceeding by failing to comply with rules or orders; substantial experience; and lack of good faith effort to make restitution or rectify the consequences of the misconduct.

*Mitigating Factors:*
Personal problems

## DISBARMENT

On April 21, 2017, the Honorable James D. Gardner, Third Judicial District Court, entered Findings of Fact, Conclusions of Law and Order disbarring Matthew G. Nielsen from the practice of law for his violation of Rules 8.4(b) and 8.4(c) (Misconduct) of the Rules of Professional Conduct. A Final Judgment was issued on July 6, 2017.

*In summary:*
Between 2012 and 2014, Mr. Nielsen committed and was convicted of numerous criminal acts including three counts of Assault, Attempted Failure to Stop at the Command of Law Enforcement, two counts of Child Abuse Involving Physical Injury, four counts of Obtaining a Prescription Under False Pretenses, Shoplifting, two counts of Retail Theft, Disorderly Conduct (Domestic Violence Related), Attempted Possession of a Controlled Substance Schedule I or II, Possession of a Controlled Substance Schedule I or II, Reckless Driving, and Attempted Burglary. On April 20, 2015, Mr. Nielsen was placed on Interim Suspension for having been convicted of crimes that reflect adversely on his honesty, integrity and fitness as a lawyer.

The court has now found that Mr. Nielsen violated Rule 8.4(b) by committing criminal acts that reflect adversely on his honesty, trustworthiness, or fitness as a lawyer. The court determined that Mr. Nielsen's incidents of assault, child abuse involving physical injury, disorderly conduct involving domestic violence, attempting to possess and possession of controlled substances, and burglary seriously adversely reflect on Mr. Nielsen's fitness to practice law.


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Mr. Nielsen violated Rule 8.4(c) by engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. The court determined that Mr. Nielsen's incidents of obtaining prescriptions under false pretenses, shoplifting and retail theft constitute serious criminal conduct, a necessary element of which includes misrepresentation, fraud, or theft.

The court determined that suspension was the presumptive sanction for Mr. Nielsen's violation of Rule 8.4(b) and disbarment was the presumptive sanction for violating Rule 8.4(c).

The court found the following aggravating factors: prior record of discipline, dishonest or selfish motive, a pattern of misconduct, multiple offenses, refusal to acknowledge the wrongful nature of the misconduct, vulnerability of victim, substantial experience in the practice of law, and illegal conduct, including the use of controlled substances.

The court found the following mitigating factors: good character or reputation, imposition of other penalties, and remorse.

After balancing aggravating and mitigating factors, the court determined that the aggravating factors far outweighed any mitigating factors in Mr. Nielsen's violation of Rule 8.4(b) and warranted an increase in the level of discipline from suspension to disbarment. The court also determined the mitigating factors did not warrant a decrease in the presumptive sanction of disbarment for Mr. Nielsen's violation of Rule 8.4(c).

## DISBARMENT

On June 21, 2017, the Honorable Thomas Willmore, First Judicial District Court, entered Findings of Fact, Conclusions of Law and Order of Disbarment disbarring Charles M. Parson from the practice of law for his violation of Rule1.3 (Diligence), Rule 1.4(a) (Communication), Rule 1.5(a) (Fees), Rule 5.5(a) (Unauthorized Practice of Law, Multijurisdictional Practice of Law), and Rule 8.1(b) (Admission and Disciplinary Matters) of the Rules of Professional Conduct.

*In summary:*
On December 2, 2013, Mr. Parson's license to practice law in the State of Utah was suspended for failing to comply with the mandatory continuing education requirements. On December 24, 2013, Mr. Parson received notice of his suspension via certified, registered U.S. Mail. Mr. Parson was suspended all of 2014 and part of 2015.

A client retained Mr. Parson to file a bankruptcy petition prior to his suspension in 2013. The client agreed to pay Mr. Parson a flat fee for his representation along with an additional filing amount to file the bankruptcy. Mr. Parson informed the client he would not undertake representation until fees were paid. During his suspension, Mr. Parson received payments from the client for his representation in February and March of 2014.

After receiving full payment from the client for his representation, Mr. Parson moved from his office and did not provide a new business address to the client. Months later, Mr. Parson's telephone was disconnected so the client could not contact Mr. Parson via telephone. Mr. Parson never filed the client's bankruptcy case. Mr. Parson claimed to have worked ten–twelve hours on the client's case prior to his suspension. Mr. Parson provided no evidence to support this claim. Mr. Parson never refunded the filing fee he collected from the client even though he did not file her bankruptcy case.

The OPC sent letters on two separate occasions asking Mr. Parson to respond. Mr. Parson did not respond to either letter. OPC served Mr. Parson with a Notice of Informal Complaint (NOIC) requiring his written response within twenty days pursuant to the Rules of Lawyer Discipline and Disability. Mr. Parson did not timely respond in writing to the NOIC.

*Aggravating factors:*
Dishonesty, multiple offenses, vulnerability of victim; refusal to acknowledge the wrongful nature of the misconduct involved; and obstruction of the disciplinary proceeding by failing to comply with rules or orders of disciplinary authority.

## *Discipline Process Information Office Update*

The Discipline Process Information Office is available to all attorneys who find themselves the subject of a Bar complaint, and Jeannine Timothy is the person to contact. Most attorneys who contact Jeannine do so in the early stages of a Bar complaint. Keep in mind Jeannine is available to assist and explain the process at any stage of a Bar complaint. Call Jeannine with all your questions.

DISCIPLINE PROCESS
INFORMATION OFFICE

**Jeannine P. Timothy**
**(801) 257-5515 | DisciplineInfo@UtahBar.org**

# Attorney Discipline

**UTAH STATE BAR ETHICS HOTLINE**

Call the Bar's Ethics Hotline at 801-531-9110 Monday through Friday from 8:00 a.m. to 5:00 p.m. for fast, informal ethics advice. Leave a detailed message describing the problem and within a twenty-four-hour workday period, a lawyer from the Office of Professional Conduct will give you ethical help about small everyday matters and larger complex issues.

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**Information about the formal Ethics Advisory Opinion process can be found at:**
www.utahbar.org/opc/bar-committee-ethics-advisory-opinions/eaoc-rules-of-governance/.

**PUBLIC REPRIMAND**

On February 20, 2017, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Amended Order of Discipline: Public Reprimand against Denise P. Larkin for violating Rules 1.3 (Diligence), 1.4(a) (Communication), and 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

*In summary:*
Ms. Larkin was retained for representation in a divorce proceeding. The case was bifurcated and the divorce was granted, with issues of custody and division of some marital assets remaining unresolved. Ms. Larkin failed to act with diligence in completing discovery in a timely manner and in timely prosecuting her client's case. Ms. Larkin failed to timely and effectively communicate with her client. The client retained new counsel to complete the case.

The OPC sent a letter to Ms. Larkin asking her to respond to these allegations and Ms. Larkin did not respond. The OPC sent a second request to Ms. Larkin asking for a reply and Ms. Larkin did not reply. The OPC served Ms. Larkin with a Notice of Informal Complaint (NOIC) requiring her written response within twenty days pursuant to the Rules of Lawyer Discipline and Disability. Ms. Larkin did not timely respond in writing to the NOIC.

*Aggravating factors:*
Pattern of misconduct and multiple violations.

**ADMONITION**

On February 27, 2017, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rule 1.6(a) (Confidentiality of Information) of the Rules of Professional Conduct.

## Discipline Process Information Office Update

During the first quarter of this year, the Discipline Process Information Office opened 20 files, and Jeannine P. Timothy provided helpful information to the attorneys named as subjects of Bar complaints. Jeannine is always available to answer questions and clarify the discipline process. Please feel free to contact Jeannine with your questions.

DISCIPLINE PROCESS INFORMATION OFFICE

**Jeannine P. Timothy**
**(801) 257-5515 | DisciplineInfo@UtahBar.org**

*In summary:*
In the course of representing a client, the attorney sent an email seeking advice from colleagues outside the attorney's firm. The email included information which provided more detail about the client than was necessary to obtain the advice being sought. The level of detail would allow others to determine the identity of the attorney's client. In the email, the attorney expressed an opinion of the client's culpability. The attorney took these actions without obtaining sufficient informed consent from the client prior to the disclosure of the confidential information.

**ADMONITION**

On February 28, 2017, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rule 1.15(d) (Safekeeping Property) of the Rules of Professional Conduct.

*In summary:*
The attorney was hired for representation in collection of a civil judgment. The client provided the attorney with case files and other materials, including a video recording. The attorney was in possession of the case files and other materials for several years. When the client requested the file materials from the attorney, the attorney provided the client with copies of only a few of the documents and failed to return the complete file materials to the client because they could not be located.

**PUBLIC REPRIMAND**

On February 28, 2017, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Paul E. Remy for violating Rules 1.3 (Diligence), 1.4(a) (Communication), and 5.3(b) (Responsibilities Regarding Nonlawyer Assistants) of the Rules of Professional Conduct.

*In summary:*
Mr. Remy was retained for representation in a civil matter. Mr. Remy filed the client's complaint but did nothing further to move the case forward until a year later when he filed a motion to amend the complaint. The client's action was ultimately dismissed for lack of prosecution.

Mr. Remy failed to reasonably communicate with his client during his representation, including failing to provide status updates to the client and failing to respond to the client's reasonable inquiries for information on the status and progress of the case.

Mr. Remy failed to supervise the work of his non-lawyer assistants, including allowing information and billing statements to be sent out to the client without Mr. Remy's review or approval. Mr. Remy also failed to conduct any follow-up with the non-lawyer assistants about his pending cases.

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**SUSPENSION**

On March 3, 2015, the Honorable Robert P. Faust, Third Judicial District Court, entered an Order of Suspension, against Joseph P. Barrett, suspending his license to practice law for a period of 150 days, for Mr. Barrett's violation of Rule 8.4(c) (Misconduct) of the Rules of Professional Conduct. On February 22, 2017, the Utah Supreme Court issued a Decision affirming Mr. Barrett's 150-day suspension.

*In summary:*

While employed at a law firm, Mr. Barrett misappropriated firm funds when he exchanged legal services for construction work on his home and yard in two cases, thereby depriving his law firm of the legal fees accrued from those cases. He also accepted payment from a firm client and deposited the funds into his personal account without the firm's knowledge.

*Aggravating circumstances:*

Dishonest or selfish motive; multiple offenses; and refusal to acknowledge the wrongful nature of the misconduct.

*Mitigating circumstances:*

Absence of a prior record of discipline; cooperation with the OPC throughout the proceedings; and a partial understanding of what actions he should have taken with his law firm to avoid the problems.


# Save the Date for these Upcoming CLEs!

## JUNE 22
### 8:30 am–4:30 pm

### Roadmap to Effective, Ethical Business Development & Client Service

- The power of relationships
- A short history of Legal Marketing
- What is considered "false and misleading"?
- Ethically networking for clients and referrals
- Client entertainment
- Online marketing and social media
- Referral fees
- Service-related ethics rules overview
- Managing client expectations
- Addressing client complaints
- Handling an angry client

5 hrs. Ethics
1 hr. Prof/Civ

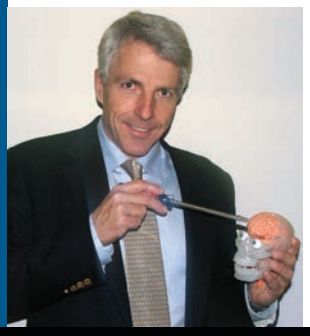
*Presenter: Roy S. Ginsburg, a practicing lawyer for 30+ years, is an attorney coach and law firm consultant nationwide. He also runs a part-time solo practice focusing on legal marketing ethics.*

## JUNE 8
### 9:00 am–4:25 pm

### Making Your Case with a Better Memory

- Save time in court preparation
- Make polished presentations without notes
- Become a better listener in the courtroom so you can cross-examine with confidence
- Remember names of clients and jurors
- Develop better concentration
- Stop worrying about remembering a crucial point

6.5 hrs. CLE



*Presenter: Paul Mellor is a nationally recognized memory training consultant. His objective is to show you how a trained memory can increase your efficiency and productivity in all aspects of law.*

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# *Attorney Discipline*

**UTAH STATE BAR ETHICS HOTLINE**
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www.utahbar.org/opc/office-of-professional-conduct-ethics-hotline/

**Information about the formal Ethics Advisory Opinion process can be found at:**
www.utahbar.org/opc/bar-committee-ethics-advisory-opinions/eaoc-rules-of-governance/.

**ADMONITION**

On November 28, 2016, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rules 1.3 (Diligence) and 1.4(a) (Communication) of the Rules of Professional Conduct.

*In summary:*
The attorney was hired to pursue post-conviction relief on behalf of a client and assist with the client's legal return to the United States. The attorney failed to move the case forward promptly and did not take action on behalf of the client for more than a year. The attorney did not adequately communicate with the client or the client's representative.

**ADMONITION**

On December 20, 2016, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rules 1.3 (Diligence), 1.4(a) (Communication), and 1.15(c) (Safekeeping Property) of the Rules of Professional Conduct.

*In summary:*
The attorney was hired for representation in a divorce case. The attorney deposited the client's payment into an operating account before the attorney had earned the funds. The attorney failed to diligently pursue the client's case, which resulted in the court scheduling an order to show cause hearing. The attorney did not reasonably communicate with the client regarding the

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status of the matter and the means by which the attorney was to accomplish the client's objectives.

*Mitigating circumstances:*
Absence of a prior record of discipline; absence of a dishonest or selfish motive; personal and emotional problems; full and free disclosure to the disciplinary authority; and genuine display of remorse.

**ADMONITION**

On December 20, 2016, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rules 1.3 (Diligence), 1.4(a)(3) (Communication), 1.4(a)(4) (Communication), and 1.15(c) (Safekeeping Property) of the Rules of Professional Conduct.

*In summary:*
The attorney was hired for representation in a divorce case and to prepare the Qualified Domestic Relations Orders (QDRO) necessary for the client. The attorney deposited the client's payment into an operating account before the attorney had performed the work to earn the funds. The attorney took an abnormal amount of time to complete a QRDO. The attorney did not reasonably communicate with the client and to keep the client informed on the status of the QDRO.

**ADMONITION**

On December 20, 2016, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rule 1.6(a) (Confidentiality of Information) of the Rules of Professional Conduct.

*In summary:*
The attorney represented a client in a divorce case. The client posted an online review of the attorney expressing dissatisfaction with the attorney's representation, and the attorney sued the client in connection with the review. As part of the attorney's action against the client, the attorney filed a motion with supporting exhibits which under normal circumstances were subject to the attorney-client privilege and/or the confidentiality obligations of Rule 1.6 of the Rules of Professional Conduct. The attorney failed to take steps to protect the confidentiality of those exhibits and failed to disclose the confidential information in a manner that would limit access to the information.

**ADMONITION**

On December 20, 2016, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rules 1.15(a) (Safekeeping Property) and 1.15(c) (Safekeeping Property) of the Rules of Professional Conduct.

*In summary:*
The attorney was hired for representation in divorce modification proceedings. The fee was considered a non-refundable flat fee by the attorney. The attorney's fee agreement with the client did not contain any language indicating that any portion of the attorney's retainer could be refunded to the client if the attorney did not perform services on behalf of the client that were reasonably worth the amount of fees paid to the attorney. This conduct was not consistent with the attorney's ethical responsibilities.

## *Discipline Process Information Office Update*

The Discipline Process Information Office opened 69 files during 2016 and provided helpful information to the attorneys named as subjects of Bar complaints. It is important to know most complaints filed with the Office of Professional Conduct are without merit. If you find yourself the subject of a Bar complaint, contact Jeannine P. Timothy with your questions about the discipline process. Jeannine is happy to answer your questions and clarify the process.

**Jeannine P. Timothy**
**(801) 257-5515**
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# *Attorney Discipline*

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**Information about the formal Ethics Advisory Opinion process can be found at:**
www.utahbar.org/opc/bar-committee-ethics-advisory-opinions/eaoc-rules-of-governance/.

## SUSPENSION

On March 22, 2017, the Honorable Laura S. Scott, Third Judicial District Court, entered an Order of Suspension, against Michael R. Power, suspending his license to practice law for a period of eighteen months. The court determined that Mr. Power violated Rules 1.4(a) (Communication), 1.5(a) (Fees), 1.15(c) (Safekeeping Property), 1.16(d) (Declining or Terminating Representation), and 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

*In summary:*
Mr. Power was hired to represent a client in a divorce action and in a criminal case. Mr. Power failed to adequately communicate with the client which resulted in a default being entered against the client in the divorce matter. Mr. Power charged the client the full amount of time involved for the motion to set aside the default entered in the divorce matter.

Due to the client's incarceration, the client provided Mr. Power with the client's financial account information by which Mr. Power had access to the client's financial accounts. The client provided the financial account information to Mr. Power for limited purposes. Mr. Power did not obtain his client's express authorization prior to using the funds in the client's financial accounts to pay his legal fees. Mr. Power did not provide the client with any invoices or otherwise inform the client of the payments prior to effectuating payment from the client's financial accounts. There were at least six instances when Mr. Power obtained funds from the client's financial accounts in an amount which resulted in an overpayment to Mr. Power. The funds Mr. Power obtained from the client's financial accounts were not deposited into Mr. Power's trust account.

Mr. Power received funds from the client's financial accounts in anticipation of hiring an expert witness to testify on the client's behalf in the criminal case. Mr. Power failed to deposit the advance expert witness fee into his trust account. An expert witness was not retained on behalf of the client. Mr. Power failed to refund the advance fee at the time his representation was terminated and instead, applied the amount of the advance fee to the client's final invoice, which was not sent to the client for several months after Mr. Power's representation was terminated.

The OPC served Mr. Power with a Notice of Informal Complaint (NOIC) requiring his written response within twenty days pursuant to the Rules of Lawyer Discipline and Disability. Mr. Power did not timely respond in writing to the NOIC.

*Aggravating factors:*
Multiple offenses; vulnerability of victim; and refusal to acknowledge the wrongful nature of the misconduct involved.

## INTERIM SUSPENSION

On April 7, 2017, the Honorable Ryan M. Harris, Third Judicial District Court, entered an Order of Interim Suspension, pursuant to Rule 14-519 of the Rules of Lawyer Discipline and Disability, against Jefferson B. Hunt, pending resolution of the disciplinary matter against him.

*In summary:*
Mr. Hunt was placed on interim suspension based upon his criminal convictions for Attempted Possession or Use of a Controlled Substance, a Class A Misdemeanor; Possession or Use of a Controlled Substance, a Class B Misdemeanor; Impaired Driving, a Class B Misdemeanor; and three counts of Attempted Purchase, Transfer, Possession or Use of a Firearm by Restricted Person, a Class A Misdemeanor.

## ADMONITION

On April 25, 2017, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rules 1.3 (Diligence), 1.4(a), and 1.4(b) (Communication) of the Rules of Professional Conduct.

*In summary:*
The attorney was hired to represent the clients in an immigration matter to pursue an Application to the USCIS. USCIS issued a Request for Evidence in association with the Application allowing a deadline of thirty days to respond. Upon review of the Request for Evidence, the attorney mistakenly assumed and informed the clients they had a longer period of time to respond to the Request for Evidence. The application was subsequently denied due to the lack of timely response to the Request for Evidence.

The clients instructed the attorney to file a second Application and provided the attorney with the necessary information. The attorney failed to complete the work that needed to be done in association with the second Application and failed to communicate with the clients. The clients attempted to schedule meetings with the attorney but the meetings were cancelled by the attorney for various reasons. When the clients were unable to speak to the attorney, they met with another attorney and went a different route. Many months later, the attorney discovered the Application had not been filed and the attorney proceeded and filed the Application without having any communications with the clients.

## PUBLIC REPRIMAND

On April 25, 2017, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Roy D. Cole for violating Rules 1.5(b) (Fees) of the Rules of Professional Conduct.

*In summary:*
Mr. Cole was retained for representation in a custody matter. Mr. Cole provided a fee agreement indicating the client would be billed according to the attorney's hourly rate. Mr. Cole received an initial retainer from the client. The client requested a breakdown of his bill from Mr. Cole monthly for two months. Mr. Cole did not provide the requested billing. The client ultimately requested his case file, final bill and the unused portion of his retainer. When the client received his final bill, Mr. Cole had charged the client a flat fee for email and text communications.

Mr. Cole failed to communicate with the client that he would be charging the client a flat fee for each email and each text message. Mr. Cole charged fees to the client in a manner that violated the fee agreement.

## PUBLIC REPRIMAND

On April 25, 2017, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Rocky D. Crofts for violating Rules 1.1 (Competence), 1.3 (Diligence), and 1.5(a) (Fees) of the Rules of Professional Conduct.

*In summary:*
Mr. Crofts was retained to obtain a loan modification from the client's lender. The client's fee was broken up into three installments to be paid over three months. Several months passed and the client called Mr. Croft's office and often spoke with Mr. Croft's assistant to check on the progress of his loan modification at which time the assistant would request additional documents from the client. The client contacted his lender directly almost seven months after retaining Mr. Crofts and was told that no request for loan modification had been received. The client also learned that his home was in foreclosure proceedings. The lender instructed the client on how to complete a loss mitigation packet for submission, which the client completed and returned to the lender. The client was ultimately approved for a loan assistance offer.

Mr. Crofts failed to complete and submit the loan modification package to the lender within seven months after being retained by the client.

Mr. Crofts did not provide a satisfactory explanation for his failure to submit the loan modification package to the lender. He refused to refund any of the money paid by the client, even though the contract signed by the client indicated that the fees for assembling and submitting the package were only part of the total fee.

## PUBLIC REPRIMAND

On April 25, 2017, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Terry R. Spencer for violating Rules 1.4(a) (Communication) and 1.5(a) (Fees) of the Rules of Professional Conduct.

*In summary:*
Mr. Spencer was retained for representation in a grandparent visitation matter. The clients paid a retainer for legal services. Mr. Spencer filed the client's Verified Petition for Grandparent Visitation. Several months later, the clients called Mr. Spencer's

office with questions concerning a recent Supreme Court Ruling and the merits of going forward with the case. The clients also requested an estimate of what it would cost to finish the case. Mr. Spencer never provided the clients with the requested estimate, nor did he answer the clients' questions concerning the merits of the case.

After two months of no communication, Mr. Spencer withdrew from the case and charged the clients for two hours of time associated with withdrawing from the case. Mr. Spencer did not contact the clients before withdrawing to communicate his intention or to inquire as to whether the client wished to have the case move forward.

Mr. Spencer charged for two hours of time to withdraw and close the file, which was not a reasonable fee. Mr. Spencer did not track and bill actual time instead he used two hours as a standard charge for each file.

## PUBLIC REPRIMAND

On March 16, 2017, the Honorable Ryan M. Harris, Third Judicial District Court entered an Order of Discipline: Public Reprimand against L. Miles Lebaron for violations of Rules 1.3 (Diligence) and 1.4(a) (Communication) of the Rules of Professional Conduct.

*In summary:*
Mr. Lebaron was retained for representation in a litigation matter. Mr. Lebaron received discovery requests including Requests for Admissions from defendants. Mr. Lebaron did not provide the clients with copies of the discovery requests and missed the deadline for responding, which resulted in the clients' Requests for Admissions being deemed admitted. The defendants filed a Motion for Summary Judgment against the clients based on the requests for admissions being deemed admitted. A couple of months later, the clients emailed Mr. Lebaron requesting a status update after being unable to reach Mr. Lebaron by telephone. Mr. Lebaron's assistant emailed the clients a copy of defendants' second set of interrogatories but did not inform the clients of the summary judgment motion. The court set the matter for oral arguments on the Motion for Summary Judgment. The court ultimately granted a Motion for Summary Judgment in favor of the defendants.

Mr. Lebaron failed to make sure he had information from his clients so that he could submit responses to discovery requests in a timely fashion. Mr. Lebaron failed to timely respond to discovery requests on behalf of his client and failed to file a motion to set aside the admissions.

Mr. Lebaron failed to return messages and phone calls from his clients, failed to keep the clients informed, failed to comply with his clients' requests for information and failed to consult with his clients regarding important matters in the case.

## ADMONITION

On March 3, 2017, the Honorable Ryan M. Harris, Third Judicial District Court, entered an Admonition against an attorney for violating Rules 1.3 (Diligence) of the Rules of Professional Conduct.

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*In summary:*
The attorney was retained by a client to prepare and file a complaint. The attorney prepared a demand letter and a draft complaint. The attorney sent the demand letter along with a copy of the draft complaint to an attorney he believed was representing the Utah resident. He asked that attorney for a response to the demand letter but did not receive one. After sending the demand letter, the attorney placed a copy of the letter and a copy of the draft complaint in a file. The attorney and staff failed to calendar the statute of limitations deadline. Consequently, the attorney failed to file the complaint before the statute of limitations expired.

## SUSPENSION

On March 3, 2017, the Honorable Ryan M. Harris, Third Judicial District Court, entered an Order of Suspension, against David J. Hardy, suspending his license to practice law for a period of 12 (twelve) months for Mr. Hardy's violation of Rule 8.4(c) (Misconduct) of the Rules of Professional Conduct. A Final Judgment was issued on March 24, 2017.

*In summary:*
Mr. Hardy was retained to represent an out of state client in a civil matter against a Utah resident. He had been advised by his client that a statute of limitations existed. Mr. Hardy drafted the complaint and placed it in a file. The statute of limitations deadline was not calendared by Mr. Hardy or his staff. Mr. Hardy failed to file the complaint in time to meet the statute of limitations deadline. A few months went by before Mr. Hardy discovered his error and realized he had failed to file the complaint before the statute of limitations expired. Mr. Hardy told no one in an effort to buy time with the hope that the problem would resolve itself over time. He informed his client that the complaint had been filed even though he knew it had not. When the client followed up with Mr. Hardy every few months, Mr. Hardy continued to tell the client that the case was proceeding nicely, even though he knew it was not. Mr. Hardy fabricated details about the case to make it appear to the client that the case was in fact proceeding. He represented to the client that there was a trial date then a few months later told the client the trial date had been postponed and a new date was in the process of being scheduled, which Mr. Hardy knew was not true.

Mr. Hardy told the client he had filed a motion for entry of default, but no such motion had been filed and Mr. Hardy knew it. A few weeks after, Mr. Hardy took an extra step of creating a document that he captioned "Entry of Default." He created the document with the intent of making it appear that the document was an authentic court document signed by a clerk of the court, signifying that the Utah resident was in default. After creating the fake Entry of Default, Mr. Hardy sent the document to the client with the intent of deceiving him into believing that the court had actually entered default against the client's opponent.

*Aggravating Factors:*
Selfish and dishonest motive. Pattern of misconduct. Substantial experience.

*Mitigating Factors:*
No prior record of discipline. Cooperative attitude towards proceedings. Remorse. Timely good faith effort to make restitution or to rectify consequences. Acknowledged wrongful nature of actions.

## STAYED SUSPENSION/PROBATION

On March 6, 2017, the Honorable James D. Gardner, Third Judicial District Court, entered an Order of Discipline (Stayed Suspension/Probation), against Kelly Ann Booth, placing her on probation for a period of 12 (twelve) months for Ms. Booth's violation of Rules 1.3 (Diligence) and 8.4(c) (Misconduct) of the Rules of Professional Conduct. A Final Judgment was issued on March 21, 2017.

*In summary:*
Ms. Booth was hired on a contingency basis to provide legal services to a client for the recovery of damages and restitution for retail theft from the client's company. The client was asked to pay a retainer for costs, which he did. Ms. Booth filed a Complaint on behalf of the client against several defendants. One of the defendants was served with the Complaint who indicated that although they had similar names, he was not the same person as the defendant they were seeking. Ms. Booth continued to pursue the case against the wrong defendant ("individual") eventually obtaining a default judgment and garnishing money from the individual's account. The individual retained an attorney to file a motion to bar garnishment of his account. The court granted the motion and entered an order in favor of the individual for more than the garnishment amount, plus attorney's fees to be paid by Ms. Booth's client.

Ms. Booth emailed the client and told him the trial had been cancelled because of a pending motion for summary judgment. The client later found out that no motion had been filed. The client communicated with Ms. Booth numerous times to get updates and information regarding his case. Ms. Booth failed to return many calls.

Ms. Booth filed a Motion for Default Judgment against some of the defendants. The court entered a Default Judgment against the defendants. After the default was entered by the court, Ms. Booth filed no further pleadings in the client's case and failed to timely pursue collections options on behalf of the client.

Ms. Booth contacted the client and told him they had won by default in a small claims action against one of the defendants when no small claims action had ever been filed. For several months, the client contacted Ms. Booth to inquire if the trial was still taking place so that he could make necessary travel arrangements to be in Utah for the trial. No trial date had been set.

## DISBARMENT

On April 25, 2017, the Honorable Ryan M. Harris, Third Judicial District Court, entered Findings of Fact, Conclusions of Law and Order of Disbarment disbarring Jeremy D. Eveland from the practice of law for his violation of Rules 8.4(b) and 8.4(c) (Misconduct) of the Rules of Professional Conduct. A Final Judgment was issued on May 9, 2017.

*In summary:*
Between 2006 and 2012, Mr. Eveland devised a scheme to defraud individuals into signing over their homes to him through deeds to a trustee to avoid foreclosure. Mr. Eveland told the individuals that by signing the documents they would be allowed to keep their homes or transfer their homes back into their names. Mr. Eveland failed to inform the individuals that he was in control of the trust. Mr. Eveland transferred the ownership of the homes to himself through various trusts and companies that he controlled. The individuals were not aware that they were no longer owners of their homes.

On March 13, 2015, in the Third District Court for Salt Lake County, State of Utah, Mr. Eveland was convicted of Communications Fraud, a 3rd Degree Felony.

On December 28, 2015, Mr. Eveland was placed on Interim Suspension for having been convicted of a crime that reflects adversely on his honesty, integrity and fitness as a lawyer. Mr. Eveland violated Rule 8.4(b) by committing a criminal act that reflects adversely on his honesty, trustworthiness, or fitness as a lawyer. Mr. Eveland violated Rule 8.4(c) by committing a criminal act involving dishonesty, fraud, deceit or misrepresentation.

After balancing aggravating and mitigating factors, the court determined that the mitigating factors were not significant enough to outweigh the aggravating factors, or to outweigh them by a large enough amount to be considered sufficiently "significant" or "unusual or substantial" to permit a reduction in the sanction down from the presumptive penalty of disbarment. Some of the mitigating factors (restitution) could not, by Rule, be considered mitigating at all, and others (inexperience, character, other penalties, remorse) are factors that under the facts of this case cannot be given great weight. In sum, the Court held that mitigating factors are simply not significant enough here to merit a downward departure in sanction.

The court determined that Mr. Eveland defrauded at least eleven customers, four of whom he admitted were his own former clients. These individuals were in an extremely vulnerable situation, and they trusted Mr. Eveland to ethically help them with their situation. Mr. Eveland broke their trust. Not only did Mr. Eveland's actions constitute felony communications fraud, they also constituted actions completely inappropriate for a member of the Utah State Bar. The court stated that actions like these are materially indistinguishable from raiding a client's trust account and deserved the highest sanction.

## *Discipline Process Information Office Update*

From January through May of this year, the Discipline Process Information office opened 33 files. In addition to answering questions posed by attorneys who are named as subjects of Bar complaints, Jeannine Timothy responded to several complainants who had questions about the confidentiality requirement. Jeannine is available to answer all questions about the complaint process, and she is happy to be of service to you.

DISCIPLINE PROCESS
INFORMATION OFFICE

**Jeannine P. Timothy**
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# *Attorney Discipline*

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Call the Bar's Ethics Hotline at 801-531-9110 Monday through Friday from 8:00 a.m. to 5:00 p.m. for fast, informal ethics advice. Leave a detailed message describing the problem and within a twenty-four-hour workday period, a lawyer from the Office of Professional Conduct will give you ethical help about small everyday matters and larger complex issues.

**More information about the Bar's Ethics Hotline:** http://www.utahbar.org/?s=ethics+hotline

**Information about the formal Ethics Advisory Opinion process:** www.utahbar.org/opc/rules-governing-eaoc/.

## SUSPENSION

On August 6, 2018, the Honorable Royal I. Hansen, Third Judicial District, entered an Order of Discipline: Suspension against Sean P. Young, suspending his license to practice law for a period of three years. The court determined that Mr. Young violated Rule 1.1(Competence), Rule 1.3(Diligence), Rule 1.4(a)(Communication), Rule 1.4(b)(Communication), Rule 1.15(d)(Safekeeping Property), Rule 1.16(d)(Declining or Terminating Representation), Rule 3.3(a)(Candor Toward the Tribunal), and Rule 8.1(b)(Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

*In summary:*

**Immigration Matter:**

A client retained Mr. Young to represent her in removal proceedings before the United States Immigration Court and paid for the representation. A few months later, the client married a U.S. Citizen with whom the client was expecting a child. As a result, the client became eligible for an adjustment of immigration status and retained Mr. Young to file the petition. Mr. Young received a payment from the client to prepare the petition including the filing fee, but Mr. Young did not file the petition. A removal hearing was held, but Mr. Young did not appear at the hearing with the client and instead an associate requested a continuance. On the advice of Mr. Young, the client's husband did not attend the hearing. The judge denied the continuance request and instead granted the client's voluntary departure.

The client's husband paid Mr. Young to file a motion to reopen the case. The client attempted to contact Mr. Young regarding the status of the motion to reopen but Mr. Young did not respond. Several months later, Mr. Young filed the motion to reopen but failed to attach adequate proof to substantiate the client's marriage. In the motion to reopen, Mr. Young indicated to the court that due to financial struggles, the client was unable to file the petition prior to the removal hearing. The immigration court denied the motion to reopen.

Mr. Young did not notify the client that the motion had been denied. After making repeated attempts to contact Mr. Young, the client contacted Immigration and Customs Enforcement and discovered that the motion was denied. The client's husband paid Mr. Young to file an appeal with the Board of Immigration Appeals. The Board issued a notice of briefing schedule. Mr. Young filed a request for an extension of time to file his brief but the Board denied the request. Mr. Young never filed a brief on behalf of the client. The client's husband paid Mr. Young to file a request for a stay of the client's removal. Mr. Young filed the request on the day scheduled for the client's departure. The request was denied. The client retained new counsel and based on Mr. Young's ineffective representation, new counsel was able to reopen the case and ultimately obtain permanent residency

## *Discipline Process Information Office Update*

What should you do if you receive a letter from Office of Professional Conduct explaining you have become the subject of a Bar complaint? Call Jeannine Timothy! Jeannine will answer all your questions about the disciplinary process. Jeannine is happy to be of service to you, so please call her.

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for the client. Mr. Young failed to provide an accounting of the work he performed on behalf of the client.

The OPC sent two letters and a Notice of Informal Complaint (NOIC) to Mr. Young requesting his response. Mr. Young did not respond to the OPC.

**Criminal Matter No. 1**

A man pled guilty to capital murder and was sentenced to death. Some years later, the supreme court allowed the man to withdraw his guilty plea and remanded the matter to the district court. Mr. Young was appointed to assist another attorney in representing the man. The client provided Mr. Young with a detailed list of potential witnesses that he believed would have helpful information in mitigation. Mr. Young was tasked with coordinating the potential testimony of approximately eighteen witnesses, including contacting and interviewing the witnesses, preparing the witnesses to testify at trial and issuing subpoenas. Mr. Young assured his co-counsel and the client that he was conducting his assigned work and that most of the witnesses were not cooperating or would not contact him. Contrary to Mr. Young's representations, he failed to contact, interview or question all but two of the witnesses he was to contact. The witnesses Mr. Young failed to contact had compelling evidence to present to the jury. Mr. Young's conversations with the two witnesses he did contact were not about the substance of their testimony.

During the trial, Mr. Young inadequately cross-examined some of the State's witnesses against the client, failed to timely object to interference with witness testimony and allowed the jury to hear that the client withdrew the jury's option to consider a sentence of life in prison without parole.

A different attorney was appointed to represent the client in his Capital appeal. That attorney promptly requested the client's file from Mr. Young. Eventually, the attorney had to file a motion to compel Mr. Young to provide the client file. The court granted the motion and ordered Mr. Young to provide the file. Mr. Young eventually provided an incomplete file almost a year after the initial request for the file.

**Criminal Matter #2**

Mr. Young was appointed to represent a man in a criminal matter. The client called Mr. Young multiple times to request copies of his discovery and his file, but Mr. Young did not respond. The OPC sent two letters and a NOIC to Mr. Young requesting his response. Mr. Young did not respond to the OPC.

**Criminal Matter #3**

Mr. Young was appointed to represent a man in a criminal matter. Mr. Young failed to meet with the client, failed to gather evidence, including the testimony of two critical expert witnesses and failed to object to the introduction of irrelevant and highly prejudicial evidence. The OPC sent two letters and a NOIC to Mr. Young requesting his response. Mr. Young did not respond to the OPC. Mr. Young, after proper notice also failed to attend the Screening Panel Hearing of the Ethics and Discipline Committee of the Utah Supreme Court.

## SUSPENSION

On August 8, 2018, the Honorable Richard McKelvie, Third Judicial District, entered an Order of Discipline: Suspension against Nathan W. Drage, suspending his license to practice law for a period of three years. The court determined that Mr. Drage violated Rule 8.4(b) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

On August 30, 2017, the United States District Court, District of Utah, convicted Mr. Drage of Conspiracy to Impair and Impede

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the IRS, a Felony; and Willful Failure to File a Return – Tax Year 2004, Willful Failure to File a Return – Tax Year 2005, and Willful Failure to File a Return – Tax Year 2006, Misdemeanors. Mr. Drage was sentenced to twenty-four months probation and restitution. Mr. Drage's alleged co-conspirators were acquitted of the conspiracy charges.

*Aggravating Circumstances:*
Prior record of discipline.

*Mitigating Circumstances:*
Good reputation.

## RECIPROCAL DISCIPLINE

On September 14, 2018, the Honorable Su J. Chon, Third Judicial District Court, entered an Order of Reciprocal Discipline: Probation, against R. Jordan Gardner, giving Mr. Gardner a ninety day probation for his violation of Rule 1.5 (Fees), Rule 1.7 (Conflict of Interest), and Rule 8.4(d) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
On February 21, 2018, the Presiding Disciplinary Judge, State of Arizona, issued a Final Judgement and Order placing Mr. Gardner on probation for ninety days and publicly reprimanded him for his conduct in violation of the Arizona Rules of Professional Conduct.

Mr. Gardner filed a petition for dissolution of a marriage, identifying himself as attorney for the petitioner (Wife) and indicated that Wife was seeking to divorce Husband. The judge approved a consent decree that appeared to be unusually favorable to Husband because he understood Wife to be represented by Mr. Gardner. The court made its determination after reviewing Mr. Gardner's client intake form that identified Wife as the adverse party and the fee agreement that listed Wife as the adverse party. There was incongruity between the identity of Mr. Gardner's client in court pleadings and the fee agreement and the scope of the representation was not adequately conveyed to Wife.

The court later determined that Mr. Gardner conducted an initial consultation with Husband in what he understood to be an uncontested divorce. At the time both Husband and Wife were affiliated with a church in Colorado City, Arizona. A few days after the initial consultation, Husband called Mr. Gardner and explained that because he was affiliated with the church, he did not want to be identified as the party initiating the divorce. Husband told Mr. Gardner that Wife consented to being identified as the petitioner in the matter. Husband and Wife both appeared in Mr. Gardner's office and signed court documents prepared by Mr. Gardner following discussion between the two. Mr. Gardner prepared the consent decree based upon the discussions. Wife contacted Mr. Gardner and voiced several concerns with the documents that had been prepared. Mr. Gardner met with Wife outside of Husband's presence and further discussed these issues. Later, the consent agreement was executed by the parties. Two years later, Wife filed a motion to

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vacate the consent decree alleging that Mr. Gardner failed to adequately consult with her prior to her signing the decree. The court vacated the consent decree.

## RECIPROCAL DISCIPLINE

On July 31, 2018, the Honorable Laura S. Scott, Third Judicial District Court, entered an Order of Reciprocal Discipline: Probation, against J. Brent Garfield, giving Mr. Garfield a three year probation for his violation of Rule 1.3 (Diligence), Rule 1.4(b) (Communication), Rule 1.15(a) (Safekeeping Property), and Rule 1.16(d) (Declining or Terminating Representation) of the Rules of Professional Conduct.

*In summary:*
On June 23, 2017, the Colorado Supreme Court issued an Order Approving Conditional Admission of Misconduct and Imposing Sanctions. Mr. Garfield agreed to a 30-day suspension all stayed provided he successfully complete a three year probationary period with conditions.

Mr. Garfield is a solo-practitioner who was winding down his practice. He was hired by a family friend to represent her in divorce proceedings. The friend paid Mr. Garfield's fee, which she understood to be a flat fee, but they had no written agreement. After he was hired, Mr. Garfield learned he would be called away for eighteen months on a religious mission to a foreign country. Mr. Garfield informed all his clients, including his friend, that he would be called away. Though Mr. Garfield encouraged the friend to retain new counsel, he did not withdraw from her case. According to Mr. Garfield, communication with the client was occasionally difficult and she was reluctant to retain new counsel.

Mr. Garfield continued to work to try and settle her case, but as his departure was approaching he was waiting on her to provide him with a list of settlement terms she would agree to. The friend provided the list, the same day he began training for the mission trip. Mr. Garfield thought that he would be able to finish wrapping up the case after arriving in his foreign assignment but was unable to establish an internet connection or otherwise attend to the case for approximately six weeks after arriving.

After Mr. Garfield fell out of touch with her, the friend contacted another attorney. The new attorney attempted to contact Mr. Garfield but received an outgoing voicemail informing her that he was on an 18-month sabbatical and she should contact a certain attorney who agreed to field his messages and give clients access to their files in Mr. Garfield's absence. The new attorney contacted that attorney who had no information about the friend's case.

The new attorney checked the case's Record of Actions, which reflected that the case was set for a Permanent Orders hearing. The new attorney also contacted opposing counsel, who informed her that Mr. Garfield had failed to participate in preparing a Joint Trial Management Certificate and had disclosed neither witnesses nor evidence for the upcoming hearing.

Mr. Garfield claims to have informed the friend of the upcoming hearing, though he has no specific memory of their conversation. Mr. Garfield admits to not submitting any prehearing witnesses or exhibit lists because he was distracted by preparing for the mission trip and because he was focused on trying to get the case settled.

Mr. Garfield gave the friend an accounting of her fees, stating that he intended the fee to be a fixed, non-refundable flat fee, but given his early departure from the case, he believed the friend was owed a refund. Mr. Garfield admits that the he did not hold the flat fee in his trust account for any portion of his representation.

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## RECIPROCAL DISCIPLINE

On August 30, 2018, the Honorable Kara L. Pettit, Third Judicial District Court, entered an Order of Reciprocal Discipline: Suspension, against Kirk A. Guinn, giving Mr. Guinn an eighteen month suspension from the practice of law for his violation of Rule 1.5(a) (Fees), Rule 1.7(a) (Conflict of Interest), Rule 3.3 (a) (Candor Toward the Tribunal), and Rule 8.4(d) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
On May 22, 2017, the Presiding Disciplinary Judge, State of Arizona, issued a Final Judgment and Order in which Mr. Guinn was suspended for eighteen months for his conduct in violation of the Arizona Rules of Professional Conduct.

Mr. Guinn filed a bankruptcy for a client dying from terminal cancer who had liens on his vehicles. Mr. Guinn and his daughter appeared at the client's home and personally drove away the vehicles of the client prior to Mr. Guinn filing the bankruptcy for him. The client died and in that same month, the lienholder received notification from an Indiana towing company, threatening that if the lender failed to pay towing and storage costs, the client's vehicles would be sold. When the lienholder arranged to pay those fees, the lienholder was told the cars had already been sold.

When confronted by the lienholder with the fact that his daughter and he had personally taken the vehicles, Mr. Guinn was asked why the vehicles had been taken to Indiana, he responded, "it was convenient."

In the client bankruptcy matter, the U.S. Trustee moved for Denial of Prior Fees and Request for Disgorgement. In the motion, it was stated that Mr. Guinn was paid his fee by a third party affiliated with the Indiana towing company. Mr. Guinn did not respond to the motion and failed to appear for a hearing on the motion. The Court ordered Mr. Guinn to appear. At the hearing, Mr. Guinn revealed he had no written agreement with the third party explaining how he would receive his fees but he had advised his client to contract with the third party who would pay Mr. Guinn. The Court ordered Mr. Guinn to list all the bankruptcy cases in which he received payment from the third party or his entities. Mr. Guinn admitted he had a relationship with the third party in twenty-four other cases. The Court ordered he disgorge himself of all fees collected through his involvement with the third party. Mr. Guinn and the Trustee settled these matters.

In a second case, Mr. Guinn represented a client in a bankruptcy matter. The client asked about attorney fees, and Mr. Guinn advised that he could participate in the "vehicle surrender program" that would cover his attorney fees. The client agreed to participate in his program, and Mr. Guinn arranged for a transfer of the client's vehicle to the Indiana towing company. He assured the client he could file bankruptcy in three weeks.

After the three weeks passed, Mr. Guinn's client repeatedly attempted to contact Mr. Guinn with no answer for over a


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month. The lienholder made demands on the clients. When Mr. Guinn finally responded to his client, he told him he was filing the bankruptcy and to have the lienholder contact him directly. Mr. Guinn then told the lienholder his client had transferred the car out of state. Mr. Guinn told his client that the action taken was not illegal. When the lienholder told the client he could face criminal prosecution, the vehicle was returned to the lienholder without the client's knowledge.

## RECIPROCAL DISCIPLINE

On September 10, 2018, the Honorable Richard E. Mrazik, Third Judicial District Court, entered an Order of Reciprocal Discipline: Public Reprimand, against Joshua R. Trigsted for his violation of Rule 4.2 (Communication with Persons Represented by Counsel) of the Rules of Professional Conduct.

*In summary:*
On April 18, 2018, the Oregon Supreme Court issued an Order of Discipline: Public Reprimand with Conditions.

Mr. Trigsted undertook to represent two clients in separate alleged Federal Fair Debt Collection Practices Act claims against a company (Company). An attorney (Company Attorney) represented the Company and copied the president of the Company (President) and an employee of the Company (Employee) on an email sent to Mr. Trigsted. Mr. Trigsted replied to Company Attorney and copied President and Employee. Over the next several weeks, when Company Attorney emailed Mr. Trigsted and copied President and Employee, Mr. Trigsted replied solely to Company Attorney.

In response to a demand letter Mr. Trigsted sent to the Company on one claim, President notified Mr. Trigsted that Company Attorney represented them on both claims and asked Mr. Trigsted to direct all communication to Company Attorney. After acknowledging notice of the representation, Mr. Trigsted "replied all" to an email from Company Attorney, copying President on that communication.

## PUBLIC REPRIMAND

On August 27, 2018, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Jeffrey C. Howe for violating Rule 1.1 (Competence), Rule 1.2(a) (Scope of Representation), and Rule 1.4(a) (Communication) of the Rules of Professional Conduct.

*In summary:*
A client retained Mr. Howe to represent her in bankruptcy proceedings. The day before the creditor meeting, the client received an email from Mr. Howe indicating that she should sign the attached documents and bring them with her to the hearing. The attached documents were not her documents, so the client refused to attend the hearing. Because the client was not at the hearing, Mr. Howe offered to re-file the bankruptcy petition but did not explain the consequences of a dismissal of a bankruptcy case. Mr. Howe filed a second petition for bankruptcy on behalf of the client but did so without the client's authorization. The client did not attend the meeting of creditors due to her attendance at a memorial service. The client did not speak with Mr. Howe again after notifying him that she would not attend the meeting of creditors. Mr. Howe filed a third petition for bankruptcy on behalf of the client. The client was not aware that Mr. Howe had filed the petition and he did not have her authorization to file it. The client's credit was detrimentally impacted as a result of the filings. Mr. Howe returned the full amount of the client's retainer.

*Aggravating Circumstances:*
Prior record of discipline.

*Mitigating Circumstances:*
Medical issues.


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## RECIPROCAL DISCIPLINE

On April 19, 2018, the Honorable John J. Walton, Fifth Judicial District Court, entered an Order of Reciprocal Discipline: Suspension, against Brent A. Blanchard, suspending Mr. Blanchard for a period of three years for his violation of Rule 1.4(a) (Communication), Rule 1.8(a) (Conflict of Interest), Rule 1.15(c) (Safekeeping Property), and Rule 1.16(d) (Declining or Terminating Representation) of the Rules of Professional Conduct.

*In summary:*
On August 23, 2015, the State Bar of Nevada Southern Nevada Disciplinary Board issued an Order suspending Mr. Blanchard for three years.

Mr. Blanchard was Continuing Legal Education (CLE) suspended in Nevada on July 27, 2010. Despite being CLE suspended, Mr. Blanchard continued to practice law. In the fall of 2010, Mr. Blanchard's friend and former co-worker (Friend) approached Mr. Blanchard about the possibility of using certain monies belonging to a trust in Friend's mothers name to purchase a home for Friend to live in. Friend provided Mr. Blanchard with money from his mother's trust to purchase the home which was to be purchased by a certain Limited Liability Company (LLC). Mr. Blanchard established the LLC in his name alone and he was the only officer of the company. Mr. Blanchard believed that Friend would pay rent on the house which Mr. Blanchard would then use to repay Friend's mother's trust. This did not happen. Mr. Blanchard sued Friend to retake the property with the intention of selling the home. Mr. Blanchard intended to keep part of the profits from the sale and return the principal of the monies taken to the trust along with the other part of the profit from the sale of the property.

In another matter, Mr. Blanchard agreed to represent a client in a contract dispute in a Nevada court despite being CLE suspended. Opposing counsel filed a motion seeking clarification and guidance from the court on how to address the fact that Mr. Blanchard was administratively suspended from the practice of law. As a result of opposing counsel's filing, the court ordered that Mr. Blanchard was to be sanctioned for filing documents while being CLE suspended and that Mr. Blanchard did so while knowing his license was suspended. Mr. Blanchard was ordered to pay attorneys fees and costs.


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The Discipline Process Information Office is available to all attorneys who find themselves the subject of a Bar complaint, and Jeannine Timothy is the person to contact. From January to August 2018, Jeannine opened 57 files, which is an increase of 20% from last year. Jeannine is available to assist and explain all stages of the discipline process, so call Jeannine with all your questions.

DISCIPLINE PROCESS INFORMATION OFFICE

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### RESIGNATION WITH DISCIPLINE PENDING

On May 10, 2018, the Utah Supreme Court entered an Order Accepting Resignation with Discipline Pending concerning S. Baird Morgan, for violation of Rules 1.5(a) (Fees), Rule 3.3(a) (Candor Toward the Tribunal), and Rule 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Morgan represented the estate of a man who was killed in an automobile accident in 2009 in which the man was the "at-fault" driver. A lawsuit was filed by the insurance provider for the victim of the other vehicle. Mr. Morgan was hired by the liability insurer of the man to represent and defend the man's estate and his surviving widow. The widow was a key fact witness to the issue of whether workers compensation was liable for damages and was also a party as the personal representative of the estate. After settlement and dismissal of the claim against the man, Mr. Morgan was permitted to continue to represent the widow to prepare her for her likely testimony as a material witness to the litigation. The widow passed away in September 2014.

In or about July of 2015, Mr. Morgan accepted an Of Counsel position with a new firm and he brought his representation of the widow and the insurance provider to the new firm. A factor in the determination of Mr. Morgan's salary at the firm was the amount of client billings that he would be generating while at the firm including this matter. Mr. Morgan worked for the new firm for approximately nine months. During this time, Mr. Morgan billed the insurance provider for costs and fees for his representation of the estate and the widow. Mr. Morgan also communicated to the insurance provider regarding the status of the representation. In the billings and status letters, Mr. Morgan represented to the insurance provider that he had spoken to the widow and had traveled to meet with her to prepare for her testimony. According to the court docket, after the widow's death, there were some pending matters that justified Mr. Morgan's claimed work involving the insurance provider, but no meetings with the widow took place.

In the Spring of 2016, the court was alerted that the widow may have passed away. The court scheduled an order to show cause hearing. At the hearing Mr. Morgan offered to file a Suggestion of Death. Mr. Morgan asked his legal assistant to assist him with the preparation of the Suggestion of Death by transcribing his dictation. Mr. Morgan's assistant had done her own research and discovered that the widow had passed away in September 2014 and placed this date in the Suggestion of Death that she prepared. The date on the Suggestion of Death that was filed was September 10, 2015. The Suggestion of Death was filed with the court with the false date and Mr. Morgan did not correct the false date prior to filing. Mr. Morgan's assistant brought the matter concerning the Suggestion of Death discrepancy to the attention of an attorney at the new firm. The firm performed an investigation and sent a check to reimburse the insurance provider for all fees and costs paid during the time Mr. Morgan was associated with the firm.

During a Screening Panel hearing on this case, Mr. Morgan made certain representations to the panel that even though his time entries to the insurance carrier clearly indicated he spoke with the widow and met with her in person, it was actually a family member whom he could not name that he spoke to and met with. The day after the


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Screening Panel, Mr. Morgan sent an email to the OPC admitting that he had given false testimony during the Screening Panel hearing.

## PROBATION

On May 19, 2018, the Honorable Barry G. Lawrence, Third Judicial District Court, entered an Order of Discipline: Probation against David A. Reeve, placing him on probation for a period of one year for Mr. Reeve's violation of Rule 1.1 (Competence), Rule 1.2(a) (Scope of Representation), Rule 1.3 (Diligence), and Rule 1.7(a) (Conflict of Interest: Current Clients) of the Rules of Professional Conduct.

*In summary:*
Mr. Reeve was counsel for a company and in that capacity drafted the corporate documents for incorporation and prepared stock certificates. In addition to being corporate counsel for the company, Mr. Reeve claimed he was also its director. A party filed a lawsuit against the company, its CEO, and the wife of the CEO. Mr. Reeve signed a stipulation and verified confession of judgment without attempting to verify that many of the statements were accurate. Mr. Reeve was aware that the CEO did not agree with the stipulated facts, but he signed the documents on behalf of the company, agreeing that the company would pay a settlement amount within a certain time period. Mr. Reeve did not review the final stipulation and confession of judgment with his clients before he signed it and did not provide a copy of the document to his clients. Further, Mr. Reeve was not authorized to execute the documents and when he signed the stipulation, he served both as an officer or director of the company as well as legal counsel to the company and both individual defendants. Based on the stipulation, the Court granted judgment to the plaintiffs against the company.

Mr. Reeve filed an Answer on behalf of the CEO and the CEO's wife. Mr. Reeve was served with deposition notices for the CEO and his wife as well as discovery requests to be answered by his clients. Neither Mr. Reeve nor his clients appeared for the depositions and an order granting a motion for sanctions was entered by the Court for failure of Mr. Reeve's clients to attend their own depositions. The court entered a judgment against Mr. Reeve's clients. The CEO and his wife retained new counsel to represent them who filed a motion to set aside the judgment. The court set aside the judgment based on Mr. Reeve's gross negligence and awarded the plaintiffs attorney's fees and costs associated with obtaining and enforcing the judgment.

## ADMONITION

On May 31, 2018, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rule 1.8(e) (Conflict of Interest: Current Clients) of the Rules of Professional Conduct.

*In summary:*
An attorney observed a hearing on Temporary Orders during a divorce action where one side had representation and the other did not. At the end of the hearing, the attorney volunteered as pro bono counsel for the unrepresented party. The attorney provided unrelated litigation costs to the client such as money, gas, food, and water and put the client up in an extended stay hotel/motel for a week. The attorney had a conscious awareness of the conduct, but did it anyway.

*Mitigating factors:*
The attorney self-reported the matter to the Office of Professional Conduct.


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Screening Panel, Mr. Morgan sent an email to the OPC admitting that he had given false testimony during the Screening Panel hearing.

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*In summary:*
Mr. Reeve was counsel for a company and in that capacity drafted the corporate documents for incorporation and prepared stock certificates. In addition to being corporate counsel for the company, Mr. Reeve claimed he was also its director. A party filed a lawsuit against the company, its CEO, and the wife of the CEO. Mr. Reeve signed a stipulation and verified confession of judgment without attempting to verify that many of the statements were accurate. Mr. Reeve was aware that the CEO did not agree with the stipulated facts, but he signed the documents on behalf of the company, agreeing that the company would pay a settlement amount within a certain time period. Mr. Reeve did not review the final stipulation and confession of judgment with his clients before he signed it and did not provide a copy of the document to his clients. Further, Mr. Reeve was not authorized to execute the documents and when he signed the stipulation, he served both as an officer or director of the company as well as legal counsel to the company and both individual defendants. Based on the stipulation, the Court granted judgment to the plaintiffs against the company.

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*In summary:*
An attorney observed a hearing on Temporary Orders during a divorce action where one side had representation and the other did not. At the end of the hearing, the attorney volunteered as pro bono counsel for the unrepresented party. The attorney provided unrelated litigation costs to the client such as money, gas, food, and water and put the client up in an extended stay hotel/motel for a week. The attorney had a conscious awareness of the conduct, but did it anyway.

*Mitigating factors:*
The attorney self-reported the matter to the Office of Professional Conduct.


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## PUBLIC REPRIMAND

On December 19, 2017, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Tony B. Miles for violating Rules 1.3 (Diligence), 1.4(a) (Communication), 1.5(a) (Fees), and 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

*In summary:* A client retained Mr. Miles and paid an amount for a retainer and an additional amount to the Bureau of Criminal Investigation (BCI) to initiate expungement proceedings on behalf of the client's son. Approximately two months later the client contacted Mr. Miles for a status update. Mr. Miles indicated he was still waiting for information from BCI. A few weeks later the client contacted BCI directly and was informed that the expungement request had been denied and mailed to Mr. Miles' business address (which was also his personal address) the month prior. BCI also indicated that the criminal offense at issue was "non-expungable" pursuant to state statute, and provided an appeal deadline of thirty days. Mr. Miles did not review the BCI letter until after the expiration of the appeal deadline.

Mr. Miles failed to keep the client reasonably informed about the status of the expungement proceedings. Mr. Miles failed to file a timely appeal and did not comply with the client's request for a refund of the unearned portion of the retainer. The OPC sent a Notice of Informal Complaint (NOIC) to Mr. Miles asking him to respond to the allegations. At the Screening Panel hearing, Mr. Miles admitted to receiving the NOIC and failed to respond.

*Aggravating factors:* Substantial experience in the practice of law. Failure to make a good faith effort to make restitution to the client or otherwise rectify the consequence of his misconduct.

*Mitigating facts:* Absence of prior record. Expressed remorse for his actions during the hearing.

## PROBATION

On December 18, 2017, the Honorable Sandra N. Peuler, Third Judicial District Court, entered an Order of Discipline: Probation, against Warren L. Barnes, placing Mr. Barnes on probation for a period of one year, for Mr. Barnes' violation of Rule 1.8(a) (Conflict of Interest: Current Clients: Specific Rules) of the Rules of Professional Conduct.

*In summary:* Mr. Barnes was retained by an elderly client to represent the client's estate by assisting in preparation of a trust and associated documents. The documents Mr. Barnes prepared contained a provision designating himself as a Successor Trustee and contained a clause indicating the client was waiving all potential conflicts. The documents Mr. Barnes prepared also contained a clause stating Mr. Barnes, as an attorney, was to be held to a "higher fiduciary standard than other non-professional trustees." The client signed numerous documents prepared by Mr. Barnes, including the Trust Agreement designating him as Successor Trustee.

Mr. Barnes failed to put the terms of his role as Trustee in writing in a manner that could be reasonably understood by his client and failed to advise the client in writing that she should seek the advice of independent legal counsel.

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*Mitigating factors:* No prior discipline, cooperative with the investigation, and an absence of dishonest motive.

## SUSPENSION

On November 13, 2017, the Honorable Paige M. Petersen, Third Judicial District Court, entered Findings of Fact, Conclusions of Law, and Order of Suspension, against Angela Sampinos Gurney, suspending her license to practice law for a period of eighteen months, for Ms. Gurney's violations of Rule 1.3 (Diligence), Rule 1.4(a) (Communication), Rule 1.16(d) (Declining or Terminating Representation), Rule 8.1(b) (Bar Admission and Disciplinary Matters), and Rule 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary:* The case involved Ms. Gurney's handling of cases in three separate client matters. Ms. Gurney failed to provide updates concerning the status of the cases and failed to return phone calls and emails from her clients in all three matters. Ms. Gurney failed to respond to discovery in the first matter, failed to file a complaint in the second matter, and missed discovery and other court deadlines in the third matter. In the first matter, Ms. Gurney failed to inform the client of the discovery that had been propounded and the Order of the court compelling an answer, lied to the client about the case status, failed to notify the client she was no longer representing the client, and failed to protect the client's interests thereafter including failing to return the client's file to the new counsel.

In the second matter, Ms. Gurney was retained to represent the client in eviction proceedings against the tenants of the client's house. She failed to file a complaint but misled the client about the case status, including giving the client a trial date and later telling the client the day before the alleged trial date that the trial had to be continued due to a family emergency. In the third matter, Ms. Gurney failed to keep the client apprised of the court deadlines in the client's case. Also, Ms. Gurney failed to respond to OPC's lawful requests for information in all three matters until many months later.

*Aggravating factors:* Dishonest or selfish motive; Pattern of misconduct; Multiple offenses; Lack of good faith effort to make restitution or rectify the consequences of the misconduct involved.

*Mitigating factors:* No prior record of discipline

## SUSPENSION

On November 14, 2017, the Honorable Joseph M. Bean, Second Judicial District Court, entered an Order of Suspension, against Stuwert B. Johnson, suspending his license to practice law for a period of eighteen months. The court determined that Mr. Johnson violated Rules 1.1 (Competence), 1.3 (Diligence), 1.4(a) (Communication), 1.5(a) (Fees), 1.15(a) and 1.15(d) (Safekeeping Property), 1.16(d) (Declining or Terminating Representation), and 8.1(b) (Bar Admission and Disciplinary Matters), 8.4(b), 8.4(c), and 8.4(d) (Misconduct) of the Rules of Professional Conduct.

*In summary:* The case involved a complaint that was filed against Mr. Johnson based upon a bad check matter that resulted in a criminal conviction. Further information was received from individuals against Mr. Johnson concerning eighteen additional matters, which were joined in the Complaint and resulted in thirty-two counts of violations of the Rules of Professional Conduct, including ten counts involving criminal conduct or the administration of justice.

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In two matters, Mr. Johnson failed to prepare for the final hearing and failed to obtain the required forms and other documents necessary to finalize an adoption for a client in one matter and in the other matter, Mr. Johnson allowed personal issues to interfere with his legal representation of the client, and also failed to competently prepare for a mediation. In three matters, Mr. Johnson failed to diligently complete the work he was paid to perform by failing to submit/file documents necessary to finalize proceedings in the matters. In six matters, Mr. Johnson failed to adequately communicate and keep his clients reasonably informed regarding the status of their cases and failed to return phone calls and/or respond to the clients' reasonable requests for information.

In one matter Mr. Johnson failed to perform enough work to earn the amount of attorney fees he collected from the client, and then reimbursed the client only a portion of the fees because he had allegedly drafted, but never filed, the documents. Mr. Johnson failed to properly terminate his representation in two matters and failed to promptly refund the fees he collected. In three matters, Mr. Johnson failed to cooperate in the disciplinary process by failing to respond to the OPC's Notice of Informal Complaint (NOIC).

In two matters, Mr. Johnson breached his duties to his clients when he improperly managed the funds in his trust account and failed to safeguard funds belonging to his clients and/or others. In two matters, Mr. Johnson breached his duty to the client by failing to act promptly to process the client's settlement check and failed to safeguard settlement funds to another client resulting in non-sufficient funds which then led to a bad check and the misappropriation of funds. Eight matters involving the bad check, an arrest, five DUIs and a justice court matter, all resulted in criminal convictions against Mr. Johnson. In three matters, Mr. Johnson failed to comply with court sentencing requirements in connection with the payment of fines in one matter, violated probation in the second matter, and failed to comply with the court's order regarding a subpoena in the third matter. Mr. Johnson was placed on Interim Suspension but was found to have violated the order of suspension by engaging in the practice of law on at least one but very probably two circumstances over the eighteen-month suspension.

*Aggravating factors:* Prior disciplinary sanctions; Multiple offenses; Obstruction of disciplinary proceedings; Pattern of conduct, Vulnerability of victims; Substantial experience in the practice of law; Violation of interim suspension order; Apparent relapse.

*Mitigating Factors:* Cooperation in his prosecution; Timely good faith effort to make restitution or to rectify the consequences of misconduct involved; Substance abuse impairment.


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## ADMONITION

On February 20, 2018, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rules 5.5(b) and 8.1(a) of the Rules of Professional Conduct.

*In summary:*
The attorney performed legal services for a period of several years with a Utah law firm for a variety of clients on a variety of Utah matters. The attorney was not licensed to practice law in Utah during this time. The attorney misrepresented to the public on social media and the Utah firm website that the attorney was admitted to practice law in Utah.

The attorney completed an application with the Utah State Bar for admittance to practice law in the state of Utah. In the application, the attorney represented to have never given legal advice and/or held themselves out as an attorney, lawyer, or legal counselor in the state of Utah and represented to have never engaged in the unauthorized practice of law in the state of Utah, which were untrue representations.

*Mitigating factors:*
The attorney was closely and consistently supervised by a Utah attorney; and after the attorney learned that a Utah license was needed to work on Utah matters, the attorney ceased work on Utah matters and at the earliest opportunity, the attorney exhibited a willingness to take steps necessary to take and pass the Utah Bar exam to become licensed to practice law in Utah.

## ADMONITION

On February 1, 2018 and March 16, 2018, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rules 1.3, 1.4(a) and 1.15(c) of the Rules of Professional Conduct in three separate matters.

*In summary:*
The attorney was retained to represent a client during divorce proceedings. The attorney deposited the retainer fees into the attorney's trust account but withdrew the funds before they were

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earned. The attorney mistakenly believed that because this was a flat fee arrangement, the fees were earned upon receipt. The attorney communicated with the client by calling, texting, and emailing. Several months into representation, the attorney stopped consistently communicating with the client and did not respond to the client's questions about the client's divorce proceedings. The attorney prepared a stipulation and settlement agreement for the client but did not file the document with the court. The client retained other counsel. The attorney issued a refund check to the client out of the attorney's operating account.

The attorney was retained to represent a client in divorce proceedings. The attorney received the client's retainer fees from the client's father. The attorney did not place the retainer fees into the attorney's trust account. The attorney believed that because this was a flat fee arrangement, the fees were earned upon receipt. Later the same month in which the attorney had been retained, the client asked the attorney to put everything on hold as the client and the client's spouse were trying to work things out. At that time, no work had been performed for the client. Several months later the attorney was informed that the client only had a few months to live and would no longer be pursuing a divorce. The client's father requested an accounting and a refund of the unused portion of the retainer. The client's father attempted to contact the attorney numerous times regarding the accounting, but the attorney did not respond. The client died a few months later. The client's father informed the attorney of the client's passing and again requested a refund and an accounting. The attorney told the client's father that the attorney needed to contact the Utah State Bar about the request. The client's father made numerous additional attempts to speak to the attorney without success. The attorney's delay in responding to the client's father's request was out of uncertainty in refunding the money to the client's father, who was not the attorney's client. The client's father submitted a Request for Assistance to the Office of Professional Conduct a month after the client's passing. The attorney issued a refund to the client's father approximately two weeks later.

The attorney was retained to represent a client in a divorce decree modification matter. The client paid an amount of money as a retainer in three installments. The attorney only deposited some into trust. The attorney withdrew or otherwise used the payments from the client after they were received and before they were earned. The attorney believed based on prior experience that because it was a flat fee arrangement that the fees were earned upon receipt.

*Mitigating factors:*
The attorney has taken substantial efforts to reform conduct to comply with rules since the time the issues in these matters occurred.

## ADMONITION

On January 9, 2018, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rule 1.7(a) of the Rules of Professional Conduct.

*In summary:*
The attorney was retained to represent a client in a civil matter. The attorney pursued claims against two companies on behalf of the client. The attorney obtained an amount as settlement from Company A. The attorney sent a settlement demand to Company B.

About six months later, the attorney was contacted by Company B regarding an open position. The attorney submitted an application for employment with Company B.

Attorney failed to disclose to their client that they had accepted employment with Company B at the same time they were working to resolve the claim client asserted against Company B.

The attorney's explanation for not disclosing the issue to the client was credible though ultimately based on an incorrect analysis. The attorney did not actively seek to conceal the information from the client.

## ADMONITION

On March 16, 2018, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rule 1.15(a) and Rule 8.1(b) of the Rules of Professional Conduct.

*In summary:*
The attorney received approximately six Notices of Insufficient Funds (NSF), which were generated by two banks where the attorney had IOLTA client trust accounts. The attorney mismanaged the trust accounts causing the accounts to be overdrawn on several occasions. The attorney co-mingled client funds with firm funds and third-party funds and failed to keep an accurate accounting. The attorney did not misuse any client funds as all of the problems in the trust account appeared to result from the attorney recently becoming a solo practitioner and misunderstanding the way trust accounts function. The attorney also failed to respond to two of OPC's demands for information during the investigation process.

No aggravating factors.

*Mitigating factors:*
Recent new solo practitioner; remorseful; demonstrated taking responsibility for actions; and put safeguards into place.

## PUBLIC REPRIMAND

On February 21, 2018, the Chair of the Ethics and Discipline Committee for the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Penniann J. Schumann for violating Rule 1.8(a) (Conflict of Interest: Current Clients: Specific Rules) of the Rules of Professional Conduct.

*In summary:*
Ms. Schumann filed a Petition on behalf of a client for the removal and replacement of the client's son as the client's family trust's co-trustee (the Petition). The Petition affirmatively asserted that the co-trustee nominated to replace the client's son was a Utah limited liability company (the LLC) in the business of trust management. Ms. Schumann, along with her husband owned the LLC. The Petition did not disclose Ms. Schumann's ownership interest in the LLC. Ms. Schumann did not obtain a written waiver with informed consent signed by the client for the transaction whereby the LLC would become co-trustee of the client's Family Trust. The Petition was granted at a hearing and the LLC filed its acceptance of appointment the same day. Ms. Schumann failed to disclose her pecuniary interest in the LLC and the potential conflict of interest its appointment as co-trustee created which erodes the trust and confidence that the public places in lawyers and the judicial system.

## PUBLIC REPRIMAND

On February 1, 2018, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Ryan M. Springer for violating Rule 1.3 (Diligence), Rule 1.4(a) (Communication), and Rule 1.4(b) (Communication) of the Rules of Professional Conduct.

*In summary:*
The client hired Mr. Springer in a wrongful death lawsuit to replace prior counsel who had already filed a Complaint on the client's behalf. Approximately three months after entering his appearance in the case, Mr. Springer attended the Rule 16 case management conference and requested an additional sixty days to review fact discovery. The court set fact discovery cut-off sixty days out which under Rule 26 of the Utah Rules of Civil Procedure made the expert witness designation deadline seven days after the fact discovery cut off date. The court also ordered the parties to mediate the case. Counsel for the defendant attempted to


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follow up with Mr. Springer by email and telephone to memorialize the new scheduling order but Mr. Springer never responded. Mr. Springer failed to calendar the deadlines and failed to communicate the fact discovery deadlines to the client. Mr. Springer failed to conduct any additional fact discovery and failed to take any steps to retain and designate needed experts before the expert designation deadline.

Mr. Springer's failures resulted in counsel for the defendant filing a motion for summary judgment on the grounds that the client could not establish a medical malpractice claim without expert testimony. Mr. Springer failed to inform the client about the filing of the summary judgment motion. The client learned about the summary judgment motion from a different attorney whom the client had communicated with because of the lack of communication with Mr. Springer. The client emailed the summary judgment motion to Mr. Springer and asked what was going on, but Mr. Springer failed to respond. Ultimately, as a result of Mr. Springer's failure to retain and designate needed experts before the expert designation deadline, the client was ordered to pay an amount in attorney fees to keep the case from being dismissed on summary judgment.

Mr. Springer believed the parties were working towards scheduling a mediation which would eliminate the need for incurring expenses of retaining experts. By focusing solely on mediation and failing to communicate deadlines and implications of those deadlines, Mr. Springer deprived the client of the opportunity to make informed decisions about the matters.

No aggravating factors.

*Mitigating factors:*
Expressed contrition and remorse for his conduct; No record of prior discipline; Apologized to the client at the hearing.

## PUBLIC REPRIMAND

On February 1, 2018, the Chair of the Ethics and Discipline Committee for the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Douglas C. Shumway for violating Rule 3.3(a) (Candor toward the Tribunal) and Rule 4.4 (Respect for Rights of Third Persons) of the Rules of Professional Conduct.

*In summary:*
Mr. Shumway represented clients who were buyers in a new home development transaction. The transaction had been terminated by the new home developer (developer) for failure of the buyers to close in a timely manner. Mr. Shumway disagreed stating that the transaction did close because all documents were executed by all parties and that the developer terminated the transaction prematurely. The clients entered and moved personal belongings into the home. A few days later Mr. Shumway sent a letter to the developer informing them of his representation. The clients had given Mr. Shumway a copy of a warranty deed they had received from the escrow company; however, the original warranty deed was still in the escrow company's possession. Mr. Shumway filed a Notice of Interest with the county recorder's office and attached a copy of the warranty deed he had received from the clients. Mr. Shumway's assistant affirmed that the Originating Paper Documents were originals. The warranty deed was recorded.

The developer began eviction proceedings. Mr. Shumway sent an email responding to the eviction indicating his clients were not tenants but that they "own the home via recorded warranty deed signed by your client." The developer filed an eviction action in district court. Mr. Shumway filed an Answer to the Complaint on behalf of the clients in which Mr. Shumway stated his clients were the titled owners to the property, pursuant to the signed and recorded warranty deed issued by Plaintiff to Defendant and recorded in the Recorder's Office Mr. Shumway filed an Amended Answer with the date the warranty deed was recorded. An evidentiary hearing was held, and Mr. Shumway's clients were evicted from the home. About three weeks later the developer filed a verified petition for civil wrongful lien injunction. Mr. Shumway recorded a Release of Notice of Interest about a week later.

Mr. Shumway filed pleadings with the Court indicating his clients were titled owners of property based on the warranty deed recorded by the Recorder's Office although the property was never recorded in Mr. Shumway's clients' names. Mr. Shumway delayed filing the Notice of Release of Interest in the property for nearly a month after the clients were evicted forcing the developer to file a wrongful lien injunction.

No aggravating factors.

*Mitigating factors:*
Absence of a prior record of discipline; inexperience in the practice of law; good character and reputation.

## RECIPROCAL DISCIPLINE

On January 17, 2018, the Honorable Royal I. Hansen, Third Judicial District Court, entered an Order of Reciprocal Discipline: Public Reprimand, against David E. Hammeroff for Mr. Hammeroff's

violation of Rule 3.1 (Meritorious claims and contentions), Rule 3.3(a)(1) (Candor toward the tribunal), and Rule 8.4(d) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
On May 21, 2015, the Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona issued an Order of Discipline of Admonition, Probation(Restitution), and Costs. In Arizona, an admonition is a public form of discipline and equates with a public reprimand in Utah.

Mr. Hammeroff represented a client in a collection case. Mr. Hammeroff did not have a good faith basis to file a collection case against the Complainant. The Complainant did not sign the Lease Agreement Mr. Hammeroff had in his possession when he filed the case against the Complainant. Mr. Hammeroff did not advise the Small Claims Court or the Superior Court that the Complainant never signed the Lease Agreement. Mr. Hammeroff did not acknowledge that fact even after it had been raised by the Complainant in the pleadings. Instead, Mr. Hammeroff continued to argue that the Complainant was liable based upon the credit application and the Complainant's failure to file an Answer to the Complaint notwithstanding Mr. Hammeroff's client was not entitled to the judgment in the first place.

Mr. Hammeroff refused to stipulate to vacate the default judgment entered against the Complainant despite the fact she had never signed the Lease Agreement. Instead Mr. Hammeroff continued to resist the Complainant's motions and relied on procedural defenses, while continuing to ignore that Mr. Hameroff's client was not entitled to the judgment. As a result, Complainant continued to file motions with the Small Claims and Superior Courts in an effort to rectify Mr. Hammeroff's actions.

No aggravating or mitigating factors.

## PROBATION

On February 23, 2018, the Honorable Samuel P. Chiara, Eighth Judicial District Court, entered an Order of Discipline: Probation, against Roland F. Uresk, placing him on probation for a period of three years for Mr. Uresk's violation of Rule 1.1 (Competence), Rule 1.3 (Diligence), and Rule 1.4(a) (Communication) of the Rules of Professional Conduct.

*In summary:*
The client was being sued in a defamation lawsuit. Before Mr. Uresk was retained, Plaintiffs in the matter filed a Motion to Compel and Request for Attorneys' Fees based on the client's failure to respond to Plaintiffs' discovery requests. Before briefing was completed on the Motion to Compel, the court entered an Order granting a Stipulated Motion to Stay in the matter. About three years later, the court denied a request for extension of the stay thereby lifting the stay. A few months later the client retained Mr. Uresk to defend her in the defamation lawsuit. The client agreed to pay a specified amount per month for Mr. Uresk's representation. No retainer agreement was signed by the client.

Shortly after Mr. Uresk entered his appearance in the case the


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Court issued a Notice of Intent to Dismiss due to lack of prosecution which was sent to Mr. Uresk and Plaintiffs' counsel. Plaintiffs filed and served a response to the Court's Notice of Intent to Dismiss and Request for Hearing requesting that the Court set a hearing on Plaintiffs' outstanding Motion to Compel and Request for Attorneys' Fees allowing time for briefing on the Motion to be completed. Mr. Uresk did not file any responsive documents. About two months later Plaintiffs filed a Request to Submit for Decision outlining actions Plaintiffs had taken over the two-month period in an effort to obtain a response to the Motion to Compel from Mr. Uresk. The court subsequently entered an Order granting Plaintiffs' Motion to Compel and awarding Plaintiffs an amount for attorney fees.

A couple of days later the court held a hearing on the outstanding discovery issues in which the parties represented to the court that they were engaged in settlement negotiations. The client did not agree to Mr. Uresk entering into settlement negotiations. The same day as the hearing Plaintiffs' counsel provided proposed settlement documents to Mr. Uresk. Mr. Uresk contacted Plaintiffs' counsel about two weeks later indicating he believed they may have a settlement, but he needed a ten-day extension to discuss the matter further with the client. Plaintiffs granted the extension. At the end of the ten-day extension Mr. Uresk requested another extension of one week to discuss matters further with his client and indicated that as a "sign of good faith" he would send Plaintiffs' counsel payment of the award of attorney fees as had been previously requested. Mr. Uresk paid the attorney fees which were previously ordered by the court. Mr. Uresk then requested yet another extension again indicating he needed to discuss matters further with the client.

Approximately four months after Plaintiffs provided the settlement documents and granted several extensions to Mr. Uresk, Plaintiffs filed a Motion to Admit Admissions and Grant Default Judgment and for Sanctions. Mr. Uresk did not file an opposition or any response on behalf of the client. The court entered an Order granting Plaintiffs' Motion, entering default judgment against the client and awarding Plaintiffs' counsel an amount for attorney fees. Mr. Uresk did not notify the client of the default judgment and two awards for attorney fees that had been entered against her until approximately two to three months later.

Mr. Uresk filed a Motion to Set Aside Default indicating he was unaware of the Motion to Admit Admissions, Grant Default Judgment and for Sanctions filed against the client until the clerk contacted him to set up the hearing on damages, after the default had been entered. Mr. Uresk further asserted that he was unaware of the Motion because his assistant had misplaced it. The court denied the Motion to Set Aside the Default.

At the time Mr. Uresk entered his appearance on behalf of the client and based on Mr. Uresk's review of the case, he believed the case was still stayed pursuant to the court's prior Order three years earlier. Mr. Uresk did not adequately prepare for the legal representation of the client's case. He failed to review the docket of the case after being hired and before entering his appearance. Mr. Uresk did not communicate with Plaintiffs' counsel regarding the status of the case after he was hired and before entering his appearance. Mr. Uresk failed to respond to Plaintiffs' Motion to Compel and failed to respond to discovery requests on the client's behalf. Mr. Uresk also failed to file an opposition or any responses on the client's behalf to Plaintiffs' Motion to Admit Admissions, Grant Default judgment and for Sanction which resulted in a default judgment being entered against the client. Mr. Uresk failed to timely notify the client of the court's Order granting Plaintiffs' default judgment or the two awards for attorney fees entered against the client.

The client made monthly payments and continued doing so for approximately ten months after retaining Mr. Uresk. Mr. Uresk failed to communicate a full accounting of the work he performed for the client.

## *Discipline Process Information Office Update*

The Discipline Process Information Office is available to all attorneys who find themselves the subject of a Bar complaint, and Jeannine Timothy is the person to contact. From January to mid April 2018, 25 attorneys have contacted Jeannine for help understanding the discipline process. One of those attorneys had questions regarding readmission to the Bar. Jeannine is available to assist and explain all stages of the discipline process, so call Jeannine with all your questions.

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*Mitigating factors:*
Medical conditions during the timeframe related to the incidents.

## SUSPENSION

On March 22, 2018, the Honorable David R. Hamilton, Second Judicial District Court for Davis County, entered an Order of Discipline: Suspension, against Denise P. Larkin, suspending her license to practice law for a period of three years for Ms. Larkin's violations of Rule 1.1 (Competence), Rule 1.2(a) (Scope of Representation and Allocation of Authority Between Client and Lawyer), Rule 1.3 (Diligence), Rule 1.4(a) (Communication), Rule 1.4(b) (Communication), Rule 1.5(a) (Fees), 1.15(d) (Safekeeping Property), Rule 1.16(a) (Declining or Terminating Representation), Rule 5.3(a) (Responsibilities Regarding Nonlawyer Assistants), Rule 8.1(b) (Bar Admission and Disciplinary Matters), and Rule 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
The case involved a complaint that was filed against Ms. Larkin based upon information received from several individuals against Ms. Larkin concerning five separate matters. The matters were all joined in the Complaint and resulted in twenty-four counts of violations of the Rules of Professional Conduct. In all matters Ms. Larkin was hired and paid an amount as a retainer to represent the clients in various actions including two divorce proceedings, a legal guardianship of a special needs child, a custody matter, and a petition to modify.

In one matter Ms. Larkin failed to appear at a hearing on behalf of the client which resulted in the client being ordered to pay an amount for attorney fees. In the same matter Ms. Larkin failed to inform the client of another hearing and at that hearing Ms. Larkin entered into a stipulation on the client's behalf without the client's knowledge or consent agreeing to pay money for opposing counsel's attorney fees.

In four of the matters Ms. Larkin performed little work on the cases and/or failed to do what she was hired to do. In one of these matters Ms. Larkin failed to file an Answer to a Petition to Modify and Counter-Petition, failed to respond on behalf of the client's Motion for Contempt, Strike Petitioner's Pleadings and Enter Default, and failed to promptly respond to the custody evaluator's letters and requests for payments.

In four of the matters, Ms. Larkin failed to keep clients informed of court hearings and the status of their cases. Ms. Larkin failed to timely communicate with the clients and respond to requests for information. Ms. Larkin also failed to return telephone calls and/or respond to other attempts to contact her.

In one matter Ms. Larkin failed to consult with the client prior to continuing scheduled court dates causing additional expense to the client for travel costs. In three matters Ms. Larkin collected fees from the clients and performed little to no work to earn the funds or did not do enough work to earn the full amount of the funds she was paid. Ms. Larkin also failed to provide an accounting of the fees she received.

In one matter Ms. Larkin failed to withdraw from the client's case after the client requested she do so. In another matter Ms. Larkin cut off all communication with the client without taking steps to terminate her representation. Ms. Larkin also failed to refund unearned fees she received from the client.

In one matter Ms. Larkin failed to properly supervise her assistant who contacted the client to inform the client that a hearing was canceled when no hearing had been scheduled and otherwise allowed the assistant to mislead the client. In the same matter Ms. Larkin made false statements to the client about having filed a petition and scheduling a court hearing for the client's case. In all matters Ms. Larkin failed to timely and honestly respond to OPC's NOIC and other requests for information.


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**Information about the formal Ethics Advisory Opinion process:** www.utahbar.org/opc/rules-governing-eaoc/.

## SUSPENSION

On April 10, 2018, the Honorable Kent R. Holmberg, Third Judicial District, entered an Order of Suspension, against Thomas M. Burton, suspending his license to practice law for three years for violating Rule 1.1 (Competence), Rule 1.3 (Diligence), Rule 1.4(a) (Communication), Rule 1.5(a), Rule 1.5(b) and Rule 1.5(c) (Fees), Rule 1.7 (Conflict of Interest), Rule 1.15 (a) and Rule 1.15(c) (Safekeeping Property), Rule 1.16(a) (Declining or Terminating Representation), Rule 3.1 (Meritorious Claims and Contentions), Rule 8.1(a) (Bar Admission and Disciplinary Matters), Rule 8.4(b) and Rule 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

Mr. Burton represented a client in civil litigation against a person and his employer. The client made payments to Mr. Burton by transferring funds from her bank account to Mr. Burton's checking account as instructed by Mr. Burton. Mr. Burton filed a Complaint in Third District Court, but the court issued an Order of Dismissal for failure to serve the defendants within 120 days of filing the complaint. Later, Mr. Burton told the client that the court had ordered her complaint reinstated and requested that she deposit the remainder of the retainer and he would proceed on a contingency basis. Mr. Burton made a proposal to hire the client's son indicating that the client was to pay money into a non-profit foundation set up by Mr. Burton and it would

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pay for the son's paralegal time. The client requested a refund after her CPA informed her that the foundation was not a tax-exempt entity. Mr. Burton filed a first amended complaint on behalf of the client, but a second notice of intent to dismiss was issued. The court held a hearing regarding dismissal but Mr. Burton did not attend and the case was dismissed.

Mr. Burton was hired by a client to pursue a second appeal on his behalf. The case had been remanded to the district court to address one narrow issue. The Utah Supreme Court upheld the conviction of Mr. Burton's client and in its opinion, the court stated that Mr. Burton had strayed far afield of the narrow issue in his brief and had failed to argue the narrow and specific issue on which it had remanded the case and had argued issues that had nothing to do with his client's case. Mr. Burton then filed a Petition for a Writ of Certiorari to the United States Supreme Court in which he raised the same non-meritorious legal arguments he raised before the Utah Supreme Court.

Mr. Burton defaulted with respect to Rule 8.4(b) and 8.4(c).

## SUSPENSION

On March 13, 2018, the Honorable Robert Faust, Third Judicial District, entered an Order of Discipline: Suspension against Wesley M. Lang, suspending his license to law for a period of three years. The court determined that Mr. Lang violated Rule 1.3 (Diligence), Rule 1.15 (a), and Rule 1.15 (c) (Safekeeping Property), and Rule 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Lang had an independent contractor and "of counsel" relationship with a law firm and was paid on his hourly billings each month. Mr. Lang submitted false billing statements to the firm in order to manipulate how his compensation was calculated. Mr. Lang wrote off bills to clients after he had been paid by the firm but before the clients were billed by the firm. Also, Mr. Lang had side clients (Lang clients) that were not the firm clients of which the firm was not aware and used firm resources to provide legal services to the Lang clients. Mr. Lang led some of the clients to believe that they were being represented by the firm when they were not.

Between 2012 and 2013, Mr. Lang submitted at least eight bad checks to the United States Patent and Trademark Office (USPTO) as part of the application process for a number of clients. Seven of the checks were returned for insufficient funds and one of the checks was written against an account that had been closed. Mr. Lang's submission of the bad checks caused delay in the processing of six provision and nonprovisional patent applications and the abandonment of one application for six different clients.

Mr. Lang did not keep complete records of client funds deposited into his trust account and operating account and preserve them for five years after the client representation. Mr. Lang used his operating account to pay filing fees and did not deposit funds he collected from clients and hold them available in his operating

## *Discipline Process Information Office Update*

From January through May of this year, the Discipline Process Information Office opened forty-one files. Jeannine P. Timothy assisted thirty-two attorneys who had questions about the disciplinary process. She also explained the process to nine complainants. Jeannine is available to answer all questions about the complaint process, and she is happy to be of service to you.

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account to pay the required fees charged by the USPTO. Mr. Lang comingled client funds with his own funds and did not place all unearned fees in his trust account.

Mr. Lang did not timely provide all documents and fees needed to properly respond to notices of missing parts from the USPTO in at least seven provisional and nonprovisional patent applications for six different clients.

## SUSPENSION

On May 2, 2018, the Honorable Keith Kelly, Third Judicial District, entered an Order of Suspension, against Jefferson B. Hunt, a South Jordan solo practitioner[1], suspending his license to practice law for a period of six months and one day. The court determined that Mr. Hunt violated Rule 5.5(a) (Unauthorized Practice of Law) and Rules 8.4(b) and 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
On June 30, 2016, the Fourth District Court for Utah County, State of Utah, convicted Mr. Hunt of Attempted Possession or Use of a Controlled Substance, a Class A Misdemeanor, Possession or Use of a Controlled Substance, a Class B Misdemeanor, and three counts of Attempted Purchase, Transfer, Possession or Use of a Firearm by a Restricted Person, a Class A Misdemeanor. Mr. Hunt was sentenced to a term of incarceration, which was suspended, and he was placed on probation for twelve months.

Mr. Hunt was suspended from the practice of law due to noncompliance with Mandatory Continuing Legal Education requirements. During the time period that Mr. Hunt's license was suspended, Mr. Hunt was unlawfully practicing law.

## RESIGNATION WITH DISCIPLINE PENDING

On March 23, 2018, the Utah Supreme Court entered an Order Accepting Resignation with Discipline Pending concerning James Garrett for violation of Rules 1.15(a) and 1.15(c) (Safekeeping Property) and Rule 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

*In summary:*
On at least four occasions, checks or withdrawal requests were submitted to a bank for payment from funds in Mr. Garrett's trust account, but the payments were denied because the trust account contained insufficient funds. In one case, Mr. Garrett knew he had collected fees that were placed in his trust account before they were earned and he used some of those fees for business or personal use before they were earned. Eventually, the fees were earned. In a second case, Mr. Garrett knew he collected fees or other monies that were unearned or unearned from the sale of the client's property that were placed in his trust account. Mr. Garrett used some of the fees before they


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were earned. Eventually, Mr. Garrett earned the remainder of the proceeds from the sale of the client's property sale.

The OPC sent multiple letters and emails requesting Mr. Garrett's explanation and certain documentation regarding the insufficient funds. Mr. Garrett did not send a timely reply. Mr. Garrett also did not timely respond in writing to the Notice of Informal Complaint.

## ADMONITION

On May 2, 2018, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rule 1.1 (Competence), Rule 1.3 (Diligence), Rule 1.4(a) (Communication), Rule 1.5(d) (Safekeeping Property), and Rule 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

*In summary:*
A client retained the attorney to represent the client in an immigration case. At trial, the judge ordered the client deported. At the hearing, the attorney told the client that they would file an appeal on the client's behalf for no additional fee and requested a court filing fee. The client paid the filing fee for the appeal. The attorney failed to file the appeal, and the client was deported. The client and the client's spouse made multiple attempts to contact the attorney but did not receive a response.

The OPC sent letters requesting an explanation and served the attorney with a Notice of Informal Complaint (NOIC) requesting the attorney's response to the allegations. The attorney did not timely respond to the NOIC.

*Mitigating factors:*
Timely good faith effort to make restitution or to rectify consequences; personal or emotional problems; and remorse.

## ADMONITION

On May 2, 2018, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an order of Discipline: Admonition against an attorney for violating Rule 1.1 (Competence) and Rule 1.3 (Diligence) of the Rules of Professional Conduct.

In summary, an attorney was appointed to represent a client in a criminal matter. The trial court held an evidentiary hearing on a motion to suppress evidence. At the end of the hearing, the attorney requested a copy of the dash-cam video as well as additional time to submit a brief on the matter. The attorney failed to timely file the brief and about a week after its due date, submitted a motion requesting additional time in which to file a brief. The court granted the motion, but the attorney again failed to file the brief. The court eventually denied the motion to suppress. Thereafter, the attorney filed three more motions to suppress the evidence but did not file supporting memoranda. The court denied these motions.

Before trial, the court conducted voir dire of the prospective jurors. The court also conducted additional questioning of a juror in chambers with the court and the attorney. The client was not invited into chambers for this questioning. During this questioning, it was discovered that this juror knew the trooper who made the traffic stop. Additionally, the attorney knew this juror, including the fact that this juror had been the officer in at least two cases that had been reversed on appeal because of this juror's conduct. The attorney did not discuss with the client what had occurred in chambers and exercised peremptory strikes without consulting with the client. The juror was included in the jury. Following a one-day trial, the jury convicted the client. The appellate court reversed the convictions and remanded the case to the trial court for a new trial.

*Mitigating Factors:*
The panel found an absence of a prior record of discipline, an absence of a dishonest or selfish motive, personal problems, including significant health-related issues that impacted the attorney's ability to function in the law practice, good faith effort to rectify the consequences of the misconduct including providing assistance to the client in securing substitute counsel, and clear communication of remorse regarding the consequences suffered by the client.

## ADMONITION

On May 2, 2018, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rule 1.15(a) and 1.15(c) (Safekeeping Property) of the Rules of Professional Conduct.

*In summary:*
A client retained the attorney to represent the client in divorce proceedings. The client signed an engagement letter which provided that an initial fee was "earned upon receipt" and was required for the engagement and included the first portion of the attorney's work. The engagement letter further provided that a second fee was required for the next portion of work or when it was determined that the divorce would not be a stipulated divorce. The client paid the attorney a $5,000 retainer. The attorney deposited the entire amount in an operating account. The attorney did not have an IOLTA trust account at this time. The attorney eventually earned the money paid by the client.

*Mitigating factors:*
The attorney eventually earned the money paid by the client. Additionally, since the representation of this client, the attorney established a trust account and revised his form of engagement letter to remove the "earned upon receipt" provision.

## ADMONITION

On April 20, 2018, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rules 1.2(a), 1.3, and 1.4(a) of the Rules of Professional Conduct.

*In summary:*
The attorney was retained to represent a sibling in a post-conviction relief case. During the representation, there were extended periods of time during which the attorney failed to prosecute the matter and did not prepare the post-conviction petition until over a year after the attorney had been retained. The attorney failed to timely respond to the client's sibling's request for updates on the case and the client terminated the representation. The attorney filed the post-conviction petition after the representation had been terminated and failed to consult with the client regarding the filing of the petition.

1. The clarification that Mr. Hunt is a South Jordan solo practitioner was added by the *Utah Bar Journal* editorial board in an effort to differentiate Mr. Hunt from other Utah State Bar members who share a similar name.

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# *Attorney Discipline*

## ADMONITION

On February 21, 2019, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating 1.15(c) (Safekeeping Property) and 5.1(a) (Responsibilities of Partners, Managers, and Supervisory Lawyers) of the Rules of Professional Conduct.

*In summary:*
An attorney operates immigration law offices in Utah and Nevada. Multiple attorneys worked out of the office in Salt Lake City, Utah under the attorney's name. A woman hired the attorney to represent her husband in immigration proceedings for a flat fee. Upon receiving the flat fee retainer the attorney placed those funds and any subsequent monies from the client in an operating account rather than a client trust account. The attorney failed to follow up with the Salt Lake City attorney to make sure that the case was being handled and that there was adequate communication. The attorney reasonably believed that the Salt Lake attorney was communicating with the woman regarding her husband's case. The woman was aware of developments in the case and as such, the attorney's lack of follow up was negligent. Further, the attorney earned the fees and placement in the operating account rather than a trust account was negligent. The attorney was remorseful and was working toward closing the Salt Lake City office.

## ADMONITION

On March 15, 2019, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rules 1.15(c) (Safekeeping Property) and 1.15(d) (Safekeeping Property) of the Rules of Professional Conduct.

*In summary:*
A man hired an attorney to represent him in a domestic relations matter. The man signed a flat fee fixed agreement and paid the attorney. The attorney deposited the money directly into an operating account. The man became unsatisfied with the representation and requested an accounting of time the attorney worked on the case. The attorney was unable to provide an accounting other than an estimate of hours stating that, because it was a flat fee agreement, time was not tracked. The attorney refunded most of the retainer to the client.

## ADMONITION

On February 21, 2019, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rule 3.3(a) (Candor Toward the Tribunal) of the Rules of Professional Conduct.

*In summary:*
The attorney filed a verified petition to determine parental rights on behalf of an adoption agency. The birth mother had signed a relinquishment of her parental rights to the child and a statement concerning the birth father, choosing not to disclose the name of the biological father. A third party signed a paternity acknowledgement adding his name to the minor child's birth certificate. The third party sent a letter via his attorney to the adoption agency stating that he did not consent to the adoption. The third party filed a complaint for legitimization and custody in another state and the adoption agency was served with the complaint. Shortly thereafter, a hearing to terminate the natural father's parental rights was held in Utah court and the attorney appeared on behalf of the adoption agency. During the hearing, the Judge inquired as to whether there was anything he needed to know that would prevent the court from issuing the order terminating parental rights. The attorney was aware that the third party had indeed filed a legitimization and request for custody in another state. The attorney told the court only that they were aware that the named father had consulted a lawyer but gave no details about what he had filed, including the complaint for legitimation. The court signed the order terminating the third party's parental rights. The court later vacated the order citing the concealment of the complaint as the basis for vacating the order. A DNA test later showed that the third party was not the father of the child.

*Mitigating Factors:*
Absence of a prior record of discipline; Good character or reputation.

## SUSPENSION

On March 19, 2019, the Honorable Eric A. Ludlow, Fifth Judicial District, entered an Order of Suspension against Kerry Willets, suspending his license to practice law for a period of eighteen months. The court determined that Mr. Willets violated Rule 1.1 (Competence), Rule 1.3 (Diligence), Rule 1.4(a) (Communication), Rule 1.5(a) (Fees), Rule 1.15(a) (Safekeeping Property), and Rule 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

*In summary:*
A client and her husband retained Mr. Willets to prepare estate planning documents and two Quit Claim Deeds transferring property into a Trust. The client's husband passed away and several years later, the client discovered that the transfer of one of the parcels of land into the Trust was ineffective. The client contacted Mr. Willets who informed her that she would need to open a probate case in order to transfer the property. The client retained Mr. Willets to revise the trust and he agreed to take care of the probate matter since the original transfer was ineffective. Mr.

Willets' assistant brought the client documents to be signed and notarized; the documents were to be taken to the county recorder and filed. The client followed up with Mr. Willets' assistant at least twice a week regarding the matter. Eventually, the client was unable to contact Mr. Willets or his assistant because the answering machine would no longer take messages. At some point during the representation, Mr. Willets closed one of his two offices and the client was unable to reach him at either location. No probate matter was filed and the transfer of the parcel was not completed.

The OPC sent a Notice of Informal Complaint (NOIC) requesting Mr. Willets' response. Mr. Willets did not respond to the NOIC.

A couple retained Mr. Willets to represent them in bankruptcy proceedings. The clients paid Mr. Willets and he filed a Chapter 13 Bankruptcy Petition on their behalf. The Trustee filed an objection to the confirmation because of irregularities in the petition but eventually it was confirmed. The Trustee filed a motion to dismiss the bankruptcy for failure to comply with the confirmation order. The clients contacted Mr. Willets and he assured them that he would address the irregularities. The clients attempted to contact Mr. Willets by leaving messages with his secretary and scheduling several appointments but Mr. Willets would not return the messages and he cancelled many appointments. The Trustee filed a second motion to dismiss for failure to resolve issues stated in the preliminary report of the Trustee. Mr. Willets was paid in fees for the bankruptcy in addition to the amount paid directly by the clients.

Mr. Willets filed a second Chapter 13 bankruptcy petition on behalf of the clients. The Trustee filed an objection to the confirmation because of failure to file documents but eventually it was confirmed. The Trustee filed a motion to dismiss the bankruptcy for failure to comply with the confirmation order. The clients attempted to contact Mr. Willets but he did not respond to their emails. The Trustee sent a letter to Mr. Willets regarding unresolved issues and again moved for dismissal due to the issues. Eventually, the clients stopped receiving notices from the Trustee and assumed the issues had been resolved.

The Trustee sent notice of completed payments which the clients learned about online. The clients sent emails to Mr. Willets requesting a response to questions regarding their bankruptcy. The Trustee submitted a final report and awarded Mr. Willets attorney fees. Mr. Willets did not earn all of the money he received from the Trustees and the clients. Mr. Willets did not hold all of the money he received from the clients in his trust account until it was earned. The clients retained a new attorney to complete the bankruptcy.

The OPC sent a NOIC requesting Mr. Willets' response. Mr. Willets did not respond to the NOIC.

## SUSPENSION

On February 14, 2019, the Honorable Andrew H. Stone, Third Judicial District, entered an Order of Suspension against Wesley D. Hutchins, suspending his license to practice law for a period of three years. The court determined that Mr. Hutchins violated Rule 1.1 (Competence), Rule 1.2(a) (Scope of Representation), Rule 1.3 (Diligence), Rule 1.4(a) (Communication), Rule 1.4(b) (Communication), Rule 1.5(a) (Fees), Rule 1.15(d) (Safekeeping Property), Rule 1.16(d) (Declining or Terminating Representation), Rule 7.1 (Communications Concerning a Lawyer's Services), Rule 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
The case involved Mr. Hutchins's handling of cases for nine separate clients. The first client retained Mr. Hutchins to represent him in an ongoing custody case. Mr. Hutchins had agreed to file a motion for contempt against the defendants and a request for discovery at the same time as he filed his notice of appearance. Two months later, Mr. Hutchins filed a notice of appearance but did not file anything further with the court in the case. Mr. Hutchins sent a letter to the custody evaluator without consulting the client and agreed to participate in mediation. The client requested his file, an accounting of time, and the unused portion of the retainer from Mr. Hutchins. The client went to Mr. Hutchins's home office to obtain the file, but Mr. Hutchins would not release the file. The client retained new counsel and requested that Mr. Hutchins file a withdrawal of counsel. The new counsel sent correspondence to Mr. Hutchins following up on the status of the withdrawal and the client's file.

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Mr. Hutchins did not return the file and did not return the unearned fees to the client. The OPC sent a NOIC requesting Mr. Hutchins' response. Mr. Hutchins did not respond to the NOIC.

The second client retained Mr. Hutchins to represent him in a custody matter and paid a retainer to him. Mr. Hutchins did not provide a written fee agreement and did not inform the client that he would charge for all text messages and/or email correspondence. Mr. Hutchins sent an email to the client indicating that they had an 80% probability of prevailing in their case. Before mediation, Mr. Hutchins did not prepare a mediation brief and did not provide any documents to the client. After mediation, the client had concerns about a relevant relocation statute but Mr. Hutchins failed to fully explain how it would affect his parent time. Mr. Hutchins was directed to draft the stipulated mediation agreement between the parties but he failed to do so despite the client regularly contacting him about completing the agreement. The client requested a refund of the unused portion of the retainer. Mr. Hutchins responded by sending an invoice which included charges for repeated texts in which the client was requesting information and not receiving a response. The OPC sent a NOIC requesting Mr. Hutchins's response. Mr. Hutchins did not respond to the NOIC.

The third client retained Mr. Hutchins to represent her in matters related to paternity and the custody of her grandson. Specifically, the client hired Mr. Hutchins to evaluate the case and assist her in filing a formal complaint with the Washington State Attorney General's office and to file a civil lawsuit to have the grandchild's adoption annulled. The client lives in Washington and Mr. Hutchins agreed to serve as lead counsel and provide instruction to local counsel in Washington. Mr. Hutchins did not communicate or contact local counsel in Washington at any time during his representation. During communications, Mr. Hutchins provided only minimal details, but informed the client that a draft of the complaint was almost completed. Eventually, Mr. Hutchins sent the client a text message asking if she had received his email with attachments of his draft of a verified complaint. The client had not received the email and had no further communications with Mr. Hutchins. The client requested a refund of the unused portion of her retainer and an accounting of time and expenses from Mr. Hutchins, but he did not respond. The OPC sent a NOIC requesting Mr. Hutchins's response. Mr. Hutchins did not respond to the NOIC.

The fourth client retained Mr. Hutchins to represent her in a divorce and custody matter. The client paid a retainer to Mr. Hutchins and he filed a notice of appearance in the case. During the representation, the client was unable to set up an appointment with Mr. Hutchins and he did not respond to questions she had about her case. Mr. Hutchins did not timely inform the client about the date set for mediation and did not respond to numerous communications by opposing counsel and the mediator. The client asked Mr. Hutchins to file a withdrawal of counsel, but the court rejected it because a motion for temporary orders was pending because Mr. Hutchins failed to request a hearing on the motion. Mr. Hutchins did not timely inform the client that the court had rejected the withdrawal of counsel. The OPC sent a NOIC requesting Mr. Hutchins's response. Mr. Hutchins did not respond to the NOIC.

The fifth client retained Mr. Hutchins to represent her in juvenile court proceedings involving her two children. Mr. Hutchins

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contacted the assistant attorney general in the case and requested that the pre-trial in the matter be rescheduled because he would be out of town. The assistant attorney general agreed to reschedule the pre-trial and set the matter for mediation and requested that Mr. Hutchins file a notice of appearance. The assistant attorney general was unable to get a hold of Mr. Hutchins to schedule the mediation and pretrial. Neither Mr. Hutchins nor the client appeared at the mediation. Because the client did not appear, a warrant for her arrest was issued and the children were removed from her care. The client retained a new attorney who requested the client's file and an invoice detailing the services Mr. Hutchins rendered on the client's behalf. Mr. Hutchins did not return to the client all the documents she provided to him nor did he provide a billing statement. The OPC sent a NOIC requesting Mr. Hutchins's response. Mr. Hutchins did not respond to the NOIC.

The sixth client retained Mr. Hutchins to represent her in obtaining custody or visitation of her daughter. The client provided Mr. Hutchins a binder of documents regarding the case and a retainer for legal services. Mr. Hutchins filed a motion for temporary orders. The court denied the motion on the grounds that the underlying petition in the present case sought to set aside an order terminating the client's parental rights in a separate adoption case. Opposing counsel filed a motion to dismiss some of the claims in the petition. Mr. Hutchins did not respond to the motion and the court entered an order granting the motion which disposed of the remaining issues in the case. Mr. Hutchins did not keep the client informed about the status of the case and did not timely respond to requests for information. The client decided that she wanted to dismiss the case with prejudice and informed Mr. Hutchins of her decision. Mr. Hutchins filed a motion to dismiss the case without prejudice. The court denied the motion. The client requested an accounting of time and expenses but she did not receive a response. The OPC sent a NOIC requesting Mr. Hutchins' response. Mr. Hutchins did not respond to the NOIC.

The seventh client retained Mr. Hutchins to represent her in a criminal matter. Mr. Hutchins set a pre-trial conference date with the court. Mr. Hutchins failed to appear at the hearing and the court issued a bench warrant for the client. The client called the court and scheduled a bench warrant hearing and sent a text message to Mr. Hutchins a week before the hearing to remind him of the date. Mr. Hutchins failed to appear at the hearing. The OPC sent a NOIC requesting Mr. Hutchins' response. Mr. Hutchins did not respond to the NOIC.

The eighth client was involved in a car accident and retained Mr. Hutchins to represent her and her husband in a legal action against the driver of the other vehicle involved in the accident. Four years later, Mr. Hutchins filed suit on behalf of the client. Two years later, the court issued an order to show cause as to why the case should not be dismissed for failure to prosecute. The opposing party retained counsel and requested numerous medical records and releases from the client. The client completed at least one of the forms and faxed it to Mr. Hutchins's assistant. Opposing counsel filed a motion to compel the releases alleging that they had attempted to obtain the releases through numerous communications with Mr. Hutchins. Mr. Hutchins did not inform the client of the motion or of the other requested releases nor did he respond to the motion. The court ordered the client to sign the requested releases and to pay the opposing party's attorneys fees and costs. Mr. Hutchins did not inform the client about the order. Opposing counsel filed a motion to dismiss, Mr. Hutchins did not respond and the court ordered the case dismissed with prejudice. A day later, Mr. Hutchins filed a motion to permit an extension of time to respond, but took no further action with the court. The client contacted Mr. Hutchins for a status update, but he did not inform her that the case was dismissed. The OPC sent a NOIC requesting Mr. Hutchins's response. Mr. Hutchins did not respond to the NOIC.

The ninth client wanted to adopt her grandson and had filed a pro se petition for custody. Later, she retained Mr. Hutchins to represent her in the case. Mr. Hutchins provided the client a draft motion to terminate parental rights and informed her that the motion would be served that same week. The motion was never filed with the court. The client attempted to contact Mr. Hutchins but was told he left the firm where he was practicing. She was given his contact information but again was unable to contact Mr. Hutchins. The OPC sent a NOIC requesting Mr. Hutchins's response. Mr. Hutchins did not respond to the NOIC.

## *Discipline Process Information Office Update*

What should you do if you receive a letter from Office of Professional Conduct explaining you have become the subject of a Bar complaint? Call Jeannine Timothy! Jeannine will answer all your questions about the disciplinary process. Jeannine is happy to be of service to you, so please call her.

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DISCIPLINE PROCESS INFORMATION OFFICE

# *Attorney Discipline*

## UTAH STATE BAR ETHICS HOTLINE

Call the Bar's Ethics Hotline at 801-531-9110 Monday through Friday from 8:00 a.m. to 5:00 p.m. for fast, informal ethics advice. Leave a detailed message describing the problem and within a twenty-four-hour workday period, a lawyer from the Office of Professional Conduct will give you ethical help about small everyday matters and larger complex issues.

**More information about the Bar's Ethics Hotline:** http://www.utahbar.org/?s=ethics+hotline

**Information about the formal Ethics Advisory Opinion process:** www.utahbar.org/opc/rules-governing-eaoc/.

## PUBLIC REPRIMAND

On June 27, 2018, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Rocky C. Crofts for violating Rule 1.15(d) (Safekeeping Property) of the Rules of Professional Conduct.

*In summary:*

Mr. Crofts represented a client in his efforts to obtain financing for a development project. The client delivered to Mr. Crofts, via wire transfer, funds for a down payment and to pay the fees for loan processing. The client repeatedly requested an accounting of the funds Mr. Crofts was holding for him but had not received one at the time he submitted information to the OPC. The OPC requested that Mr. Crofts provide an accounting of the funds. Eventually, Mr. Crofts responded but failed to provide documentation demonstrating what happened to the funds. The OPC forwarded the accounting information to the client, who found discrepancies when he compared the information Mr. Crofts provided to the information in his records.

## RESIGNATION WITH DISCIPLINE PENDING

On November 21, 2018, the Utah Supreme Court entered an Order Accepting Resignation with Discipline Pending concerning Philip J. Danielson, for violation of Rule 1.3 (Diligence), 1.4(a) (Communication), Rule 1.5(a) (Fees), Rule 1.15(d) (Safekeeping Property), Rule 1.16(d) (Declining or Terminating Representation), Rules 5.3(b) and 5.3(c) (Responsibilities Regarding Nonlawyer Assistants), Rule 5.5(a) (Unauthorized Practice of Law: Multijurisdictional Practice of Law), Rule 7.1(b) (Communications Concerning a Lawyer's Services), Rule 7.3(c) (Direct Contact with Prospective Clients), and 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

*In summary:*

**Matter #1**

The Federal Trade Commission filed a complaint against Mr. Danielson, d/b/a Danielson Law Group and d/b/a DLG Legal alleging that Mr. Danielson misled financially distressed homeowners nationwide by promising a loan modification in exchange for an advance fee. The complaint made numerous


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allegations including the following: Mr. Danielson misled financially distressed homeowners into paying thousands of dollars based on false promises and misrepresentations, and that he provided little, if any, meaningful assistance to modify or prevent foreclosure; Mr. Danielson sent direct mail solicitations that told consumers that they pre-qualify for mortgage relief; the direct mail solicitations, websites, radio and television advertisements and seminars violated several Mortgage Assistance Relief Services Rules and Regulations; Mr. Danielson's representatives told consumers that they were affiliated with the consumer's lender, have a strong and unique relationship with the consumer's lender, or that the lender referred Mr. Danielson to the consumer; Mr. Danielson charged a fee and told consumers that they must make the first payment before loan modification services can begin; Mr. Danielson assigned a non-attorney representative to consumers but typically they received little to no communication from his representatives; in numerous instances, consumers complained that they did not receive the services or legal representation Mr. Danielson promised.

Many consumers never met or spoke to Mr. Danielson or to an attorney licensed in the state where they reside or where the property at issue is located; after consumers paid the requested advance fees, Mr. Danielson failed to obtain loan modifications or other relief to stop foreclosures; consumers who engaged Mr. Danielson's services suffered significant economic injury, including paying hundreds or thousands of dollars and receiving little or no service in return, going into foreclosure, and even losing their homes.

The court entered a final stipulated order for permanent injunction and monetary relief in the case. In the order, Mr. Danielson agreed that the facts alleged in the complaint will be taken as true.

**Matter #2**

Homeowners retained Mr. Danielson to assist them with obtaining a loan modification in order to try and avoid foreclosure of their home in Missouri. Mr. Danielson is not licensed to practice law in Missouri. The homeowners paid Mr. Danielson a fee for legal services. The homeowners' mortgage company foreclosed on their home four months after they retained Mr. Danielson. The homeowners retained another attorney and requested a copy of their file. Mr. Danielson failed to provide the file.

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**5 hrs. Ethics CLE Credit, 1 hr. Prof./Civ.**

Cost $245 on or before March 6, 2019, $270 thereafter.

**Matter #3**

A homeowner retained Mr. Danielson to help him avoid foreclosure of his property in Colorado. Mr. Danielson is not licensed to practice law in Colorado. The homeowner authorized Mr. Danielson's firm to debit his checking account monthly for advance fees. The homeowner called Mr. Danielson's firm numerous times, each time speaking with a different individual, not Mr. Danielson, and sent everything the firm requested. Twenty months after retaining Mr. Danielson the homeowner cancelled the agreement because he was notified that his property had gone into foreclosure proceedings.

**Matter #4**

Homeowners, residents of Wisconsin, retained Mr. Danielson for assistance with a loan modification. Mr. Danielson is not licensed to practice law in Wisconsin. The homeowners made monthly payments to Mr. Danielson. Twenty-two months after retaining Mr. Danielson, the homeowners' mortgage company denied their loss mitigation request. The homeowners never spoke with Mr. Danielson, just several other non-lawyer assistants in his office. Mr. Danielson did no work on the homeowners' case and sent them information to complete after that information needed to be submitted.

**Matter #5**

A homeowner retained Mr. Danielson for assistance with a loan modification for his home in North Carolina. Mr. Danielson is not licensed to practice law in North Carolina. The homeowner paid some advance fees but after Mr. Danielson's efforts were unsuccessful, the homeowner terminated the representation and refused to pay anything further.

**Matter #6**

A homeowner received a mailed solicitation letter for Mr. Danielson's home loan modification services related to the homeowner's property in Virginia. Mr. Danielson is not licensed to practice law in Virginia. The homeowner paid an advance fee for the representation. The homeowner made repeated phone calls to Mr. Danielson's office but was unable to speak with anyone. Further, during the representation, the homeowner only received four letters from Mr. Danielson: 1) the solicitation; 2) the fee agreement; 3) a letter informing him that Mr. Danielson would no longer be representing him; and 4) another solicitation letter. The homeowner's home was sold at auction.

**Matter #7**

Homeowners, residents of Florida, received an advertisement in the mail from a company called New Start, Inc. whose representatives assured them they could qualify for a mortgage modification.

Mr. Danielson is not licensed to practice law in Florida. The homeowners completed an application for a loan modification and money was debited from their bank account and paid to Mr. Danielson's firm. The homeowners discovered that New Start, Inc. was no longer in business and requested a refund of the money paid to Mr. Danielson. Mr. Danielson sent the homeowners a letter indicating their file had been closed and later denied their refund request. The homeowners provided requested information to Mr. Danielson, but no work was done on their case and he failed to contact their lender. The OPC sent a Notice of Informal Complaint to Mr. Danielson but he failed to respond.

**Matter #8**

Mr. Danielson solicited a homeowner residing in Maryland by mail. The mailer did not specify that it was advertising material. Mr. Danielson is not licensed to practice law in Maryland. The homeowner retained Mr. Danielson to assist her with efforts to modify her home loan, making four separate payments to him. During the modification process, the homeowner had communications with several people from Mr. Danielson's office, none of whom were attorneys. Nevertheless, each person she spoke with gave her advice. Seven months after retaining him, Mr. Danielson sent the homeowner a letter indicating that he would no longer be representing her. Mr. Danielson failed to complete meaningful work on the homeowner's case.

**Matter #9**

The State of North Carolina Department of Justice contacted Mr. Danielson regarding consumers who complained about his loan modification services. Mr. Danielson is not licensed to practice law in North Carolina. Consumer #1 contacted Mr. Danielson about a loan modification. The homeowner paid advance fees for Mr. Danielson's services but her home was being sold by her mortgage company. Mr. Danielson never contacted her mortgage company. Consumer #2 paid Mr. Danielson advance fees for a loan modification. Consumer #3 retained Mr. Danielson for a loan modification and paid advance fees. The consumer received notice of a foreclosure hearing and notified Mr. Danielson. The mortgage company denied the loan modification. Consumer #4 stated that Mr. Danielson promised a loan modification and advised her not to contact her mortgage company. The consumer paid the advance fees, but in the end her mortgage company performed a modification at no charge. Consumer #5 was contacted by Mr. Danielson's company after his mortgage became delinquent. The consumer made payments over five months for a loan modification. The North Carolina Housing Authority ultimately helped with the modification. Consumer #6 retained Mr. Danielson for a loan modification paying advance fees. The consumer's modification was denied because the documents requested by the mortgage company were not provided. The consumer requested a refund of his retainer, but it was denied. Consumer #7 received information in the mail regarding Mr. Danielson's services and was promised a loan modification. Mr. Danielson debited the consumer's checking account for five months. The consumer contacted her mortgage company and was informed that they had received no information from Mr. Danielson. Consumer #8 retained Mr. Danielson for a loan modification and paid an advance fee. None of the consumer's creditors nor her mortgage companies had been contacted and she failed to receive a modification through Mr. Danielson. Consumer #9 worked with Mr. Danielson for over two years but failed to receive a loan modification, paying him advance fees. The consumer notified Mr. Danielson that she was terminating his services. The consumer's account was charged after the termination.

**Matter #10**

A homeowner retained Mr. Danielson to renegotiate a new payment schedule with the company that held his mortgage to avoid foreclosure of his home in New York. Mr. Danielson is not licensed to practice law in New York. The homeowner paid Mr. Danielson an advance fee. The homeowner requested information but received little or no information about what work was being performed on his case. Little or no progress was made on the homeowner's case and he terminated Mr. Danielson's representation.


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**Matter #11**

A homeowner, a resident of California, responded to an advertisement from Mr. Danielson's firm regarding the possibility of lowering the interest rate on his home loan. Mr. Danielson is not licensed to practice law in California. The homeowner was assured that Mr. Danielson would be able to assist him with a loan modification and if he couldn't, the homeowner would receive a full refund. The lender denied the homeowner's request for a loan modification. The homeowner requested a refund from Mr. Danielson, an accounting and a copy of his file. The homeowner received three pdf files, a detailed description of the work performed on his case, but did not receive an accounting.

## SUSPENSION

On December 19, 2018, the Honorable Mark R. DeCaria, Second Judicial District, entered an Order of Suspension against Paul E. Remy, suspending his license to practice law for a period of three years. The court determined that Mr. Remy violated Rule 1.1 (Competence), Rule 1.2(a) (Scope of Representation), Rule 1.3 (Diligence), Rule 1.4(a) (Communication), Rule 1.4(b) (Communication), Rule 1.5(a) (Fees), Rule 1.15(a) (Safekeeping Property), Rule 1.15(b) (Safekeeping Property), Rule 1.15(c) (Safekeeping Property), Rule 1.15(d) (Safekeeping Property), Rule 1.16(d) (Declining or Terminating Representation), Rule 5.3(b) (Responsibilities Regarding Nonlawyer Assistants), Rule 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

The case involved Mr. Remy's handling of cases for six separate clients. The first client retained Mr. Remy to represent her in a guardianship matter. The client wanted temporary custody of two grandchildren while both parents were incarcerated and needed legal documentation so that she could register the children in daycare and obtain medical coverage. The client paid a retainer for legal services and Mr. Remy filed a petition for guardianship. The court notified Mr. Remy that the case would be dismissed if here was no activity by a certain date. Mr. Remy filed a motion to extend time for service but did not file a request to submit the motion or proposed order. A couple of months later, Mr. Remy filed an acceptance of service and summons but there was little or no activity in the case thereafter. The client attempted to speak with Mr. Remy numerous times through phone calls and office visits to obtain a status update on her case but was unable to do so. Eventually, the court ordered that the case be dismissed due to inactivity. Mr. Remy did not inform the client that the court had ordered the case dismissed. Mr. Remy filed a motion to set aside the order, but filed nothing further in the case.

The second client retained Mr. Remy to advise her regarding her financial situation and a bankruptcy filing. The client paid a retainer for legal services and believed that Mr. Remy was working on her matter. The client later met with Mr. Remy's assistant to sign release forms and pay the bankruptcy filing fees. No bankruptcy petition was filed on behalf of the client nor was other meaningful work performed on her behalf. The client terminated Mr. Remy's representation and requested a refund. Mr. Remy did not provide a refund and charged the client for an office visit that was cancelled. Mr. Remy failed to return the client's file to her.

The third client retained Mr. Remy for a divorce/custody matter. The client's mother paid a retainer for legal services and the parties attended mediation but were unable to reach a resolution. After mediation, the client attempted to contact Mr. Remy many times to obtain a status update but was unable to do so. The client's ex-husband filed a petition to modify custody and a few days later, a motion to appoint a custody evaluator. Mr. Remy filed a motion to dismiss but did not file a memorandum supporting the motion. A hearing was held before the commissioner, and Mr. Remy was ordered to re-file the motion and a custody evaluator was appointed. The client paid additional attorney's fees to Mr. Remy. The custody evaluator emailed information to Mr. Remy regarding the custody evaluation process but he did not forward the information to the client. Opposing counsel contacted Mr. Remy about his client's failure to return the custody evaluation paperwork and threatened to file an order to show cause. A telephone conference was scheduled and the clerk was unable to reach Mr. Remy. Thereafter, opposing counsel filed an order to show cause alleging that the client failed to cooperate with the custody evaluation and Mr. Remy failed to respond to his emails. Mr. Remy did not return all documents the client provided him as part of her file at the end of the representation.

The fourth client retained Mr. Remy to represent her in a custody matter. The client paid a retainer for legal services. The client was

not notified that the opposing party had filed documents in the case and little or no action was taken by Mr. Remy to advance the matter. Eventually, Mr. Remy filed a petition to modify custody in the case but it was filed without the client's consent. The client attempted to contact Mr. Remy about her case, but he did not respond to her request. The OPC sent a Notice of Informal Complaint (NOIC) requesting Mr. Remy's response. Mr. Remy did not respond to the NOIC.

The fifth client retained Mr. Remy to represent him in two cases, a paternity matter and a criminal matter. Mr. Remy filed a motion on behalf of the client in the paternity matter. The motion was for a temporary restraining order, but the proposed order Mr. Remy submitted was for an order to show cause hearing before the commissioner essentially asking for temporary order. The court directed Mr. Remy to the rules regarding the request for temporary orders. Mr. Remy did not file a request for temporary orders until two months later. The court held an order to show cause hearing. Mr. Remy did not appear on behalf of his client at the hearing. Mr. Remy charged the client for his travel to and appearance at the hearing. A hearing was held in the criminal matter, but Mr. Remy did not appear on behalf of the client. Mr. Remy charged the client for his travel to and appearance at the hearing in the criminal matter. The client and/or his wife attempted to contact Mr. Remy but he failed to return phone calls or respond to emails. The client requested his file several times but did not receive it. The OPC sent a NOIC requesting Mr. Remy's response. Mr. Remy did not respond to the NOIC.

The sixth client retained Mr. Remy to represent her in two civil matters. The client paid Mr. Remy a retainer for one matter and a filing fee for the other matter. The client left messages on Mr. Remy's office voicemail and spoke to his receptionist, but there was no responsive communication from Mr. Remy.

## RECIPROCAL DISCIPLINE

On November 9, 2018, the Honorable Keith A. Kelly, Third Judicial District Court, entered an Order of Reciprocal Discipline: Disbarment, against Dana C. Heinzelman, disbarring Ms. Heinzelman for her violation of Rule 1.3 (Diligence), Rule 1.4(a) (Communication), Rule 1.15(c) (Safekeeping Property), Rule 1.15(d) (Safekeeping Property), and 1.16(d) (Declining or Terminating Representation) of the Rules of Professional Conduct. Since Utah does not have a five-year suspension sanction, disbarment is equivalent discipline in Utah.

*In summary:*
On July 20, 2017, The Supreme Court of the State of Oregon entered an Order Accepting Stipulation for Discipline suspending Ms. Heinzelman from the practice of law for a period of five years based upon the following facts:

**Matter #1**
A client hired Ms. Heinzelman to file an uncontested divorce petition on her behalf and paid an advance fee. A written fee agreement recited that Ms. Heinzelman would hold the funds in her trust account. The parties orally agreed that part of the funds would be a flat fee for Ms. Heinzelman's time and part of the funds were to be used to pay the petition filing fee. Five months later, the client's husband paid Ms. Heinzelman for the filing fee. Ms. Heinzelman did not deposit the funds into her trust account.

Ms. Heinzelman did not file the dissolution petition. For approximately six months the client attempted to contact Ms. Heinzelman to obtain a status update on the matter and then to


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ask for an explanation for the delay. Ms. Heinzelman did not substantively respond to the client's contact attempts. Thereafter, Ms. Heinzelman stopped responding to the client altogether.

In the meantime, the client's husband retained his own attorney, who was unable to contact Ms. Heinzelman. When it became clear that Ms. Heinzelman would not respond to their contact attempts, husband's attorney completed and filed the dissolution paperwork. The client and client's husband then requested a refund of their funds. Eventually the money was repaid.

**Matter #2**

A client retained Ms. Heinzelman to represent her as the respondent in a dissolution petition filed pro se by the client's estranged husband. The client signed a written fee agreement and paid a retainer in cash to Ms. Heinzelman. Ms. Heinzelman did not deposit the client funds into her trust account and instead commingled them with her own.

The client and her estranged husband owned a mobile home. As part of the asset division in the dissolution proceeding, the client wanted to receive the full value of the mobile home in lieu of any spousal support. Ms. Heinzelman conveyed the offer to husband. At the husband's request, Ms. Heinzelman agreed to give him a few weeks to consider the offer. That wait stretched from weeks to months. During that time, Ms. Heinzelman did not file an appearance for the client, did not take steps to monitor the status of the case, and did not provide information or updates to the client. Ms. Heinzelman arranged for a meeting with estranged husband to review and sign a stipulated agreement. Ms. Heinzelman cancelled the meeting at the last minute without notifying the client. She did not reschedule the meeting, nor did she promptly respond to the client's multiple messages asking whether the meeting had taken place.

The court issued a notice of intent to dismiss the case because the client had not filed an answer in the matter. The client informed Ms. Heinzelman that she had received the court's notice of intent to dismiss the case, and Ms. Heinzelman agreed to take action. Thereafter, the client made multiple inquiries with Ms. Heinzelman but no action was taken. The estranged husband filed a motion for default and entry of judgment. A default judgment was signed and entered four days later. Later that day, Ms. Heinzelman filed paper copies of a fee-deferral request, and an answer and counterclaim on the client's behalf. The filings had no effect because they had not been e-filed and because the default had already been entered. Ms. Heinzelman promised the client that she would file a motion to set aside the default, but she did not do so and did not follow up with the client to inform her of the developments.

The client asked Ms. Heinzelman to fix the situation or provide a refund. Ms. Heinzelman did neither. Ms. Heinzelman did not know, and failed to learn, the process for filing the motion to set aside the default. Ms. Heinzelman also did not respond to the client's requests for information about the matter, nor did she return the client's funds despite the client's requests.

## RECIPROCAL DISCIPLINE

On December 22, 2018, the Honorable Royal I. Hansen, Third Judicial District Court, entered an Order of Reciprocal Discipline: Disbarment, against April R. Morrissette, disbarring Ms. Morrissette for her violation of Rule 8.4(b) (Misconduct) and Rule 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

On April 6, 2018, the Presiding Disciplinary Judge, State of Colorado, entered a Stipulation, Agreement and Affidavit containing Ms. Morrissette's Conditional Admission of Misconduct and Imposition of Disbarment. On April 10, 2018, the Presiding Disciplinary Judge, State of Colorado, issued an Order approving Conditional Admission of Misconduct and Imposing Sanctions based on the following facts:

Ms. Morrissette began working at a law firm in Colorado. Her employment with the firm was terminated. Ms. Morrissette filed an initial claim for unemployment insurance benefits by accessing the Colorado Department of Labor and Employment (CDLE) Internet site and entered the required information establishing a computer record of the claim. Soon after, Ms. Morrissette signed a verification of personal information form which warns against false statements and willful misrepresentation in order to obtain or increase benefits and returned it to the CDLE. Ms. Morrissette began collecting unemployment benefits.

Ms. Morrissette began employment as an attorney at a Colorado firm. Ms. Morrissette's employment with the firm was terminated. Ms. Morrissette intentionally continued to collect unemployment benefits even though she knew she was no longer entitled to them after being hired by the Colorado firm. In her biweekly telephonic and/or online unemployment claims, Ms. Morrissette represented that she was unemployed and had no income, concealing her employment and earnings from CDLE. Ms. Morrissette was employed during thirty-two of the fifty-four weeks that she filed for and received unemployment insurance benefits.

Based on Ms. Morrissette's conduct, she was criminally prosecuted in Colorado. Ms. Morrissette entered guilty pleas to Computer Crime, a class four felony pursuant to §18-5.5-102(1)(b) C.R.S. and Theft, a class one misdemeanor pursuant to §18-4-401(2)(e) C.R.S.

## DISBARMENT

On December 20, 2018, the Honorable Christine L. Johnson, Fourth Judicial District, entered an Order of Disbarment against Scott J. Eckersley, disbarring him from the practice of law. The court determined that Mr. Eckersley violated Rule 1.1 (Competence), Rule 1.3 (Diligence), Rule 1.4(a) (Communication), Rule 1.5(a) (Fees), and Rule 1.15(a) (Safekeeping Property) of the Rules of Professional Conduct.

*In summary:*

A client retained Mr. Eckersley to represent his children, both minors, in a defensive asylum case before the Immigration Court. The client paid a retainer for legal fees and Mr. Eckersley attended a hearing on behalf of the client and his minor children. The client did not hear from Mr. Eckersley again regarding the case. The client was unable to see, speak to, or in any way contact Mr. Eckersley for several months and was unsure whether the asylum applications had been submitted. The client submitted a Freedom of Information Act Request (FOIA) to the Houston Asylum office to find out whether Mr. Eckersley had filed the asylum application. The office indicated that no asylum application had been submitted. The client retained new counsel who requested an accounting of legal fees to Mr. Eckersley. Mr. Eckersley did not respond to new counsel.

In another matter, a couple retained Mr. Eckersley to represent their three children in immigration removal proceedings. Their daughter came to the United States in April 2014 and Mr. Eckersley told them that their daughter qualified for asylum. The couple paid Mr. Eckersley to begin their daughter's case and had a payment plan to pay an additional fee every month until the rest of the fee was paid off. Mr. Eckersley appeared in court with the minor daughter in 2014.

The clients' sons arrived in the United States in 2015. They retained Mr. Eckersley to file an asylum application. No application was ever filed on their behalf.

In early 2015, the clients discovered that their daughter's circumstances had changed and they contacted Mr. Eckersley's office. The clients spoke with Mr. Eckersley's secretary who told them that the daughter might qualify for a U visa.

Mr. Eckersley closed his office in February 2016. After Mr. Eckersley closed his office he would not answer their calls. They would try calling one to two times per month, but Mr. Eckersley would only respond to text messages.

Mr. Eckersley filed the U Visa application on behalf of the daughter in July 2016. The daughter discovered that a hearing was scheduled by calling the immigration court's automated line. The client took the day off work to drive his daughter to court, but on the way, they spoke to Mr. Eckersley and he was adamant that no hearing was scheduled so they heeded his advice and went home. Mr. Eckersley did not attend the hearing and the daughter was ordered deported. The daughter was in a car accident two days after the scheduled hearing. Mr. Eckersley filed a motion to reopen an in absentia order on behalf of the daughter. In the motion he asserted that the daughter missed the hearing due to an automobile accident that had occurred two days after the hearing.

A hearing was held for the two sons in their immigration cases. The clients did not receive any notification from Mr. Eckersley or the immigration court that a hearing had been scheduled. The sons did not attend the hearing and they were ordered deported.

The clients also retained Mr. Eckersley to represent the wife's brother after he was detained in Texas. Mr. Eckersley stated that he would charge a certain fee. A few days later, he requested that the clients send him money via Western Union as soon as possible. Mr. Eckersley wanted the money to pay the cash bond for two other clients in another state. The brother called Mr. Eckersley because he had an interview in the detention center, but Mr. Eckersley did not answer.

The clients requested a copy of the work Mr. Eckersley had performed on behalf of the family, including a copy of a motion in the daughter's case. Mr. Eckersley stated that he only made two copies and he filed both of them with the court. He told the clients to file a FOIA request to obtain copies.

Mr. Eckersley deposited the fee paid by the family into his personal account and not into a client trust account. Mr. Eckersley did not provide an accounting to the family for work performed.


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# Attorney Discipline

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### PUBLIC REPRIMAND

On June 6, 2019, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Frances M. Palacios for violating Rules 1.4(a) (Communication), 1.15(a) (Safekeeping Property), 5.3(a) (Responsibilities Regarding Nonlawyer Assistants), and 5.3(c) (Responsibilities Regarding Nonlawyer Assistants) of the Rules of Professional Conduct.

*In summary:*

Ms. Palacios was the directing attorney for a law firm. Ms. Palacios supervised a nonlawyer manager (manager) of the law firm and credit repair business associated with the law firm. A client retained the law firm for the purpose of removing derogatory information from his credit report. The client paid the law firm and a third party who was identified as an "intermediary" for the client on the retainer and fee agreement. The manager was the point of contact for the client and the client was under the impression that the manager was an attorney. Later, the client complained that services were not rendered and was informed that he would receive a refund. The manager sent an email to the client requesting that he provide Ms. Palacios with an address to where his refund could be mailed. Over a period of several months, the client made several attempts to contact Ms. Palacios and the manager but he did not receive a response from either Ms. Palacios or the manager. At some point, Ms. Palacios received a letter from the client which she forwarded to the manager because she no longer worked for the law firm and the manager handled the money for the credit repair. Ms. Palacios encouraged the manager to make a payment in full to the client, but he was unable to do so. Eventually, Ms. Palacios refunded the money paid by the client.

### PROBATION

On May 14, 2019, the Honorable Laura S. Scott, Third Judicial District Court, entered an order of discipline against John A. Quinn, placing him on probation for a period of one year based on Mr. Quinn's violation of Rules 1.1 (Competence), 1.3 (Diligence), 1.4(a) (Communication), 1.5(a) (Fees), 1.16(d) (Declining or Terminating Representation), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(d) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

The case involved Mr. Quinn's handling of cases for three separate clients. The first client retained Mr. Quinn to represent her in divorce proceedings. The court set a pretrial conference but neither Mr. Quinn nor the client appeared. The court ordered the client's pleadings stricken and default entered against her. The court set a judicial mediation but neither Mr.

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Quinn nor the client appeared. A two-day divorce trial was set and on the morning that trial was to begin the court clerk called Mr. Quinn. Mr. Quinn indicated he was about twenty-five minutes away; however Mr. Quinn never appeared. The court was unable to reach Mr. Quinn after several attempts. The court issued an Order to Show cause wherein Mr. Quinn was ordered to appear and explain why he should not be held in contempt. The court found that Mr. Quinn was unable to be served and a civil bench warrant was issued. The court held a hearing in which Mr. Quinn was found in contempt. The OPC sent a Notice of Informal Complaint (NOIC) requesting Mr. Quinn's response. Mr. Quinn did not timely respond to OPC.

The second client retained Mr. Quinn to assist him with having two felonies reduced to misdemeanors. The client typically emailed Mr. Quinn one or twice a month and it would take several months for Mr. Quinn to reply. The client paid Mr. Quinn an additional sum of money after Mr. Quinn offered to go to the prosecutor's office and wait to speak to him about the client's case. Mr. Quinn emailed the client and stated that he had dropped off papers with the prosecutor and he expected to get everything filed in the next week. A month later, Mr. Quinn emailed the client and stated he would make another trip to see the prosecutor and if nothing came of the meeting, he would file a motion to reduce the offense without the prosecutor's assistance. Mr. Quinn did not file a motion with the court. The client requested a copy of all the paperwork in the case, and Mr. Quinn stated he would send him the file. The OPC sent a NOIC requesting Mr. Quinn's response. Mr. Quinn did not timely respond to the OPC.

The third client retained Mr. Quinn to represent him in a criminal matter. The client pleaded guilty to Assault, a class B misdemeanor and two days later paid Mr. Quinn to appeal his case. Mr. Quinn filed a notice of appeal and a motion to stay the sentence. The court held a remand hearing but Mr. Quinn and his client failed to appear. Mr. Quinn filed a motion to reinstate the appeal with the justice court. The justice court held a remand hearing but Mr. Quinn and his client failed to appear. The justice court set a second remand hearing which Mr. Quinn did not attend. The justice court ordered Mr. Quinn to contact the court within seven days, but he failed to do so. The court held a hearing on an Order to Show Cause. Mr. Quinn did not appear for the hearing and the client's original sentence was imposed. The OPC sent a NOIC requesting Mr. Quinn's response. Mr. Quinn did not timely respond to the OPC.

# Attorney Discipline

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### ADMONITION

On April 8, 2019, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

*In summary:*
The OPC received a non-sufficient funds (NSF) notification from a bank that an attorney's trust account had insufficient funds. The OPC sent two letters and a Notice of Informal Complaint (NOIC) to the attorney requesting an explanation for the deficiency. The attorney did not respond to the letters or the NOIC and no mail was returned. The attorney ultimately filed a late response explaining that the overdraft was caused by simple negligence and was cured quickly.

*Mitigating Factors:*
Personal or emotional problems.

### ADMONITION

On March 20, 2019, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rules 1.15(a) (Safekeeping Property), 1.15(b) (Safekeeping Property), 1.15(c) (Safekeeping Property), and 5.3(a) (Responsibilities Regarding Nonlawyer Assistants) of the Rules of Professional Conduct.

*In summary:*
Settlement funds associated with a personal injury matter were deposited into the trust account for the attorney's law firm. The firm wrote a check to their client, one of the plaintiffs in the personal injury case. However, when the client attempted to deposit the check, it was returned. Similarly, settlement funds associated with a different personal injury matter were deposited into the trust account for the attorney's law firm. Subsequently, the firm wrote a check to their client, one of the plaintiffs in the personal injury matter. However, when the client attempted to deposit the check that same day, it was returned.

Following the disbursement of fees associated with the second matter, the client was entitled to receive the remaining portion of the settlement amount. Although the attorney issued a check to the client for that amount, the check was never presented for payment. Rather than continue to hold these funds in trust, the attorney chose to gradually transfer the funds from the trust account into the law firm's operating account.

*Aggravating Factors:*
Multiple offenses; substantial experience in the practice of law

*Mitigating Factors:*
Absence of a prior record of discipline; absence of a dishonest

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or selfish motive; timely good faith effort to make restitution or to rectify the consequences of the misconduct involved; and physical disability.

## INTERIM SUSPENSION

On April 22, 2019, the Honorable Michael D. Direda, Second Judicial District Court, entered an Order of Interim Suspension, pursuant to Rule 14-519 of the Rules of Lawyer Discipline and Disability, against Tony B. Miles, pending resolution of the disciplinary matter against him.

*In summary:*
Mr. Miles was placed on interim suspension based upon his criminal convictions for two counts of Possession of a Controlled Substance Within a Correction Facility, a Third Degree Felony; one count of Possession or Use of a Controlled Substance, a Class A Misdemeanor; and two counts of Possession or Use of a Controlled Substance, a Third Degree Felony.

## RESIGNATION WITH DISCIPLINE PENDING

On March 27, 2019, the Utah Supreme Court entered an Order Accepting Resignation with Discipline Pending concerning F. Chad Copier, for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.15(a) (Safekeeping Property), 1.15(c) (Safekeeping Property), 1.16(d) (Declining or Terminating Representation), and 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
A client retained Mr. Copier for patent application work on two devices. Mr. Copier met with the client and accepted a retainer payment that was deposited directly into Mr. Copier's savings account. Mr. Copier did not have a trust account and had not earned the advance fee when he deposited it into his savings account. The client sent text messages and emails to Mr. Copier requesting status updates but Mr. Copier provided little or no information. After being unable to contact Mr. Copier for some time, the client located Mr. Copier's home address and eventually was able to meet with him. Mr. Copier informed the client the work was almost finished. Later, Mr. Copier informed the client his computer had crashed and that he had lost the client's contact information but that the work would be completed within a few days. Mr. Copier did not provide any draft applications or any other work that he stated he performed for the client. Mr. Copier never filed any provisional patent applications for the client's case. The client terminated Mr. Copier's representation and requested a refund of the unused portion of the retainer. At the time of the termination, Mr. Copier no longer had the fees the client had paid him. Mr. Copier did not respond to the termination letter.

A second client retained Mr. Copier to write three provisional patents for his company. The client paid a retainer but Mr. Copier did not deposit the funds into a trust account. Mr. Copier exchanged emails and had telephone conversations with the client regarding what was needed for the patents and he began

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work on the patent applications. Later, Mr. Copier informed the client that he had almost completed work on the applications and hoped to have the first one sent to the client within a few days. The client attempted to contact Mr. Copier after that but Mr. Copier did not respond. The client did not receive any work or proof of any work from Mr. Copier. The client terminated Mr. Copier's representation and requested a refund of the unused portion of the retainer. The client requested a stop payment and received the retainer money back from his bank.

## SUSPENSION

On April 8, 2019, the Honorable James T. Blanch, Third Judicial District, entered an Order of Suspension against Amy L. Butters, suspending her license to practice law for a period of six months and one day.

*In summary:*

On August 8, 2017, the Court entered an Order of Discipline: Probation against Ms. Butters. Ms. Butters was given a twelve-month probation which became effective the date the Order was signed. The Order stated that if the OPC received a complaint during the period of this probation involving legal services rendered by her during the period of the probation, the OPC had the discretion to petition the court for consideration of the complaint as a possible violation of the probation.

An informal complaint came into the OPC's office during the probation period from a client of Ms. Butters indicating that she hired Ms. Butters to file a bankruptcy petition. The client stated that Ms. Butters did not meet with her to advise her before the creditor's meeting. The client provided documents to Ms. Butters but when they were requested at the creditor's meeting, they had not been submitted. The client sent the documents to Ms. Butters a second time but then later received notice that her bankruptcy was going to be dismissed because Ms. Butters had still not submitted the documents. Although the bankruptcy was eventually discharged, Ms. Butters did not perform all the duties outlined in their fee agreement.

During the probation period the OPC received a "self-report" of misconduct from Ms. Butters. Ms. Butters provided a stipulation confirming an agreement with the Bankruptcy Trustee that she would be sanctioned by the Bankruptcy Court for various acts of misconduct.

By engaging in misconduct in the Bankruptcy Court and because the OPC received another informal complaint regarding Ms. Butters' conduct, Ms. Butters breached the requirements of her probation.

## *Discipline Corner*

**DISBARMENT**

On May 26, 1998, the Honorable Kenneth Rigtrup, Third Judicial District Court entered an Order of Disbarment disbarring Robert L. Wood from the practice of law for violation of Rules 8.4(a), (b) and (c) (Misconduct) of the Rules of Professional Conduct. The Order was based on a Stipulation to Discipline By Consent: Disbarment, entered into by Wood and the Office of Professional Conduct.

On July 22, 1986, Wood on behalf of Bonneville Pacific Corporation ("BPC") made an initial public offering of its securities and filed a registration for the sale of debt securities with SEC. The registration statement made disclosures that were false, fraudulent, and misleading.

The Information further alleged that on April 15, 1986, Wood willfully signed and verified, by a written declaration under penalties of perjury, a 1985 joint U.S. Tax Return, on behalf of himself and his spouse, wherein Wood reported $162,500 in stock sales which he knew were worth substantially less, all in violation of Title 26, U.S.C. §7206(1) (False Tax Return).

On October 15, 1996, Wood pled guilty to a two felony count Information which charged him with a violation of 15 U.S.C. §77q(a) and 77(x) (Securities Fraud – Offer and Sale) and 26 U.S.C. §7206(1) (False Tax Return). Wood was sentenced to twelve months and one day in prison and placed on Interim Suspension on November 5, 1996.

**DISBARMENT**

On June 26, 1998, the Utah Supreme Court reversed the Seventh Judicial District Court's suspension of Mark H. Tanner. The Court stated that disbarment is the appropriate sanction for Tanner's violation of Rules 8.4(a), (b), and (c) (Misconduct) of the Rules of Professional Conduct.

The Utah State Bar appealed an order suspending Tanner from the practice of law for three years. Tanner accepted a settlement without authorization from his client, forged his client's signature, forged and back-dated a Special Power of Attorney, convinced his wife to falsely notarize the Special Power of Attorney, converted the client's settlement funds for his own use, and lied to a federal agent regarding the Special Power of Attorney. Although the District Court found that Tanner committed serious violations of the Rules of Professional Conduct, it entered an order sanctioning Tanner with a suspension. On appeal, the Bar asserted that the trial court should have disbarred Tanner.

The Supreme Court found that although the trial court correctly concluded that the presumptively appropriate sanction was disbarment, it incorrectly weighed the aggravating and mitigating circumstances. The Supreme Court concluded that:

> . . . the multiple aggravating factors in this case – a record of misconduct, taking advantage of a vulnerable client, absence of mental, emotional, or financial difficulties and lack of remorse prior to exposure – would in fact justify an increase in the degree of discipline imposed.

The Supreme Court also considered Tanner's deception of the federal agent while he held a public office, and noted that public officials are generally held to a higher ethical standard because they must act in the best interest of the public.

Whereas the trial court considered as mitigating circumstances Tanner's inexperience in the practice of a law, his good character and reputation, the remorse he showed at trial, and the lack of a pattern, the Supreme Court noted that "With regard to all mitigating factors, courts must consider them in light of the particular misconduct, not in isolation."

Moreover, the Supreme Court stated that Tanner's inexperience in the practice of law could not be considered mitigating because, "All citizens, lawyers or otherwise, should know that the law forbids forging and back-dating documents." This, combined with the fact that Tanner had already been warned regarding the proper use of a notary, demonstrated that additional experience in the practice of law would not have taught Tanner anything he did not know. The Supreme Court further stated that the fact that Tanner was able to conceal his "weak character" from the public should not weigh in his favor. Finally, the Supreme Court noted that Tanner's remorse was irrelevant, as it was not displayed until after he was caught and was going through trial.

**RESIGNATION WITH DISCIPLINE PENDING**

On June 22, 1998, the Honorable Richard C. Howe, Chief Justice, Utah Supreme Court, executed an Order Accepting Resignation Pending Discipline in the matter of Nick H. Porterfield. In the Petition for Resignation with Discipline Pending, Porterfield admitted that he violated Rules 1.1 (Competence), 1.3 (Diligence), 1.16(d) (Declining or Terminating Representation), 8.1 (Bar Admission and Disciplinary Matters), and 8.4(a), (b), (c) and (d) (Misconduct) of the Utah Rules of Professional Conduct.

Upon a motion submitted by the Office of Professional Conduct, in the Third Judicial District Court, Porterfield was placed on interim suspension for abandonment of his practice. The OPC later filed a Formal Complaint in the Third District Court based on information contained in approximately thirty-five informal complaints, most from former clients, alleging misconduct by Porterfield. Since the Complaint was filed, the Office of Professional Conduct has received approximately twenty-six additional informal complaints against Porterfield.

In his representation of many of the clients who filed informal complaints, Porterfield failed to appear at hearings, took additional fees to complete work which he never completed, failed to file documents, failed to communicate with his clients, and failed to return client fees.

In addition to the numerous client complaints against Porterfield, were three criminal incidents that warranted discipline. The most recent occurred in Texas in 1996 when, while on suspension from the practice of law in Utah, Porterfield held himself out as an attorney in Texas in violation of the Utah court's Order of Interim Suspension. Additionally, on June 3, 1996, Porterfield pled guilty to Credit Card Abuse, a State Jail Felony, in Tarrant County, Texas. He received a sentence of Deferred Adjudication and was placed on probation for two years. Finally, on October 6, 1978, Porterfield was arrested in Fort Worth, Texas on charges of felony theft. The case was later dismissed. Porterfield failed to report his incident on his application to the Utah State Bar, although the application specifically asks for such information.

**RESIGNATION WITH DISCIPLINE PENDING**

On June 2, 1998, the Honorable Richard C. Howe, Chief Justice, Utah Supreme Court, executed an Order Accepting Resignation with Discipline Pending in the matter of Duane R. Smith. The Order took effect on July 15, 1998. In the Petition for Resignation with Discipline Pending Smith admitted that he violated Rules 8.4(a), (b), and (c) (Misconduct) of the Rules of Professional Conduct.

In May 1990, Smith began renting office space from a law firm and began to work at the firm on various cases. This arrangement continued until April 1, 1994, when Smith was suspended from the practice of law for one year for forging his wife's signature and a notary's signature on an acceptance of service and waiver stemming from a divorce action he initiated. Smith continued to work at the firm as a law clerk during his disciplinary suspension.

When Smith's suspension ended on March 1, 1995, Smith resumed his relationship with the firm and entered into another agreement with the firm. Under the agreement, Smith would be recognized as a member of the firm, receive a portion of the hourly amount he billed and collected, have his work billed through the firm, and be responsible for twenty-five percent of the overhead. Sometime after January 15, 1996, at Smith's request, the agreement was changed to provide him with a greater portion of the amount billed and collected.

On May 9, 1997, a partner in the firm discovered that Smith had been receiving payments from clients and cashing them or depositing them into his own account without apportioning any percentage to the firm. Smith first routed client payments into his own account on September 25, 1995. From the date through April 7, 1997, Smith failed at least twenty-four times to apportion payments to the firm. The total amount Smith failed to apportion totaled $15,969.25.

On May 19, 1997, the firm informed the Office of Professional Conduct of Smith's conduct, as required by Rule 8.3(a) (Reporting Professional Misconduct) of the Rules of Professional Conduct.

**INTERIM SUSPENSION**

On July 6, 1998, the Honorable Boyd Bunnell, Senior District Court Judge, presiding in the Fifth Judicial District Court, entered a Ruling on the Bar's Motion for Interim Suspension suspending Gary Pendleton from the practice of law pending final disposition of the disciplinary proceeding.

The Office of Professional Conduct asked the Court for an order placing Pendleton on Interim Suspension from the Practice of Law, pursuant to the provision of Rule 19, Rules of Lawyer Discipline and Disability. Rule 19(c) states: "The district court shall place a respondent on interim suspension upon proof that respondent has been convicted of a crime which reflects adversely

on the respondent's honesty, trustworthiness or fitness as a lawyer in other respects, regardless of the pendency of an appeal."

On March 13, 1998, the Honorable David E. Roth, Fifth Judicial District, executed a Judgment, Stay of Imposition of Sentence, and Order of Probation. The Judgment of Conviction stated that Pendleton "is guilty of the offense of possession or use of a controlled substance, to wit: methamphetamine, which is a third degree felony . . . ." The Order sentenced Pendleton to a term not to exceed five years in the Utah State Prison, but stayed the sentence and placed Pendleton on supervised probation for thirty-six months. Additionally, Pendleton was fined $4,995, ordered to complete three hundred twenty hours of community service, and ordered to undergo a substance abuse evaluation and treatment program.

The Office of Professional Conduct argued to Judge Bunnell that in accordance with Rule 19(e) Rules of Lawyer Discipline and Disability, the Bar's submission of a certified copy of the Judgment justified the granting of their motion.

The Court determined that the only question is whether or not Pendleton's felony conviction for the use and possession of an illegal controlled substance adversely reflects on his honesty, trustworthiness, or fitness as a lawyer in other aspects. The Court found:

> The conviction of respondent of the crime for which he was charged requires the proving beyond a reasonable doubt that he intentionally and knowingly violated the felony controlled substance laws. It is inconceivable to the Court that an attorney sentenced to prison on a felony drug charge can continue to appear as an officer of the Court and defend clients similarly charged or to otherwise represent and advise clients on legal matters without adverse reflection on his honesty, trustworthiness, or fitness as a lawyer.

**ADMONITION**

On June 9, 1998, Judge Pat B. Brian, Third District Court, admonished an attorney for violation of Rule 1.7 (Conflict of Interest) and 8.4(d) (Misconduct) of the Rules of Professional Conduct.

Between May 1991 and September 1991, the attorney acted as legal counsel and provided legal services for a partnership controlled by a woman and comprised of members of her immediate family, including her husband, who, along with her, was a general partner. During this time a judgment creditor in California, obtained a judgment against her husband in the amount of $2,500,000. The attorney recommended to her that the partnership file a suit and obtain a judgment against her husband to prevent the company from attaching the assets of the partnership. The woman declined to follow that advice. Thereafter, while representing another client, the attorney did file a suit against the husband. In that suit, it was alleged that the husband assigned all of the partnership's assets to a trust without the knowledge of the woman, as one of the partnership's general partners. The company filed the suit for the purpose of putting the partnership's claims on equal footing, if not prior in time, to the company's claims.

In his common representation of these parties, the Respondent violated Rule 1.7 "Conflict of Interest" of the Rules of Professional Conduct, in that, the Respondent's common representation of the clients described herein and the Complaint was directly adverse, and no lawyer could reasonably believe that the common representation would not adversely affect his relation with the other client.

In a second incident, previous to 1994, the subject attorney and another attorney were involved in litigation involving the partnership and a company. The other attorney represented another party in that matter and the subject attorney represented the partnership. The subject attorney withdrew from representation of the partnership, which then became represented by other counsel. During the course of their representation of their respective clients, the subject attorney and the other attorney each alleged that the other's conduct was unprofessional. The other attorney filed a complaint with the OPC alleging among other things, that the Respondent had been rude and unprofessional and had filed papers in the case that lacked merit. The subject attorney filed a response to the complaint denying all allegations and alleging the other attorney had been unprofessional. The subject attorney stipulated to the matter being included in the admonition, and acknowledges that his conduct towards opposing counsel and the opposing party could have been handled in a more professional manner and his conduct was, to some degree, prejudicial to the administration of justice.

# Discipline Corner

### ADMONITIONS

1. An attorney was admonished for violating Canon 6, DR 6-101(A)(2) and Rule 1.1 by failing to correspond in writing to his client regarding the trial strategy and court dates to enable the client to participate fully in his defense and for failing to prepare a witness for a trial.

2. Two attorneys were admonished for violations of Rule 7.5(a)(d) by representing to the public their status as partners when in fact no partnership existed.

### PRIVATE REPRIMAND

1. For violating Rule 8.4(c), an attorney was privately reprimanded for ignoring two requests from the Tenth Circuit Court of Appeals regarding the filing of briefs and ultimately failing to timely file the briefs or request an extension of time. In addition, the attorney failed to respond to an Order to Show Cause regarding his failure to abide by the rules of the Court. The sanction was mitigated by the attorney's emotional turmoil due to the disappearance of a close friend, a lack of prior disciplinary history and that a private reprimand is consistent with the discipline in prior cases with similar circumstances.

### PUBLIC REPRIMANDS

1. On February 6, 1990, Phillip A. Harding was publicly reprimanded for violating Canon 6, DR 6-101(a)(3), DR 7-101(A)(2) and DR 7-101(A)(3) by accepting a retainer in a divorce action and subsequently failing to make an appearance, contact opposing counsel or file an Answer to the Complaint resulting in entry of default against his client. Subsequent to the entry of default, Mr. Harding assured his client that he would take remedial action but failed to do so.

2. On February 6, 1990, Peter M. Ennenga was publicly reprimanded for violating Canon 6, DR 6-101(A)(3) by neglecting his representation of his client by failing to respond to discovery resulting in sanctions against his client and failing to inspect the court file allowing judgment in favor of his client to lay undetected for 16 months. The sanction was mitigated by Mr. Ennenga's offer to reimburse his client for the civil sanction prior to the filing of the complaint in the Office of Bar Counsel, that other than the financial sanction the client was not injured and that the conduct was not intentional. The sanction was aggravated in that Mr. Ennenga had established a pattern of indifference to his client and disregarded the potential harm to his client. The sanction was also aggravated in that the civil sanction imposed against his client was $3,264.13.

3. On January 10, 1990, M. Shane Smith was publicly reprimanded for violating Canon 6, DR 6-101(A)(3) and Rule 1.4(a) by accepting a retainer in 1984 and agreeing to file a complaint in the matter and subsequently misrepresenting to the client in 1987 that the action was ongoing and misrepresenting to the client again in 1988 that a trial had been set and misrepresenting to the client again in 1988 that the trial had been re-scheduled when in fact the case had been dismissed in March 1986 for failure to prosecute. The sanction was mitigated by Mr. Smith's recent divorce and lack of significant disciplinary history and his admission of neglect and attempt at restitution.

### SUSPENSION

1. On January 12, 1990, William L. Schultz was suspended for violating Canon 6, DR 6-101(A)(3), Canon 2, DR 2-110(A)(2) and Rules 1.3, 1.4(b) and 1.14(d). Mr. Schultz was suspended from all practice of law in Utah for two months which suspension was stayed pending successful completion of a one-year probationary period. Mr. Schultz was also suspended from the practice of law not associated with his position as Deputy Grand County Attorney for a period of ninety (90) days. Mr. Schultz was retained in a collection action and failed to respond to his client for a period exceeding four years, Mr. Schultz failed to perform work on the collection matter, moved his practice during the representation and failed to inform the client and failed to return the client's file upon request to do so. The sanction was aggravated by Mr. Schultz's failure to respond for a period exceeding four years, Mr. Schultz's knowledge of his client's need for immediate legal action, particularly after the client suffered injuries in an accident which left him a paraplegic, Mr. Schultz's failure to comply with a previous disciplinary Order and Mr. Schultz's indifference to the disciplinary procedure.

### REINSTATEMENT

On December 29, 1989, the Utah Supreme Court entered an Order vacating an Order previously entered on October 3, 1988, disbarring Richard K. Crandall.

# Supreme Court Adopts New Rules of Procedure

On December 18, 1989, the Supreme Court approved amendments to Rules 3, 4, 10, 12 and 64D of the Utah Rules of Civil Procedure and approved the repeal of the remaining provisions of Rule 73. In addition, the Court approved the repeal of the rules of the Utah Supreme Court and the Rules of the Utah Court of Appeals and adopted in their place the consolidated Rules of Appellate Procedure.

The new rules are effective on April 1, 1990, and will be included in the 1990 Michie publication entitled *Utah Court Rules*. That publication will be distributed to all subscribers by Michie prior to the April 1 effective date.

Questions concerning the new rules may be directed to Carlie Christensen, Administrative Office of the Courts, 230 S. 500 E., Suite 300, Salt Lake City, UT 84102.

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the client made numerous unsuccessful attempts to contact Mr. Stephens. On September 1, 1989, the client was informed by his former wife that a hearing was scheduled for September 13, 1989. Mr. Stephens had not notified his client of the September hearing. Upon contacting the Court directly, the client, for the first time, learned of the June 23, 1989 judgment against him. The client terminated Mr. Stephens' services and retained new counsel who discovered that a second judgment had also been entered against the client in August of 1989. Upon termination, the client requested a refund of his retainer fee and that his file be given to the new counsel. Mr. Stephens failed to respond to these requests.

### DISBARMENT

On November 13, 1991, Gerald Turner was disbarred for his conviction of Bankruptcy Fraud pursuant to 18 U.S.C. Sec. 152 in the United State District Court for the District of Utah. The Court found Mr. Turner's conviction was for a crime involving moral turpitude and therefore, pursuant to Rule II(a) of the Procedures of Discipline, the record of his conviction was conclusive evidence of his conviction giving grounds for his discipline. Any attempt to be readmitted shall be conditioned upon his full compliance with Rule XVIII, of the Procedures of Discipline.

### RULE CHANGE ALERT

The following revisions to Rule 65A of the Utah Rules of Civil Procedure went into effect on September 1, 1991.

(b) Temporary restraining orders.

(1) Notice. No temporary restraining order shall be granted without notice to the adverse party or that party's attorney unless:

(B) the applicant or the applicant's **attorney certifies to the Court in writing as to the efforts, if any, that have been made to give notice and the reasons supporting the claim that notice should not be required.** (emphasis added.)

(d) Form and scope. This paragraph has been expanded to include:

...If a restraining order is granted without notice to the party restrained, it shall state the reasons justifying the Court's decision to proceed without notice.

(f) Domestic relations cases. This paragraph is new and is added to ensure that nothing in this rule shall be construed to limit the equitable powers of the Court in domestic relations cases.


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# *Attorney Discipline*

The Office of Professional Conduct is pleased to announce the launch of its new website at **opcutah.org**. Please visit the new site for information about the OPC, the disciplinary system, and links to court rules governing attorneys and licensed paralegal practitioners in Utah. You will also find information about how to file information with the OPC, and the forms necessary to obtain your discipline history records or request an OPC attorney presenter at your next CLE event.

## ADMONITION

On October 31, 2018, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rules 1.3 (Diligence), 1.4(a) (Communication), and 8.1(b) (Bar Admission and Disciplinary Matter) of the Rules of Professional Conduct.

*In summary:*
A couple retained the attorney to assist them in developing an estate plan and drafting the associated documents. The attorney met with the clients and they paid a retainer for legal services. As part of the estate plan, the attorney recommended that the clients convert their small business from a sole proprietorship to a limited liability company. The attorney sent them a first draft of the estate planning documents and requested certain additional information. The client proposed a small number of changes to the documents but did not provide the requested information. The clients began having difficulty getting the attorney to respond to them. When they were able to reestablish communication, the clients asked about registering the small business as a limited liability company. The attorney stated the work would be done for an additional fee and a filing fee. The clients paid the fee. Roughly ten months later, the clients had not received the required documents for the conversion. Once the OPC contacted the attorney, work for the clients was completed. The attorney did not respond to the Notice of Informal Complaint.

## ADMONITION

On September 13, 2019, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rules 1.5(a) (Fees), 1.15(a) (Safekeeping Property), 1.15(c) (Safekeeping Property), and 1.16(d) (Declining or Terminating Representation) of the Rules of Professional Conduct.

*In summary:*
A client retained the attorney to represent them in divorce proceedings. The attorney informed the client that the representation could not be accepted without a minimum, upfront, non-refundable retainer fee, filing fee, and vital statistics fee. The client paid the attorney and the attorney did not deposit the funds the client paid into the attorney trust account. The client told the attorney to put the divorce on hold and no work was performed for the client. About two years later, the client requested a refund of the retainer. The attorney informed the client that the retainer was non-refundable and that the client had eight hours of legal services in connection with a divorce proceeding that were still available. After correspondence with the OPC, the attorney refunded the client's money plus interest. The attorney apologized to the client, who told the OPC that they accepted the apology.

## ADMONITION

On September 13, 2019, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rules 1.4(a) (Communication) and 1.5(a) (Fees) of the Rules of Professional Conduct.

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*In summary:*
The owners of a company retained the attorney to assist with tax problems for their business. There were four partners who owned the company, and one of the partners signed a power of attorney on behalf of the company so that the attorney could talk to the IRS on their behalf. The company paid a retainer and an additional fee. An IRS revenue officer assigned to the matter attempted to contact the attorney but did not receive responses from the attorney or their office. Because the revenue officer had not received a response from the attorney, they scheduled an appointment to meet with the company. One of the partners requested from the attorney a detailed printout of the hours spent on the case. The partner did not receive a response and requested the information before the meeting with the revenue officer. The attorney informed the partner that the attorney does not do hourly billing and that the agreement was project-based. The attorney informed another partner that the attorney would take care of meeting with the revenue officer. The day before the meeting, the attorney sent a fax to the revenue officer cancelling the meeting. The company's bank account was levied.

## ADMONITION

On September 13, 2019, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rules 1.7(a) (Conflict of Interest: Current Clients) and 1.9(a) (Duties to Former Clients) of the Rules of Professional Conduct.

*In summary:*
An attorney at a firm represented a company (Company 1) for a number of years. A competitor of the company (Company 2) retained another attorney (Second Attorney) at the firm to draft a demand letter and enter into negotiations to resolve a contract dispute with a former employee after the employee left Company 1 to work for Company 2. After the employee received the demand letter on behalf of Company 2, the president of Company 1 contacted the attorney. The attorney contacted Second Attorney about the problem. The Second Attorney contacted Company 2 and explained the conflict and withdrew from representation. Company 2 retained another attorney (Third Attorney) for representation in the matter.

The day after Second Attorney terminated its representation of Company 2, the attorney consulted with Company 1 to prepare a settlement proposal for its dispute with Company 1. The attorney sought and obtained permission from Second Attorney to send the settlement proposal on behalf of Company 1 to employee and Third Attorney.

On behalf of Company 1, the attorney thereafter engaged in settlement negotiations with Third Attorney and employee. Several months after the settlement negotiations had concluded unsuccessfully, Third Attorney obtained a temporary restraining order (TRO) against employee. Third Attorney notified the attorney of the TRO in an email on the same day. In that same email, Third Attorney indicated that the client objected to the firm representing Company 1 in any action adverse to Company 2.

The attorney emailed Third Attorney indicating that had they been aware of the TRO hearing, they would have appeared on behalf of Company 1 and also proposed settlement terms on behalf of Company 1. Third Attorney wrote a letter to the

attorney and restated that the Third Attorney and Company 2 were opposed to the attorney's representation of Company 1. The attorney withdrew from representing Company 1 shortly after receiving Third Attorney's letter.

## PUBLIC REPRIMAND

On October 14, 2019, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Mark H. Gould for violating Rule 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
An individual retained Mr. Gould to represent them in a personal injury matter. Subsequently, Mr. Gould's client instructed Mr. Gould to initiate arbitration proceedings on his behalf. In response to a request for a status update, Mr. Gould informed his client in writing that he had filed for arbitration when Mr. Could had not, in fact, done so. Mr. Gould neither corrected his misstatement nor commenced the arbitration process.

*Aggravating Factor:*
Substantial experience in the practice of law.

*Mitigating Factors:*
Timely good-faith effort to make restitution or to rectify the consequences of the misconduct involved; full and free disclosure to the client or the disciplinary authority prior to the discovery of any misconduct or cooperative attitude toward proceedings; remorse.

## PUBLIC REPRIMAND

On September 26, 2019, the Honorable Patrick W. Corum, Third District Court, entered an Order of Discipline: Public Reprimand against E. Jay Sheen for violating Rules 1.3 (Diligence), 1.4(a) (Communication), and 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

*In summary:*
A client retained Mr. Sheen for representation in a wrongful termination matter. Mr. Sheen provided the client with an intake questionnaire from the Utah Antidiscrimination and Labor Commission (UALD). The client completed and signed the questionnaire and Mr. Sheen filed it about three weeks later. The client received notice from the UALD that the questionnaire

was rejected because the statute of limitations dates had passed. The client sent Mr. Sheen numerous text messages and made several telephone calls requesting a status on her case. Mr. Sheen assured the client each time they spoke that the case was still on track. The client obtained a copy of the questionnaire from the UALD and learned that the questionnaire had been filed two days after the statute of limitations had passed. The OPC sent a Notice of Informal Complaint (NOIC) to Mr. Sheen. Mr. Sheen did not respond to the NOIC.

## SUSPENSION

On September 30, 2019, the Honorable Elizabeth A. Hruby-Mills, Third Judicial District, entered an Order of Suspension against John A. White, suspending his license to practice law for a period of three years. The court determined that Mr. White violated Rule 8.4(b) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. White plead guilty to and was convicted of two counts of Sexual Exploitation of a Minor. Mr. White's conviction was based upon his admission to having knowingly possessed child pornography in Davis County, Utah, two or more images. Mr. White was ordered to pay a fine and was sentenced to a term of 195 days, 195 days suspended for time served and placed on probation for forty-eight months.

## DISBARMENT

On September 24, 2019, the Honorable Joseph M. Bean, Second Judicial District, entered an Order of Disbarment against Stuwert B. Johnson, disbarring him from the practice of law.

*In summary:*
The court suspended Mr. Johnson's license to practice law for a period of eighteen months.

During the period of suspension, the court found that Mr. Johnson consumed alcohol in violation of his suspension order and that Mr. Johnson wrote a letter that appeared to be undertaking representation of a new client. The letter was written on letterhead identifying himself as an "Attorney at Law" and "Licensed in Utah and Wyoming." While both letterhead statements were, on their face, accurate, it did not tell the whole story and was misleading. Nowhere in the letter did Mr. Johnson state that he was acting as a paralegal for another attorney nor did he clarify that his license to practice law in Utah had been suspended. Mr. Johnson instructed the opposing party to call him directly, not an assigned attorney. Further e-mails between Mr. Johnson and the opposing party appeared to confirm that Mr. Johnson was acting in the capacity of an attorney and negotiating terms for his client. Mr. Johnson also appeared in the small claims division of the Second District Court on behalf of his client and requested a continuance of the small claims trial while suspended. Additionally, Mr. Johnson continued to deposit client trust fund checks into his trust account after his suspension. The court found that Mr. Johnson violated his suspension order and engaged in the unauthorized practice of law while suspended.

Mr. Johnson was cited for Driving on a Suspended License, Interlock Restricted Driver violation, and No Insurance. The Court also found this to be a violation of the suspension order.

*Aggravating factors:*
Prior record of discipline; Wyoming disbarred respondent for exactly the same original conduct; Despite the court giving Mr. Johnson the opportunity to remedy his behavior by continuing a suspension rather than disbarring him in 2017, Mr. Johnson continued a pattern of misconduct; Mr. Johnson has substantial experience in the practice of law and should have taken greater care to strictly observe the terms of his suspension.

*Mitigating factors:*
Good character and reputation; Mr. Johnson had periods of abstaining from alcohol apparently using the tools he acquired through counseling.


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# *Attorney Discipline*

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## INTERIM SUSPENSION

On January 7, 2020, the Honorable Patrick W. Corum, Third Judicial District Court, entered an Order of Interim Suspension, pursuant to Rule 14-519 of the Rules of Lawyer Discipline and Disability, against Ryan M. Springer, pending resolution of the disciplinary matter against him.

*In summary:*
Mr. Springer was placed on interim suspension based upon the following criminal convictions:

Interference with Arresting Officer, a Class B Misdemeanor;

Criminal Mischief, a Class B Misdemeanor, Interrupt Communication Device, a Class B Misdemeanor;

Driving Under the Influence of Alcohol/Drugs, A Third Degree Felony;

Driving Under the Influence of Alcohol/Drugs, a Class A Misdemeanor; and

Disorderly Conduct, a Class C Misdemeanor.

## SUSPENSION

On December 23, 2019, the Honorable Richard E. Mrazik, Third Judicial District, entered an Order of Suspension against Terry R. Spencer, suspending his license to practice law for a period of six months and one day. The court determined that Mr. Spencer violated Rule 1.5 (a) (Fees), Rule 1.8 (e) (Conflicts of Interest), and 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
A client retained Mr. Spencer to represent her in the property distribution portion of her divorce case with her first husband. The client met Mr. Spencer through her second husband, a business partner and friend of Mr. Spencer. Mr. Spencer presented the client with a proposed fee agreement but did not explain the terms to her or ask her to sign it at that time. A few months later, Mr. Spencer also began representing the client in an on-going real estate case (real estate case) against her former brother-in-law involving properties. Mr. Spencer sent billings for the client to her second husband's email.

Among the real property at issue in the divorce case were building lots that were held by a development company formed by the client and her first husband. The lots were encumbered by a promissory note and trust deed by a bank, which had threatened to foreclose upon them. In an effort to prevent the lots from being lost to foreclosure, the client's father purchased the promissory note held by the bank. Mr. Spencer and a mortgage foreclosure consultant assisted the father with the purchase by providing capital and overseeing the purchase. Under the payment and service agreement, the father agreed to pay back the amount of capital and a fee for the mortgage consultant's services. The client was not a party to the payment and service agreement.

Mr. Spencer spent time addressing a title issue related to the building lots that were encumbered by the note. The title issue was a simple one: in the property description for the lots, a reference to "east" needed to be changed to "west." Mr. Spencer charged the client several thousand dollars for the time he spent addressing the issues which involved attending one meeting with a surveyor and preparing "some documents."

The client and second husband approached Mr. Spencer concerning a tax sale notice she had received from the county assessor on one of the building lots. The sale was scheduled for two days later. The client was concerned she would lose the lot, which had substantial market value. The client asked Mr.

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Spencer for financial assistance to save the lot from the tax sale. Mr. Spencer agreed to pay the outstanding property taxes to the county on the client's behalf, subject to the terms of repayment agreement drafted by Mr. Spencer. When Mr. Spencer presented the repayment agreement he did not explain that the attorney/client agreement would cover the repayment terms and interest due on his loan.

During a client meeting, the client informed Mr. Spencer that she and second husband had separated. Mr. Spencer presented the client with an attorney/client agreement for services that had already taken place but did not explain the terms of the agreement to her. Mr. Spencer also presented the client with a notice of attorney's lien for work performed in the real estate case. The client signed the attorney/client agreement and notice of lien but did not agree to be liable for the money Mr. Spencer loaned to father or for the mortgage consultant's services. Mr. Spencer's billing statements show he billed for nineteen hours of work for the client on this day.

Mr. Spencer recorded a notice of lien bearing the caption of the divorce matter against a lot held by a company formed by the client and first husband. Mr. Spencer also filed a notice of lien on each of the building lots that were associated with the former bank note. The notice, which was not signed by the client, included the amount that Mr. Spencer had loaned to father and the amount for the mortgage consultant's services.

Mr. Spencer terminated his attorney-client relationship by filing a withdrawal of counsel in the divorce matter. Mr. Spencer continued to bill the client for services and attempted to collect from the client substantial sums for which she was not liable. Mr. Spencer misrepresented that the amount of money stated in his notices of lien represented the total for work he performed on behalf of his client and failed to disclose that the amount of money stated in his notices of lien included amounts for which the client was not liable. Mr. Spencer repeatedly misrepresented to his client, her subsequent counsel, and opposing counsel in related matters that the total amount owed by the client included amounts that father owned to Mr. Spencer and the mortgage consultant. Taken together, this course of conduct showed a concerted effort by Mr. Spencer to misrepresent the amounts owned to him by the client in order to collect from her amounts that she did not owe.

In a second matter, Mr. Spencer represented a client (client) in a divorce matter (divorce matter) and a protective order matter (protective order) in the Eighth District Court. The court entered a temporary protective order providing the client's spouse (wife) the use and control of the parties home. At a hearing on temporary orders in the divorce matter, the court ruled that that temporary use and possession of the home was awarded to wife.

Mr. Spencer filed a contract action in the Third District Court (contract case) on behalf of his client's mother (mother) and against wife and his client. Mr. Spencer had presented mother and client with a waiver of conflict of interest document before filing the contract case. In the contract case, Mr. Spencer alleged mother had loaned wife and client money to purchase the home but they had defaulted on their loan agreement. Mr. Spencer filed a motion to list home and escrow the proceeds. The motion failed to inform the court that the home was subject to a temporary order in the divorce matter or that the court had ordered four months earlier that any proceeds from the sale of the property were to be placed in a trust account pending an order of the court as to their disposition.

Mr. Spencer's conduct showed a deceitful effort to subvert the Eighth District Court's order by withholding from the Third District Court material information regarding the Eighth District proceedings.

While the divorce matter was pending, client executed a quit-claim deed transferring the home to Mr. Spencer. Mr. Spencer recorded the deed.

In the divorce matter, the court determined that the home was martial property and that mother had no interest in the equity and that the equity should be divided equally between wife and client.

*Aggravating circumstances:*
Prior record of discipline; dishonest or selfish motive; multiple offenses; refusal to acknowledge the wrongful nature of the misconduct involved, either to the client or to the disciplinary authority; vulnerability of victim; substantial experience in the practice of law.

*Mitigating circumstances:*
Unreasonable delay in disciplinary proceedings; remoteness of prior offenses.

## SUSPENSION

On January 27, 2020, the Honorable David J. Williams, Second Judicial District, entered an Order of Suspension against Tony B. Miles, suspending his license to practice law for a period of three years. The court determined that Mr. Miles violated Rule 1.3 (Diligence), Rule 1.4 (a) (Communication), Rule 1.5 (a) (Fees), Rule 3.2 (Expediting Litigation), Rule 8.1 (b) (Bar Admission and Disciplinary Matters), Rule 8.4 (b) (Misconduct), and Rule 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

**Client Matter #1**

A client retained Mr. Miles to represent her in obtaining an expungement. Mr. Miles filed a motion to reduce the client's two misdemeanors. The client contacted Mr. Miles multiple times to request a status update on her case but received no response or a response saying he was working on the matter. Mr. Miles told the client he was preparing the expungement petition to file with the court. Eventually, Mr. Miles told the client that the petition had been filed with the court when it had not been filed. Mr. Miles told the client that the clerk had put the matter on the calendar and that he appeared on the date set by the clerk but that a procedural issue caused the matter to be continued. There was no hearing scheduled on that date. The client requested that Mr. Miles finish the matter or return her money. Mr. Miles confessed to the client that he had missed the deadline to file the petition. The OPC sent a Notice of Informal Complaint (NOIC) requesting Mr. Miles' response to the allegations. Mr. Miles did not provide a response.

**Client Matter #2**

Mr. Miles was retained to represent a defendant in a justice court matter. The clerk for the judge attempted for two months to contact Mr. Miles to schedule a hearing in the client's case, but Mr. Miles did not respond. The court scheduled a pretrial conference and sent notice to Mr. Miles. Mr. Miles did not appear at the hearing and the judge removed him as the client's attorney. The OPC sent a NOIC requesting Mr. Miles' response to the allegations. Mr. Miles did not provide a response.

**Criminal Matter #1**

On January 11, 2019 Mr. Miles was found guilty of two counts of Possession of a Controlled Substance Within a Correctional Facility.

**Criminal Matter #2**

On January 1, 2019 Mr. Miles entered into a plea in abeyance on one count of Possession or Use of a Controlled Substance and was given a Drug Court referral.

**Criminal Matter #3**

On January 11, 2019, Mr. Miles pled guilty to two counts of Possession or Use of a Controlled Substance.

## DISBARMENT

On December 4, 2019, the Honorable Richard E. Mrazik, Third Judicial District, entered an Order of Disbarment against Thomas M. Burton, disbarring him from the practice of law.

*In summary:*

Mr. Burton was ordered suspended from the practice of law for three years. Mr. Burton continued to practice law and an Order to Show Cause motion was filed with the court to hold Mr. Burton in contempt. The court ultimately determined that Mr. Burton had violated his suspension and ordered that he be disbarred.

During the period of suspension, Mr. Burton filed pleadings in and appeared before the Fourth District Court on behalf of a client. Mr. Burton appeared before the U.S. District Court for Utah for the same client.

A client filed a bar complaint against Mr. Burton asserting that she had hired Mr. Burton after the effective date of the suspension to assist her in a lawsuit. Mr. Burton admitted that he was retained by the client after the effective date of his suspension.

A second client filed a bar complaint against Mr. Burton asserting that he was being represented by Mr. Burton. Mr. Burton admitted that he was representing the client after the effective date of his suspension. Mr. Burton filed documents on behalf of the client in the U.S. District Court for Utah nearly one year after his suspension was entered.

*Aggravating circumstances:*

A pattern of misconduct; refusal to acknowledge the wrongful nature of the misconduct involved, either to the client or to the disciplinary authority; substantial experience in the practice of law.

*Mitigating circumstances:*

Absence of a dishonest or selfish motive.

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DISCIPLINE PROCESS INFORMATION OFFICE

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## ADMONITION

On January 27, 2020, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rules 5.1(a) (Responsibilities of Partners, Managers, and Supervisory Lawyers) and 7.1 (Communications Concerning a Lawyer's Services) of the Rules of Professional Conduct.

*In summary:*
An attorney was a partner in a firm, but the attorney was also primarily responsible for developing, managing, and procuring advertising for the firm. The attorney failed to make reasonable efforts to ensure that there were measures in place at the firm to give reasonable assurance that all the lawyers in the firm complied with the Rules of Professional Conduct.

The firm advertised by presenting live, scripted, and recorded radio advertisements (radio spots) presented on air by disc jockeys from various Utah radio stations. The radio spots suggested that the radio personalities have personal knowledge of the character, abilities, competence, and/or professional qualities of the firm lawyers, without disclosing that the radio personalities have not had attorney/client relationships with the firm lawyers and otherwise don't have sufficient personal knowledge to affirm the traits suggested in the radio spots. Additionally, the radio spots functioned as endorsements because they purported to affirm the character, abilities, competence, and/or professional qualities of the firm lawyers. The radio personalities voicing the radio spots are well known by their respective audiences. The time slots for the radio spots are in the higher demand slots which tend to reflect the popularity associated with the radio personality operating that time slot and the trust and confidence placed in the radio personality by his or her listeners during that time slot. As a result, the endorsements given by the radio personalities are more persuasive and more likely to mislead.

## ADMONITION

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*In summary:*
An attorney was a named partner in a firm. Both the attorney, the partner, and the firm held the respondent out to the public as a partner in the firm. The attorney also functioned as a partner although the attorney had not undertaken or been delegated responsibility for developing, managing, or procuring advertising for the firm. The attorney failed to make reasonable efforts to ensure that there were measures in place at the firm to give reasonable assurance that all the lawyers in the firm comply with the Rules of Professional Conduct.

The firm advertised by presenting live, scripted and recorded radio advertisements (radio spots) presented on air by disc jockeys from various Utah radio stations. The radio spots suggested that the radio personalities have personal knowledge of the character, abilities, competence, and/or professional qualities of the firm lawyers, without disclosing that the radio personalities have not had attorney/client relationships with the firm lawyers and otherwise don't have sufficient personal knowledge to affirm the traits suggested in the radio spots. Additionally, the radio spots functioned as endorsements because they purported to affirm the character, abilities, competence, and/or professional qualities of the firm lawyers.

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## PUBLIC REPRIMAND

On March 24, 2020, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against John V. Coy for violating Rules 1.3 (Diligence) and 1.4(a) (Communication) of the Rules of Professional Conduct.

*In summary:*
Mr. Coy was retained to represent a client in a custody and support matter. Mr. Coy did not return phone calls from the client for extended periods of time during the representation. The court held a hearing for temporary orders and Mr. Coy was instructed to prepare the order. Mr. Coy did not file the proposed order until seven months later. The court declined to sign the proposed order because it was not approved as to form by all parties, nor was a request to submit filed. Mr. Coy did not provide the client with billing statements during the representation and the first bill submitted was after the client terminated Mr. Coy's services.

## PUBLIC REPRIMAND

On March 24, 2020, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against John V. Coy for violating Rules 1.3 (Diligence), 1.4(a) (Communication), 1.5(a) (Fees), and 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

*In summary:*
A client retained Mr. Coy to assist him in resolving custody and visitation issues. The client paid a retainer fee and an additional fee a few months later to replenish the retainer. After mediation, Mr. Coy agreed to draft the resulting agreement. In addition to the visitation issues, the parties also mediated the resolution of outstanding medical bills. The client delivered a check to Mr. Coy for the client's share of the medical expenses and understood that Mr. Coy would deliver the mediation agreement and check to opposing counsel within a week. Mr. Coy failed to prepare the mediation agreement and deliver the client's check to opposing counsel.

During the next few months, the client had difficulty communicating with Mr. Coy and the opposing party refused to follow the mediated agreement because Mr. Coy failed to deliver a draft of the mediation agreement and there was no formal agreement in place.

After contacting Mr. Coy and complaining of the delay and communication problems, Mr. Coy agreed to return the check for medical bills that was now void and prepare the mediation agreement. Mr. Coy did not produce the draft. The client asked Mr. Coy to withdraw from the case. The client was not provided with a billing statement for services until after the client terminated Mr. Coy's services.

The OPC sent a Notice of Informal Complaint (NOIC) to Mr. Coy. Mr. Coy did not respond to the NOIC.

## PUBLIC REPRIMAND

On January 27, 2020, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Cleve Covert Burns for violating Rule 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
An attorney hired Mr. Burns to work at their firm. Two months later, Mr. Burns notified the attorney that he was resigning his position. The firm discovered that Mr. Burns took electronic data from the firm without the attorney's consent, knowledge, or permission. The files Mr. Burns took were not his work product, and the majority were from cases that were several years old and/or that he had never worked on. The documents taken by Mr. Burns included, but were not limited to, medical records of certain clients, an adoption file, protective order files, the completed

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financial declarations of ten separate clients, victim medical records and a preliminary hearing transcript that was "under seal." Mr. Burns also took client identifying information, social security numbers, birthdates, and account numbers that were part of the financial declarations, estate planning documents, and other documents. The bulk of the material was taken by Mr. Burns the day before he resigned his position with the firm.

When the attorney met with Mr. Burns after his resignation, he denied taking anything. The attorney and the firm were exposed to liability for the data breach and resulted in billable hour losses for reporting the incident to their malpractice insurer and clients.

*Mitigating Factors:*
Inexperience in the practice of law, remorse, absence of prior record of discipline.

## SUSPENSION

On March 13, 2020, the Honorable Heather A. Brereton, Third Judicial District, entered an Order of Suspension, against Paul R. Christensen, suspending his license to practice law for a period of six months for violating Rules 1.1 (Competence), 1.2(a) (Scope of Representation and Allocation of Authority Between Client and Lawyer), and 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

*In summary:*
A plaintiff retained Mr. Christensen to represent her in a grandparent's visitation matter. After the parties conducted discovery, the defendants moved for summary judgment. Mr. Christensen filed an opposition to the motion for summary judgment but did not file any affidavits or make any reference to the record with any degree of specificity. The opposition did not restate the paragraphs verbatim as provided in the Rules of Civil Procedure and did not controvert the facts anywhere in the pleading. There was no citation to the record at all. The court issued a written decision granting summary judgment. The client filed a Rule 60(b) Motion for relief from the summary judgment order, arguing that the deficiencies in the memorandum resulted from Mr. Christensen's excusable neglect. Specifically, the client argued that Mr. Christensen suffered from a condition that impaired his ability to adequately respond to the motion for summary judgment.

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The court held a hearing on the motion and noted that it had interacted with Mr. Christensen during the period of alleged impairment and found him to be a perfectly sound, able attorney. The motion was denied.

The OPC sent a Notice of Informal Complaint (NOIC) to Mr. Christensen. Mr. Christensen did not respond to the NOIC.

## RECIPROCAL RESIGNATION WITH DISCIPLINE PENDING

On February 26, 2020, the Utah Supreme Court entered an Order Accepting Resignation with Discipline Pending concerning the Petition for Reciprocal Discipline filed by OPC against Richard D. Lamborn, for violation of Rules 1.15(a) (Safekeeping Property) and 8.4(c) (Misconduct) of the Rules of Professional Conduct.

The OPC's case was based upon the facts of the New York disciplinary matter. In summary:

The New York Supreme Court Appellate Division entered an Order accepting Mr. Lamborn's resignation from the practice of law. The Order was predicated on the following facts in relevant part:

Mr. Lamborn was admitted to the practice of law in the State of New York by the Fourth Judicial Department. At all times relevant herein, Mr. Lamborn maintained an office for the practice of law within the First Judicial Department.

The Department Disciplinary Committee (Committee) sought an order, pursuant to the Rules of the Appellate Division, First Department (22 NYCRR) § 603.11, accepting Mr. Lamborn's resignation from the practice of law and striking his name from the roll of attorneys. Mr. Lamborn's affidavit of resignation complies with section 603.11.

Mr. Lamborn states that he is aware that he is the subject of disciplinary charges currently pending before a Referee alleging that he misappropriated and/or intentionally converted funds belonging to others for his own use and benefit in violation of the New York Rules of Professional Conduct (22 NYCRR 1200.00), namely, Rule 1.15(a) and Rule 8.4(c).

The New York Supreme Court Appellate Division entered an Order accepting Mr. Lamborn's resignation from the practice of law. The Order was predicated on the following facts in relevant part:

In the first matter, Mr. Lamborn represented a client in a dispute with the client's commercial landlord. Mr. Lamborn used money that belonged to the client for his own personal purposes.

In the second matter, Mr. Lamborn used money which belonged to an estate for his own personal use.

Mr. Lamborn reimbursed both the client and the estate.

The radio personalities voicing the radio spots are well known by their respective audiences. The time slots for the radio spots are in the higher demand slots which tend to reflect the popularity associated with the radio personality operating that time slot and the trust and confidence placed in the radio personality by his or her listeners during that time slot. As a result, the endorsements given by the radio personalities are more persuasive and more likely to mislead.

## ADMONITION

On January 27, 2020, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rules 5.1(a) (Responsibilities of Partners, Managers, and Supervisory Lawyers) and 7.1 (Communications Concerning a Lawyer's Services) of the Rules of Professional Conduct.

*In summary:*
An attorney was a named partner in a firm. Both the attorney, the partner and the firm held the respondent out to the public as a partner in the firm. The attorney also functioned as a partner although the attorney had not undertaken or been delegated responsibility for developing, managing, or procuring advertising for the firm. The attorney failed to make reasonable efforts to ensure that there were measures in place at the firm to give reasonable assurance that all the lawyers in the firm comply with the Rules of Professional Conduct.

The firm advertised by presenting live, scripted and recorded radio advertisements (radio spots) presented on air by disc jockeys from various Utah radio stations. The radio spots suggested that the radio personalities have personal knowledge of the character, abilities, competence, and/or professional qualities of the firm lawyers, without disclosing that the radio personalities have not had attorney/client relationships with the firm lawyers and otherwise don't have sufficient personal knowledge to affirm the traits suggested in the radio spots. Additionally, the radio spots functioned as endorsements because they purported to affirm the character, abilities, competence, and/or professional qualities of the firm lawyers. The radio personalities voicing the radio spots are well known by their respective audiences. The time slots for the radio spots are in the higher demand slots which tend to reflect the popularity associated with the radio personality operating that time slot and the trust and confidence placed in the radio personality by his or her listeners during that time slot. As a result, the endorsements given by the radio personalities are more persuasive and more likely to mislead.

## PUBLIC REPRIMAND

On January 24, 2020, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Rocky D. Crofts for violating Rule 1.1 (Competence), Rule 1.3 (Diligence), and Rule 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
A client retained Mr. Crofts to pursue a county property tax appeal. Mr. Crofts informed the client's assistant that he had gotten the appeal process started. Mr. Crofts represented to the OPC that he had filled out the appeal form and given it to his assistant to file with the county by fax and a confirmation of the receipt was printed. Mr. Crofts later determined that the form was likely sent to the wrong county office. Mr. Crofts testified that he personally sent the fax, did not assure that the fax was received, and learned later that the fax did not go through successfully because the receiving fax was busy.

The client's assistant attempted to follow up with Mr. Crofts several times. Mr. Crofts responded to the requests with answers indicating that he was working on "it" but provided no specifics regarding the status of the appeal. Mr. Crofts became aware that his initial attempt to file the appeal via fax had failed when the client, assistant, or the county informed him the county had no record of any appeal. Mr. Crofts sent an email to the client and attached a copy of the appeal he claimed to have filed with the county. In that same email, Mr. Crofts stated that he had made two trips down to the county to get the information and dropped off the request for appeal. A county employee notified Mr. Crofts that there was no appeal in their system and that he would need to provide proof of the delivery. A few days later, Mr. Crofts informed the client that he had confirmed that the appeal was filed with the county. Eventually, the county employee informed the client that no appeal had been filed; what they did receive was deficient and advised that the client would need to take further action.

Mr. Crofts informed the client's assistant that he would refund the money that the client paid. The assistant followed up with Mr. Crofts many times but no money was refunded. The client initiated a small claims action against Mr. Crofts. Although he was served with process, Mr. Crofts did not appear at the small claims trial and a judgment was entered against him in favor of his client. Mr. Crofts satisfied the small claims judgment against him after a writ of garnishment was filed.

## RECIPROCAL DISCIPLINE

On February 3, 2020, the Honorable James T. Blanch, Third Judicial District Court, entered an Order of Reciprocal Discipline: Suspension, against Kristian S. Beckett, suspending Mr. Beckett for twenty-eight days for his violation of Rule 1.4(a) (Communication) and Rule 1.15(a) (Safekeeping Property).

*In summary:*
Mr. Beckett entered into a stipulation regarding his discipline in Idaho where he acknowledged he violated two Idaho Rules of Professional Conduct. Mr. Beckett admitted that he failed to explain matters to his client to the extent reasonably necessary to permit her to make informed decisions about her representation, more specifically, explaining options other than settlement advances that may have been more suitable for her financial situation; by not promptly fully informing her of circumstances where her informed consent was required; and by not keeping her reasonably informed about the status of all post-settlement matters.

Further, Mr. Beckett admitted that he failed to hold all of his client's settlement funds in a trust account. He held his client's funds in a corporate bank account together with other funds which were not client's property.

*Aggravating circumstances:*
Vulnerability of victim.

*Mitigating circumstances:*
Absence of a prior record of discipline; inexperience in the practice of law.

## INTERIM SUSPENSION

On March 15, 2020, the Honorable Patrick W. Corum, Third Judicial District Court, entered an Order of Interim Suspension, pursuant to Rule 14-519 of the Rules of Lawyer Discipline and Disability, against Steven E. Rush, pending resolution of the disciplinary matter against him.

*In summary:*
Mr. Rush was placed on interim suspension based upon the following criminal convictions:

Two counts of Possession or Use of a Controlled Substance, a Class A Misdemeanor;

Retail Theft, a Class B Misdemeanor;

Failure to Appear, a Class B Misdemeanor;

Burglary of a Vehicle, a Class A Misdemeanor; and

Driving Under the Influence of Alcohol/Drugs, a Class B Misdemeanor.


***Discipline Process Information Office Update***

What should you do if you receive a letter from Office of Professional Conduct explaining you have become the subject of a Bar complaint? Call Jeannine Timothy! In 2019, Jeannine helped over 100 attorneys by answering their questions and concerns about the disciplinary process. Jeannine is happy to be of service to you, so please call her.

DISCIPLINE PROCESS INFORMATION OFFICE

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# *Attorney Discipline*

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## ADMONITION

On May 26, 2020, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rule 1.7(a) (Conflict of Interest: Current Clients) of the Rules of Professional Conduct in two instances.

*In summary:*

In the first matter, the attorney contacted the owner of a company (seller) introducing themself as the attorney preparing draft agreements for the sale of the business to two other parties (buyers). The attorney did not obtain written consent or waiver for the representation of the seller or buyers. The attorney communicated to seller and buyers that they were asked to prepare an operating agreement for the company. The seller retained another attorney (new attorney) to represent them on the operating agreement issues. The buyers contacted the attorney because they wanted to sue seller for breach of contract, fraud, and theft. The attorney sent an email to the new attorney asking if they would be willing to accept service.

In the second matter, agents with two state entities (agents) executed a search warrant on two facilities (facility one and facility two). The attorney represented facility two in transactional matters and acted as a registered agent for some of their locations. One of facility two's employees (employee) expressed a willingness to be interviewed by government agents and had assisted them with some documentation. The CFO of facility two told the employee that they needed representation to accompany them to the meeting with the agents and arranged for the attorney to attend the meeting with the employee.

The attorney met with the agents and indicated that they were there as the employee's attorney. The attorney indicated further that they advised the employee not to come to the meeting until they had talked to the agents. The agents told the attorney the details of the case, including that they were primarily targeting the owners of the facilities. The attorney agreed to have the employee meet with the agents later in in the day. The attorney contacted employee informing them of the new meeting time and stating that they were representing employee now and not facility two. The employee met with the attorney at facility one and asked about attorney fees. The attorney requested a dollar bill from employee and started handwriting a contract on a sticky note. After leaving to make a phone call, the attorney returned and stated they could no longer represent employee but continued filling out the sticky note contract and had employee sign it although they did not take any money from employee.

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## ADMONITION

On July 6, 2020, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rule 5.5(a) (Unauthorized Practice of Law; Multijurisdictional Practice of Law) of the Rules of Professional Conduct.

*In summary:*

A client retained the attorney to petition the court to recognize the client's common law marriage and the attorney filed the petition. A few weeks later, the attorney changed their license status with the Utah State Bar to inactive. Notice for a hearing was issued and the attorney attended the hearing but did not notify the client or the court of their change to inactive status. The court concluded that the client and their partner had been involved in a marriage and instructed the attorney to prepare the order. The attorney was unable to efile the final documents because of the attorney's inactive status. The client contacted the attorney to remind them that an extension for filing the client's tax returns was set to expire, but the attorney indicated the order had not been signed. The attorney hand delivered a notice to submit and findings of fact. The documents did not identify the attorney as the client's attorney. A note on the docket for the case indicates that the findings were in efiling format with no lines for the judge to sign and that the attorney attached to the case is inactive. Another note on the docket indicated the court notified the client that the attorney became inactive. The client was later able to obtain an order granting their petition.

*Mitigating Factors:*

Absence of a dishonest or selfish motive; personal or emotional problems; timely good faith effort to make restitution or to rectify the consequences of the misconduct involved; and physical disability.

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**Virtual Presentations:**

**September 16, 2020 • 2:00 pm – 5:00 pm**

**September 17, 2020 • 9:00 am – noon**

**5 hrs. Ethics CLE Credit, 1 hr. Prof./Civ.**

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## ADMONITION

On July 20, 2020, the Honorable Eric A. Ludlow, Fifth Judicial District, entered an Order of Discipline: Admonition against an attorney for violating Rule 7.1 (Communications Regarding a Lawyer's Services) of the Rules of Professional Conduct.

*In summary:*
An attorney was a volunteer small claims judge. The attorney's website clearly delineated the location and tenure of the attorney's service as a judge pro tem, but it did not state that such service was rendered as a volunteer, rather than one of gainful employment. The attorney's advertisements and website identified the attorney as a "Former Judge" and an "Ex-Judge." The court found that the statements were misleading in that an ordinary reader would have an exaggerated perception of the attorney's actual judicial experience.

*Mitigating Circumstances:*
Timely good faith effort to make restitution or to rectify the consequences of the misconduct involved.

## ADMONITION

On August 5, 2020, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rules 1.4(a) (Communication) and 1.16(d) (Declining or Terminating Representation) of the Rules of Professional Conduct.

*In summary:*
A client retained an attorney to represent them in a small claims trial. The attorney did not adequately communicate with the client regarding the scope of the employment and how and under what circumstances any additional legal work requested by the client would be performed.

The affidavit and summons served on the client gave an incorrect trial date. Because of the error in dates on the affidavit and summons neither the client nor the attorney appeared and a default judgment was entered against the client. The client and their spouse learned of the default judgment from their insurance carrier. The client and their spouse contacted the attorney separately and claim that the attorney informed them the attorney would file a motion to have the judgment set aside and that the court would notify them by mail when a hearing date was scheduled.

The attorney filed a motion to set aside the default and emailed a copy to the client. The docket for the case indicates that the clerk called the attorney to ask that they refile the motion with an order. The clerk called the attorney again a week later to make the same request but could not leave a message because their voicemail was full. The client's spouse sent an email to the attorney and left a voicemail message but the attorney did not respond. The client's spouse called the court to find out the status of the case and learned that although the attorney had filed the motion, the court was attempting to contact the attorney without success.

Exactly when the attorney ceased representing the client was uncertain to the client. This confusion did not give the client reasonable notice of the termination of the representation and it may not have allowed the client sufficient time to seek new counsel promptly. The client obtained new counsel who assisted them with the remainder of their case.

*Aggravating Factors:*
Substantial experience in the practice of law.

*Mitigating Factors:*
Absence of a prior record of discipline; absence of a dishonest or selfish motive; and personal or emotional problems.

## PUBLIC REPRIMAND

On May 26, 2020, the Chair of the Ethics and Discipline Committee entered an Order of Discipline: Public Reprimand against Ricky D. Bonewell for violating Rules 1.4(a) (Communication) and 5.3(a) (Responsibilities Regarding Non-Lawyer Assistants) of the Rules of Professional Conduct.

*In summary:*
A client retained Mr. Bonewell to represent them in a workers' compensation matter. The client contacted the Labor Commission one and a half years after retaining Mr. Bonewell to inform them his medical issues were getting worse. The Labor Commission responded and informed the client that they showed no case pending for adjudication and suggested that he contact Mr. Bonewell for a status update on his case.

During this time, Mr. Bonewell employed staff that did not leave notes on existing cases, took files home with them and used a USB thumb drive to transfer client files from their home computers to computers in Mr. Bonewell's office. In addition, client files and computer files were scattered over multiple locations. Mr. Bonewell's law clerk, a suspended attorney, found the client file in another client's bankruptcy file. Eventually, the law clerk restarted the client's case and completed the preliminary work.

The law clerk communicated with the client using Mr. Bonewell's email address but failed to provide adequate and accurate information. Eventually, the client contacted the Labor Commission again because nothing had happened on his case since he retained Mr. Bonewell three years prior and because Mr. Bonewell was no longer responding to him. The Labor Commission responded giving the client some direction on how he could proceed and notified him that an application for hearing needed to be filed before the statute of limitations deadline. The client reached the law clerk the day before the statute of limitations deadline and the law clerk filed the claim.

## PUBLIC REPRIMAND

On August 5, 2020, the Chair of the Ethics and Discipline Committee entered an Order of Discipline: Public Reprimand against Roy D. Cole for violating Rule 1.5(a) (Fees) of the Rules of Professional Conduct.

*In summary:*
A client retained Mr. Cole to represent them in a custody matter. Mr. Cole's fee agreement with the client included a provision that if he withdrew or was fired and the client filed a bar complaint, he would bill for the time it took to defend himself, his actions, his decisions in the case, whether he won or lost. The client's wife submitted information to the OPC regarding Mr. Cole's representation of the client. Mr. Cole billed the client for one-half hour of time for his office to draft a letter in response to the information.

*Aggravating Factors:*
Prior record of discipline; substantial experience in the practice of law.


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Effective December 15, 2020, the Utah Supreme Court re-numbered and made changes to the Rules of Lawyer and LPP Discipline and Disability and the Standards for Imposing Sanctions. The new rules will be in Chapter 11, Article 5 of the Supreme Court Rules of Professional Practice. The final rule changes reflect the recommended reforms to lawyer discipline and disability proceedings and sanctions contained in the American Bar Association/Office of Professional Conduct Committee's Summary of Recommendations (October 2018).

## PROBATION

On October 19, 2020, the Honorable Amber M. Mettler, Third Judicial District Court, entered an order of discipline against Don Carlos Stirling, placing him on probation for a period of one year based on Mr. Stirling's violation of Rule 1.3 (Diligence), Rule 1.4(a) (Communication), Rule 1.15(a) (Safekeeping Property), Rule 1.15(c) (Safekeeping Property), and Rule 1.15(d) (Safekeeping Property) of the Rules of Professional Conduct.

*In summary:*

In summary, a client retained Mr. Stirling for a guardianship matter involving the client's adult daughter. At the time the client sought the representation, the client's daughter was incarcerated and due to the incarceration she could not be properly treated for her condition. The client paid Mr. Stirling and the money was deposited into Mr. Stirling's operating account, not an attorney trust account. A few days later, another charge was made to the client's debit card that was also deposited into Mr. Stirling's operating account. Mr. Stirling did not have an attorney trust account at the time he collected the money from the client. The client contacted Mr. Stirling because he did not authorize the additional charge. Mr. Stirling indicated the charge was made in error and that he would refund the money to the client. A refund receipt for the additional charge was emailed to the client but he did not receive the money until several months later.

The client made attempts to contact Mr. Stirling without response by leaving messages on Mr. Stirling's phone. At times, the client attempted to leave messages but Mr. Stirling's mailbox was full. Eventually, the client spoke with Mr. Stirling and made an appointment to meet; however, Mr. Stirling called the client and cancelled the appointment.

Mr. Stirling told the client he would file the guardianship and send the client the copies. Mr. Stirling did not send any documents to the client nor did he file the guardianship documents with the court.

The client filed a small claims action against Mr. Stirling. The court entered a default judgment against Mr. Stirling and a satisfaction of judgment was filed shortly thereafter.

*Mitigating Factor:*

Personal or emotional problems.

## RECIPROCAL DISCIPLINE

On October 28, 2020, the Honorable Robert P. Faust, Third Judicial District Court, entered an Order of Reciprocal Discipline: Suspension, against Liborius I. Agwara, suspending Mr. Agwara for one year for his violation of Rule 1.15(a) (Safekeeping Property), Rule 1.4(a) (Communication), Rule 1.8(a) (Conflict of Interest: Current Clients: Specific Rules), and Rule 8.4(d) (Misconduct) of the Rules of Professional Conduct.

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*In summary:*
The OPC's case was based upon the facts of the Nevada disciplinary matter. In summary: On October 21, 2019, the Supreme Court of Nevada entered an Order Approving Conditional Guilty Plea, suspending Mr. Agwara from the practice of law for three years with two years stayed. The Order Approving Conditional Guilty Plea was predicated on the following facts in relevant part:

Mr. Agwara violated rules by commingling client funds with personal funds, misusing his client trust account and failing to keep records, failing to timely communicate with clients and lienholders, failing to pay liens and funds owed to clients in a timely manner, loaning money to a client without advising him to consult with independent counsel, and failing to respond to the State Bar's request for records when investigating clients' grievances.

## SUSPENSION

On November 9, 2020, the Honorable Patrick W. Corum, Third Judicial District Court, entered an Order of Suspension, against Steven E. Rush, suspending his license to practice law for a period of three years. The court determined that Mr. Rush violated Rule 1.1 (Competence), Rule 1.3 (Diligence), Rule 1.4(a) (Communication), Rule 1.15(a) (Safekeeping Property), Rule 1.15(c) (Safekeeping Property), Rule 1.16(d) (Declining or Terminating Representation), Rule 8.4(b) (Misconduct), and Rule 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

**Client Matter**
A client retained Mr. Rush to represent him in a matter involving modification of a divorce decree, paying a flat fee for the representation. The Representation Agreement signed by the client and Mr. Rush states that flat fees were deemed the property of the attorney at the time of receipt and were nonrefundable. Pursuant to the Representation Agreement, Mr. Rush did not put the client's funds in a client trust account but put the funds in his own personal account. The client paid an additional fee for a temporary stay of custody and court fees.

For several months, the client attempted to contact Mr. Rush by telephone, text, and email but did not receive a response. Mr. Rush finally responded several months later notifying the client that he would be out of state for several months for treatment. Rather than inform the client that he needed to withdraw, Mr. Rush offered to continue with the representation. The client agreed to keep Mr. Rush on as his attorney, provided Mr. Rush would inform the court of the leave of absence and get confirmation from the court that the delay was not going to affect his case. By email, Mr. Rush confirmed to the client that he had contacted the court regarding his leave and was told that they could pick up where they left off without a problem. The court docket for the client's case has no entry stating Mr. Rush contacted the court.

The court entered an Order of Dismissal. Mr. Rush did not notify the client that the case had been dismissed.

**Criminal Matter #1**
In this matter, Mr. Rush pleaded guilty of one count of Possession or Use of a Controlled Substance. Mr. Rush violated the conditions of his sentence and his probation term was revoked and reinstated.

**Criminal Matter #2**
In this matter, Mr. Rush pleaded guilty to one count of Retail Theft (Shoplifting) and one count of Failure to Appear.

**Criminal Matter #3**
In this matter, Mr. Rush pleaded guilty to one count of Burglary of a Vehicle.

**Criminal Matter #4**
In this matter, Mr. Rush pleaded guilty to one count of Possession or Use of a Controlled Substance. Mr. Rush violated the terms of his sentence and his probation was revoked and reinstated. Mr. Rush was committed by order of the court to be held in the Salt Lake County Jail for sixty days.

**Criminal Matter #5**
In this matter, Mr. Rush pleaded guilty to Driving Under the Influence of Alcohol/Drugs. Mr. Rush violated the terms of his sentence and his probation was revoked and reinstated.

*Mitigation*
Mr. Rush provided proof of mitigating circumstances. The mitigating circumstances in this matter are that Mr. Rush attended and completed a rehabilitation treatment program and was released from probation by the court.

## RECIPROCAL DISCIPLINE

On June 23, 2020, the Honorable Vernice S. Trease, Third Judicial District Court, entered an Order of Reciprocal Discipline: Disbarment, against Andrew D. Taylor, disbarring Mr. Taylor for his violation of Rule 1.2(a) (Scope of Representation and Allocation of Authority Between Client and Lawyer), Rule 1.4(a) (Communication), Rule 1.8(a) (Conflict of Interest: Current Clients), Rule 1.8(f) (Conflict of Interest: Current Clients), Rule 1.15(a) (Safekeeping Property), Rule 1.15(c) (Safekeeping Property), Rule 3.3(a) (Candor Towards the Tribunal), Rule 3.4(a) (Fairness to Opposing Party and Counsel), Rule 4.1 (Truthfulness in Statements to Others), Rule 5.4(a) (Professional Independence of a Lawyer), Rule 8.1(a) (Bar Admission and Disciplinary Matters), Rule 8.1(b) (Bar Admission and Disciplinary Matters), and Rule 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
On July 5, 2019, the Nevada Supreme Court issued an Order of Disbarment, disbarring Mr. Taylor from the practice of law. The Order was predicated on the following facts in relevant part:

The record therefore established that Mr. Taylor misappropriated client funds. Further, he commingled personal funds with client funds and opened numerous different law firms with different trust accounts and operating accounts to mislead the Nevada State Bar and his clients. For one of those law firms, he named his non-lawyer assistant as the sole officer. Additionally, he entered into litigation advancement loan agreements on behalf of clients without their knowledge or consent, used those funds for his personal or business expenses, and failed to repay many of those loans. He failed to comply with reasonable requests for information from the Nevada State Bar and made false statements of material fact concerning his trust account to the Nevada State Bar.

*Aggravating Circumstances:*
Prior record of discipline; dishonest or selfish motive; pattern of misconduct, multiple offenses; obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary authority; refusal to acknowledge the

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*"It is good to have an end to journey toward; but it is the journey that matters in the end."*
— **Ernest Hemingway,** *Who found inspiration and a home in Sun Valley*

wrongful nature of the misconduct involved, either to the client or to the disciplinary authority; vulnerability of victim; substantial experience in the practice of law; lack of good faith effort to make restitution or to rectify the consequences of the misconduct involved; and illegal conduct.

## DISBARMENT

On October 27, 2020, the Honorable Kraig J. Powell, Fourth Judicial District Court, entered an Order of Disbarment against Cynthia M. Gordon, disbarring her from the practice of law. The court determined that Ms. Gordon violated Rule 1.1 (Competence), Rule 1.3 (Diligence), Rule 1.4(a) (Communication), Rule 1.4(b) (Communication), Rule 1.5(a) (Fees), Rule 1.16(d) (Declining or Terminating Representation), and Rule 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

*In summary:*
This case involves four client matters. In the first matter, a client retained Ms. Gordon to represent the client in immigration proceedings. During the representation, the client attempted to contact Ms. Gordon several times but she was not responsive. The client eventually found out that Ms. Gordon was no longer occupying the office space. Ms. Gordon did not provide the client their file or a refund. The OPC sent a Notice of Informal Complaint (NOIC) to Ms. Gordon. Ms. Gordon did not respond to the NOIC.

In the second matter, a client retained Ms. Gordon to represent the client in removal proceedings. Ms. Gordon failed to submit evidence regarding the client's legal entry into the United States. The client's case was based on adjustment of status and not cancellation, a fact that Ms. Gordon failed to recognize. Ms. Gordon failed to perform the necessary functions and request the appropriate relief for the client and the application for cancellation of removal was denied and the client was ordered removed from the United States. Ms. Gordon timely filed a Notice of Appeal but failed to file a brief in support of the appeal. The appeal was summarily dismissed. The OPC sent a NOIC to Ms. Gordon. Ms. Gordon did not respond to the NOIC.

In the third matter, a client retained Ms. Gordon to assist her and her husband with several matters, including domestic, criminal and immigration matters. Ms. Gordon failed to appear for some court appearances. During its investigation, the OPC received a copy of a letter from Disciplinary Counsel for the Department of Justice, Executive Office of Immigration Review. In the letter to Ms. Gordon it was requested that she withdraw from all immigration cases given her ineligibility to practice law. Ms. Gordon remained the attorney of record for one case before the Immigration Court and four cases before the Board of Immigration Appeals. The OPC sent a NOIC to Ms. Gordon. Ms. Gordon did not respond to the NOIC.

In the fourth matter, a client retained Ms. Gordon to represent the client in an immigration matter. Three years later, the client met with Ms. Gordon and was told that he needed to make an additional payment for filing fees. The client later contacted USCIS and learned the fees were never paid. The client called Ms. Gordon frequently to get an explanation, but she did not respond to his messages. The client stopped by Ms. Gordon's office numerous times but was told by her administrative assistant that Ms. Gordon was busy. The client retained other counsel to complete his immigration matter. The client left numerous messages requesting his file and personal documents, but Ms. Gordon did not respond. Eventually, he visited Ms. Gordon's office to obtain his file but was informed by her staff that only Ms. Gordon had access to the file and that the client could not have the file. The OPC sent a NOIC to Ms. Gordon. Ms. Gordon did not respond to the NOIC.

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Cost: $100 on or before March 5, $120 thereafter.
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## SUSPENSION

On October 6, 2020, the Honorable Mark S. Kouris, Third Judicial District, entered an Order of Suspension, against David A. Goodwill, suspending his license to practice law for a period of two years. The court determined that Mr. Goodwill violated Rule 1.5(a) (Fees), Rule 1.8(a) Conflict of Interests Current Clients, Rule 1.15(a) (Safekeeping Property), Rule 1.15(c) (Safekeeping Property), Rule 1.15(d) (Safekeeping Property), Rule 1.15(e) (Safekeeping Property), Rule 4.2(a) (Communication), and Rule 8.4(d) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Goodwill's violations arise out of conduct in three matters:

In the first matter, the OPC received notice from Mr. Goodwill's bank that Mr. Goodwill had overdrawn his attorney trust account. Mr. Goodwill had deposited money into his trust account that was from a settlement for his client. Mr. Goodwill transferred some of the settlement proceeds into his checking account, issued a check to the client and paid some costs associated with the settlement. The client had a balance of the settlement in Mr. Goodwill's trust account. Mr. Goodwill began using his trust account as a personal account and comingled his money with the client's money in his personal account.

In the second matter, Mr. Goodwill represented a client in a criminal matter. Another attorney represented the co-defendant. At the co-defendant's initial appearance, his attorney made an offer of a plea that included testifying against Mr. Goodwill's client. Mr. Goodwill drafted an affirmation for the co-defendant to sign which exonerated his client and stated that the co-defendant lied. Mr. Goodwill visited the co-defendant at the jail knowing that the co-defendant was represented by counsel and had him sign an affirmation.

In the third matter, a couple met Mr. Goodwill when the wife's sister introduced Mr. Goodwill as her fiancé. The next day, Mr. Goodwill asked the wife to loan him money. The wife gave Mr. Goodwill the cash as a loan. The husband, who was unaware of the loan at the time, told Mr. Goodwill on that same day that the wife had suffered from dementia for about fifteen years and was in the early stages of Alzheimer's. After reconsidering giving Mr. Goodwill the money, the wife contacted Mr. Goodwill by text asking him to pay back the money. Mr. Goodwill responded by telling the wife he did not have the money. He then attempted to involve himself in a family contract matter and insisted that he was representing the wife in the matter and that she owed him several thousand dollars more than the loan. He told her that he had collected the money on her behalf on a contingency basis. There was no written signed fee agreement for this representation. The couple did not retain Mr. Goodwill for legal services. The husband contacted Mr. Goodwill to resolve the issue, but Mr. Goodwill refused to speak with the husband. After the wife filed a complaint with the OPC, Mr. Goodwill tried to interfere in the process to have her withdraw the complaint.

## DISBARMENT

On December 23, 2020, the Honorable Royal I. Hansen, Third Judicial District, entered an Order of Disbarment against Tyler R. Goucher, disbarring him from the practice of law. The court determined that Mr. Goucher violated Rule 1.3 (Diligence) (Four

## Discipline Process Information Office

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Counts), Rule 1.4(a) (Communication) (Four Counts), Rule 1.5(a) (Fees) (Four Counts), and 8.1(b) (Bar Admission and Disciplinary Matters) (Four Counts) of the Rules of Professional Conduct.

*In summary:*
This case involves four client matters. In the first matter, a client retained Mr. Goucher to draft and file a provisional patent application. The client paid a retainer and Mr. Goucher filed the application. The client paid additional legal fees for Mr. Goucher to file a utility patent application and two trademark applications. The client requested from Mr. Goucher the receipts from the two trademark applications but she did not receive a response. The US Patent and Trademark Office (USPTO) sent a notification to Mr. Goucher that the utility patent application was subject to restriction and a response was required. The utility patent was abandoned due to failure to respond to an office action. The client attempted to contact Mr. Goucher to request status updates but Mr. Goucher did not respond. Eventually, the client was able to contact Mr. Goucher and he informed her that there was a restriction but that he would resubmit the application. Mr. Goucher did not resubmit the application. The OPC sent a Notice of Informal Complaint (NOIC) to Mr. Goucher. Mr. Goucher did not respond to the NOIC.

In the second matter, a client retained Mr. Goucher to file a trademark application. Mr. Goucher told the client that it would take six to eight months to process the application. Several months later when the client contacted Mr. Goucher to inquire about the status application, Mr. Goucher told the client that he needed more information. The client supplied the additional information and Mr. Goucher responded indicating that he would file the application by the end of the day. Mr. Goucher did not file the application on behalf of the client. Mr. Goucher did not respond to the client's multiple requests for information or a refund paid for legal services. The OPC sent a NOIC to Mr. Goucher. Mr. Goucher did not respond to the NOIC.

In the third matter, a client retained Mr. Goucher to file two patents. Mr. Goucher filed a patent (Patent 1) on behalf of the client. The USPTO sent two notices to Mr. Goucher that the application for Patent 1 was incomplete. Mr. Goucher did not respond and Patent 1 was abandoned because of non-action. Mr. Goucher filed a second patent (Patent 2) on behalf of the client. Over a period of three years, Mr. Goucher told the client several times that he had not heard from the patent office. Patent 2 was abandoned due to the filing fee not being paid and USPTO's inability to receive a response from Mr. Goucher. Mr. Goucher indicated he would refile Patent 1 on behalf of the client but was unable to refile Patent 2 because the client had been selling it for over a year. Mr. Goucher agreed to refile Patent 1 and file two new patents for the client to make up for the loss of Patent 2.

Mr. Goucher filed Patent 1 a second time (Patent 3). The USPTO sent via mail and email notification of Non-Final Rejection to Mr. Goucher regarding drawings in the patent. Mr. Goucher did not respond. The USPTO sent notification to Mr. Goucher notifying him Patent 3 was abandoned. The fourth patent (Patent 4) was filed as a provisional patent. The client contacted Mr. Goucher regarding Patent 3 and Patent 4 and Mr. Goucher told the client that he had no new information regarding the patents. Eventually, Mr. Goucher stopped responding to emails or telephone messages. The client reached Mr. Goucher by telephone and told the client that he did not know what happened but he would rewrite Patent 4 and deal with Patent 3. The client contacted Mr. Goucher every few days over the course of a few weeks and Mr. Goucher responded each time that he needed a couple more days. Mr. Goucher eventually stopped taking the client's telephone calls and there was no voicemail on which to leave a message. The OPC sent a NOIC to Mr. Goucher. Mr. Goucher did not respond to the NOIC.

In the fourth matter, a client retained Mr. Goucher to file an office action response for a patent application and to file a continuation in part application with the USPTO. Mr. Goucher filed the application and a few months later the USPTO issued a non-final rejection. The client contacted Mr. Goucher inquiring if there had been any communication from USPTO. Mr. Goucher denied that there had been any communication. The patent was abandoned due to non-action. The client continued to attempt to contact Mr. Goucher but he failed to respond. Eventually Mr. Goucher responded and stated he would refile the patent. Mr. Goucher did not complete the office action response and did not refile the patent. The OPC sent a NOIC to Mr. Goucher. Mr. Goucher did not respond to the NOIC.

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# Attorney Discipline

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Effective December 15, 2020, the Utah Supreme Court re-numbered and made changes to the Rules of Lawyer and LPP Discipline and Disability and the Standards for Imposing Sanctions. The new rules will be in Chapter 11, Article 5 of the Supreme Court Rules of Professional Practice. The final rule changes reflect the recommended reforms to lawyer discipline and disability proceedings and sanctions contained in the American Bar Association/Office of Professional Conduct Committee's Summary of Recommendations (October 2018).

## ADMONITION

On January 20, 2021, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rules 1.1 (Competence) and 1.3 (Diligence) of the Rules of Professional Conduct.

*In summary:*
A woman married husband number one (Husband 1) in 1984. She married husband number two (Husband 2) in 1994. A few months after the marriage, a verified complaint for divorce between the woman and Husband 1 was filed. A Decree of Divorce was entered indicating that the woman had appeared in person with her attorney at a hearing of the same date. About a year later, a Decree of Divorce was entered for the woman and Husband 2. Sometime in 2000, Husband 2 died. In 2001, the woman married husband number three (Husband 3).

In 2015, the woman applied for widow's insurance benefits on the record of Husband 2 with the Social Security Administration (SSA). The woman filed a motion to set aside the judgment in her divorce from Husband 2. The court denied the motion because she had failed to bring her action within a reasonable period of time. The SSA sent a notice of disproved claim to the woman outlining that she had sixty days to request an appeal.

The woman retained the attorney to "reverse" her divorce from Husband 2 and help her obtain widow's insurance benefits. The attorney filed a motion to set aside the woman's divorce from Husband 2. The attorney relied on representations from the woman at the time of filing that she believed herself to be married to Husband 2 at the time of his death. An order setting aside the woman's divorce from Husband 2 was entered.

The attorney provided the OPC with a copy of a SSA request for reconsideration regarding its denial of the woman's request for widow's insurance benefits. The SSA did not receive this request for reconsideration and the woman claimed it was never filed. The SSA denied widow's benefits because of the woman's subsequent marriage.

The attorney accepted an additional retainer from the woman to pursue an annulment from Husband 3. The attorney filed the petition for annulment and it was granted by the court.

*Mitigating Factor:*
Inexperience in the practice of law.

## PUBLIC REPRIMAND

On January 20, 2021, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Michael R. Anderson for violating Rule 5.3(c) (Responsibilities Regarding Nonlawyer Assistants) and Rule 7.1 (Communications Concerning a Lawyer's Services) of the Rules of Professional Conduct.

*In summary:*
Blog posts advertising Mr. Anderson's firm and/or its services were posted to false blogs created for the sole purpose of advertising. The blogs appeared to take content from other firm websites and attributed it to Mr. Anderson and/or his firm. Mr. Anderson used internet marketing companies but did not give these marketing professionals instructions on the specific ethical rules that apply to attorney advertising or even direct them to his official website so that their marketing tactics only used his content. Mr. Anderson indicated that he requested the content be removed. However, he did not know who made the posts or how to have them taken down.

*Mitigating Factor:*
Inexperience in the practice of law.

## PUBLIC REPRIMAND

On February 16, 2021, the Honorable Adam T. Mow of the Third Judicial District entered an Order of Discipline: Public Reprimand against Brad R. Anderson for violating Rule 4.2(a) (Communication with Persons Represented by Counsel) and Rule 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
While employed as an attorney at a law firm, Mr. Anderson represented a client in two criminal matters. An attorney entered an appearance with the court on behalf of the fourteen-year-old victim. Mr. Anderson was aware that the victim was represented by counsel. Mr. Anderson had a telephone conversation with the victim without her attorney present. During the conversation, Mr. Anderson requested that she put her thoughts on paper and send them to him so he could forward them to the judge in the matter. Mr. Anderson also told the victim to call his office if anything else came up or if she wanted to talk again.

The law firm terminated Mr. Anderson's employment due to his conduct with respect to the victim. At the time he was terminated, Mr. Anderson was told he was no longer allowed to access any of the firm's files or accounts. After leaving the firm, Mr. Anderson used the firm's online legal research access number, which was one of several numbers he used. The law firm was billed for Mr. Anderson's use of the service. Mr. Anderson was charged with a misdemeanor crime – theft of services.

## RECIPROCAL DISCIPLINE

On February 4, 2021, the Honorable Su J. Chon, Third Judicial District Court, entered an Order of Reciprocal Discipline: Delicensure/Disbarment against Russell Collings, disbarring Mr. Collins for his violation of Rule 1.1 (Competence), Rule 1.3 (Diligence), Rule 1.4(a) (Communication), Rule 1.5(a) (Fees), Rule 1.8(a) (Conflict of Interest: Current Clients: Specific Rules), Rule 1.15(a) (Safekeeping Property), Rule 1.16(a) (Declining or Terminating Representation), Rule 3.2 (Expediting Litigation), Rule 3.4(a) (Fairness to Opposing Party and Counsel), Rule 4.2(a) (Communication with Persons Represented by Legal Professionals), Rule 8.1(b) (Bar Admission and Disciplinary Matters), and Rule 8.4(d) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
On January 27, 2020, the Nevada Supreme Court issued an Order of Suspension, suspending Mr. Collings from the practice of law for five years. The Order was predicated on the following facts in relevant part:

The facts and charges alleged in the complaint are deemed admitted because Collings failed to answer the complaint and a default was entered. 1 SCR 105(2). The record therefore establishes that Collings violated the above-referenced rules by accepting fees from clients and failing to provide legal work, failing to appear on behalf of clients, failing to communicate with clients, accepting an interest in a business in exchange for legal work, failing to respond to the State Bar's requests for information and letters of investigation, and abandoning his legal practice. In one instance, Collings's failure to appear on behalf of a client resulted in the issuance of a bench warrant against his client, which caused the client to spend several days in jail and lose his job.

*Aggravating factors*
Substantial experience in the practice of law, multiple offenses, bad faith obstruction of the disciplinary process, and pattern of misconduct.

*Mitigating factor*
Absence of prior disciplinary record.

The Utah Order of Disbarment/Delicensure confirmed that (1) the disciplinary proceedings before the Nevada authorities gave Mr. Collings notice and an opportunity to be heard and Mr. Collings received due process in Nevada; (2) the imposition of Disbarment/Delicensure is equivalent discipline in Utah and is just; and, (3) the conduct for which Mr. Collings was disciplined in Nevada would result in at least the same level of discipline in Utah.

## Discipline Process Information Office

The Disciplinary Process Information Office is available to all attorneys who find themselves the subject of a Bar complaint, and Jeannine Timothy is the person to contact. Jeannine will answer all your questions about the disciplinary process, reinstatement, and readmission. Jeannine is happy to be of service to you.

DISCIPLINE PROCESS INFORMATION OFFICE

**801-257-5518**
**DisciplineInfo@UtahBar.org**

## RECIPROCAL DISCIPLINE

On March 9, 2021, the Honorable Robert P. Faust, Third Judicial District Court, entered an Order of Reciprocal Discipline: Delicensure/Disbarment against Paul D. Petersen, disbarring Mr. Petersen for his violation of Rule 8.4(b) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
On July 20, 2020, the Presiding Disciplinary Judge, State of Arizona issued a Judgment of Disbarment. The Judgment issued by the Presiding Disciplinary Judge was predicated on his agreement to a disbarment in Arizona. According to the record of the State Bar of Arizona, Mr. Petersen's misconduct violated Arizona ethics Rule 8.4(b), which is substantially the same as Rule 8.4(b) of the Utah Rules of Professional Conduct.

His agreement to disbarment was based upon a criminal indictment filed against him in Arizona. The criminal indictment against Mr. Petersen included charges for the following: Conspiracy, a Class 2 Felony; Fraudulent Schemes and Artifices, a Class 2 Felony; twenty-seven counts of Fraudulent Schemes and Practices, Class 5 Felonies; and Forgery, a Class 4 Felony.

The Utah Order of Disbarment/Delicensure confirmed that (1) the disciplinary proceedings before the Arizona authorities gave Mr. Petersen notice and an opportunity to be heard and Mr. Petersen received due process in Arizona; (2) the imposition of Disbarment/Delicensure is equivalent discipline in Utah and is just; and, (3) the conduct for which Mr. Petersen was disciplined in Arizona would result in at least the same level of discipline in Utah.

## SUSPENSION

On December 22, 2020, the Honorable Kent R. Holmberg, Third Judicial District, entered an Order of Suspension against J. Mark Edwards, suspending his license to practice law for a period of six months and one day. The court determined that Mr. Edwards violated Rule 1.3 (Diligence), Rule 1.4(a) (Communication), Rule 1.5(a) (Fees), Rule 1.15(a) (Safekeeping Property), Rule 1.15(c) (Safekeeping Property), Rule 1.16(d) (Declining or Terminating Representation), and Rule 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

*In summary:*
Mr. Edwards's violations arise out of conduct in two matters:

In the first matter, Mr. Edwards kept earned funds in his attorney trust account and used those funds to pay personal expenses including personal loans. Mr. Edwards used his attorney trust account to process transactions for a credit card processing business wherein funds would be both electronically deposited and withdrawn. Mr. Edwards deposited funds belonging to third parties related to that business into his attorney trust account, which had some of his own funds in it. On several occasions, Mr. Edwards's trust account was overdrawn or had insufficient funds to cover properly payable instruments presented for payment against the trust account. The way Mr. Edwards was using his attorney trust account created a risk of the funds in the account being withdrawn by creditors and ACH withdrawals due to credit card refund requests and creditor collections actions. Mr. Edwards failed to keep and maintain complete accounting records of funds deposited into his attorney trust account and accounting records related to client funds for five years. Mr. Edwards did not respond to many requests by the OPC for detailed written explanations and bank statements, accountings, and other documents related to his attorney trust account. The OPC sent a Notice of Informal Complaint (NOIC) to Mr. Edwards. Mr. Edwards did not respond to the NOIC.

In the second matter, a client paid Mr. Edwards for legal representation in two payments. Mr. Edwards did not deposit the payments into his trust account. The client paid a second

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payment to Mr. Edwards, believing the payment was for Mr. Edwards to file a complaint in court. Mr. Edwards did not keep contemporaneous accounting records of the funds paid by the client and had not earned all the fees paid to him when he deposited the funds into his personal account. Mr. Edwards negligently used some of the payment he received from the client before fees were earned and/or costs incurred. Mr. Edwards did some work in the case but did not timely draft and file a complaint or otherwise resolve the client's case. The client made several phone calls to Mr. Edwards requesting information about the case and requesting documents related to the representation, but Mr. Edwards did not timely provide the information to the client and did not keep him timely informed about the work he was performing on the case. The client requested that Mr. Edwards send his client file to his new attorney. Mr. Edwards sent a digital file, but the new attorney was unable to open it. Later, Mr. Edwards sent the client a file by mail and charged the client for fees and costs associated with copying and returning the client file.

## RESIGNATION WITH DISCIPLINE PENDING

On February 5, 2021, the Utah Supreme Court entered an Order Accepting Resignation with Discipline Pending concerning Lincoln M. Nehring, for violation of Rule 8.4(b) (Misconduct) and 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Nehring was the CEO of a Utah non-profit organization (non-profit) focusing on childrens' issues. Mr. Nehring was the registered agent and sole member of a business entity (entity) registered with the State of Utah. Mr. Nehring submitted to the non-profit an invoice from the entity and approved a check request for a payment of the invoice. The non-profit issued a check payable to the entity. The check later cleared the bank. As president and CEO of the non-profit, Mr. Nehring signed a letter agreement between the non-profit and the entity where the non-profit agreed to pay the entity for consulting services. Later, Mr. Nehring submitted an invoice from the entity and approved a check request for payment of the invoice. The non-profit issued a check payable to the entity and it cleared the bank. A staff member of the non-profit believed the checks to be suspicious, investigated, and discovered the entity was set up and established in Mr. Nehring's name. The non-profit's chair and two other members of the board's executive committee contacted Mr. Nehring and requested to meet regarding the checks. At the meeting, Mr. Nehring tendered his immediate resignation and provided a cashier's check in the amount of the two checks.

## RESIGNATION WITH DISCIPLINE PENDING

On October 19, 2020, the Utah Supreme Court entered an Order Accepting Resignation with Discipline Pending concerning Richard G. Uday, for violation of Rules of Professional Conduct: Rule 1.1 (Competence) (Two Counts), Rule 1.3 (Diligence) (Two Counts), Rule 1.4(a) (Communication) (Two Counts), Rule 1.5(a) (Fees) (One Count), Rule 1.15(a) (Safekeeping Property) (Two Counts), Rule 1.15(c) (Safekeeping Property) (Four Counts), Rule 1.15(d) (Safekeeping Property) (One Count), Rule 1.16(d) (Declining or Terminating Representation) (Four Counts), Rule 8.1(b) (Bar Admission and Disciplinary Matters) (Three Counts), Rule 8.4(b) (Misconduct) (One Count), Rule 8.4(c) (Misconduct) (Three Counts), and Rule 8.4(d) (Misconduct) (One Count).

*In summary:*
In the first matter, a client retained Mr. Uday as a private attorney in a criminal defense matter and paid legal fees. Mr. Uday did not deposit all advance fees payments made by the client into his trust account. Mr. Uday did not keep the client informed about his case nor did he diligently represent the client. Mr. Uday missed several hearings. The court set the matter for trial and ordered all motions to be filed before a certain date, and Mr. Uday did not file any motions. Mr. Uday failed to appear for a pretrial conference and a status conference. The trial dates were cancelled and the court appointed new counsel to represent the client. Mr. Uday did not refund any of the advance fees he collected.

In the second matter, a client retained Mr. Uday to represent her in a dog bite and an assault case in justice court. The client paid advance fees to Mr. Uday for both cases. Mr. Uday missed a pretrial conference in the assault case and the client terminated the representation. During this time period, Mr. Uday did not deposit into his trust account unearned advanced fees and costs and/or funds he was holding that belonged to others. The bank issued notices of insufficient funds for his trust account on several occasions because there were not enough funds available when properly payable instruments were presented for payment. Mr. Uday was untruthful with regards to monies he was supposed to be holding in trust in his trust account and/or the administration of his trust account.

In several other matters, Mr. Uday contracted to provide appellate representation for indigent defendants who had conflicts of interest with the office that provides court-appointed criminal defense services. Mr. Uday accepted appointments in at least seven criminal appeals cases as conflict counsel. Mr. Uday

received payments from the public defense office to file Appellant briefs and represent the defendants on appeal. In another case, Mr. Uday was paid funds for criminal appellate work and the cost of obtaining a transcript. Mr. Uday did not hold the advanced fees and costs he received from the public defense office and/or others for the appellate cases in his trust account and maintain them in the trust account until the fees were earned and the costs were incurred. Mr. Uday did not keep the clients informed about the status of their cases and did not timely respond to requests for information. In one case, the client sent multiple requests to Mr. Uday to provide him a copy of the summary he had given Mr. Uday and for information about his case and the work Mr. Uday had done. Mr. Uday did not file Appellant briefs for the criminal cases in all but one of the cases. In several cases, Mr. Uday received multiple extensions to file the Appellant brief but still failed to do so. In one case, the court of appeals issued three criminal default contempt orders for Mr. Uday's failure to timely file the brief. Mr. Uday caused the issuance of contempt orders and orders to show cause, which resulted in the courts holding additional hearings to appoint new counsel and further delaying the cases. The public defense office attempted to contact Mr. Uday via email, voicemail, letter, and certified letter, requesting that the client files be returned and that the advanced funds be reimbursed. Mr. Uday did not refund any funds or return the client files. Mr. Uday engaged in misrepresentations or dishonest conduct related to the misappropriation of funds. Mr. Uday failed to timely respond to the OPC's Notice of Informal Complaint.

In another matter, a client retained Mr. Uday to represent the client and file a post-conviction relief petition. The client's family paid a retainer for legal services for the petition and its appeal to the Utah Court of Appeals and the Utah Supreme Court. Mr. Uday filed the petition. The Utah Court of Appeals dismissed the petition and found that all of the client's claims were frivolous on their face. Mr. Uday filed a notice to appeal to the Utah Supreme Court. Mr. Uday requested and received four extensions of time to file Appellant's brief but he did not file anything. The court entered an order of default dismissal for Mr. Uday's failure to file the brief within the time permitted. The client and his family members attempted to contact Mr. Uday by calling and sending letters, but Mr. Uday did not respond. Mr. Uday did not refund any of the fees paid for the case nor did he provide the client with his file. Mr. Uday failed to timely respond to the OPC's Notice of Informal Complaint.

In the last matter, Mr. Uday was appellate counsel for a client. The client's convictions were affirmed by the Utah Court of Appeals. The client wrote to Mr. Uday and requested a copy of his file. Mr. Uday did not respond. The OPC sent a Notice of Informal Complaint to Mr. Uday. Mr. Uday did not timely respond.

## DISBARMENT

On February 19, 2019, the Honorable Todd Shaughnessy entered an Order of Disbarment against Brian W. Steffensen, disbarring him from the practice of law for his violation Rule 8.4(b) (Misconduct) and Rule 8.4(c) (Misconduct) of the Rules of Professional Conduct. The Utah Supreme Court affirmed the District Court's Order of Disbarment on January 7, 2021.

*In summary:*
Mr. Steffensen incorporated the first of many law firms in 1995 (Firm 1). Mr. Steffensen repeatedly failed to maintain accounting practices that would keep his law firms viable. Additionally, Mr. Steffensen opened a new law firm each time the previous one financially floundered. Firm 1's demise resulted in the seizure of all assets by the IRS because of Mr. Steffensen's failure to pay withholding taxes. As a result of the IRS seizure, Mr. Steffensen would have been acutely aware of his obligations going forward. Mr. Steffensen established his second firm (Firm 2) shortly after the IRS seizure. Firm 2 closed due to the exact same problems with payroll and the Tax Commission as Firm 1.

Mr. Steffensen started his third firm (Firm 3) the same year that Firm 2 closed. The Tax Commission began to scrutinize Mr. Steffensen's employee tax withholding practices when the filing process of one of his employees was suspended and came under review by the Tax Commission because her W2 from Firm 3 did not have a state withholding tax number. The Tax Commission completed its investigation and uncovered a number of potential violations of tax law on Mr. Steffensen's part and recommended that Mr. Steffensen be criminally charged. Firm 1 had an unpaid outstanding withholding tax account balance. Mr. Steffensen broke seven payment arrangements regarding this balance. Regarding Firm 2, Mr. Steffensen used invalid state withholding tax identification numbers, and the W2s he distributed to employees falsely declared that money had been withheld and remitted. In operating Firm 3, Mr. Steffensen failed to file withholding returns for 2003 through 2006. He failed to remit withholdings for this firm's entire existence.

Mr. Steffensen was charged with one count each of Failing to Render a Proper Tax Return, Intent to Evade, and Unlawful Dealing of Property by a Fiduciary. Mr. Steffensen entered into a diversion agreement with the State in which he admitted that there was probable cause for the charges against him.

# Attorney Discipline

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## ADMONITION

On February 25, 2021, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rule 1.15(a) (Safekeeping Property) of the Rules of Professional Conduct.

*In summary:*
The OPC received notification from a bank that the attorney's trust account had insufficient funds. The attorney operated a law firm where he had two banking accounts, an operating account and a client trust account. On two separate occasions the attorney took funds from a client trust account and comingled them with his operating account. Further, the attorney paid third-party liabilities through that operating account and not the client trust account.

*Mitigating Factors:*
Absence of dishonest or selfish motive; personal or emotional problems; remorse; and remoteness of prior discipline.

## INTERIM SUSPENSION

On April 14, 2021, the Honorable Royal I. Hansen, Third Judicial District Court, entered an Order of Interim Suspension, pursuant to Rule 11-564 of the Rules of Lawyer Discipline, Disability and Sanctions against Amanda L. Ulland, pending resolution of the disciplinary matter against her.

*In summary:*
Ms. Ulland was placed on interim suspension based upon the following criminal pleas:

One count of False Information to a Law Enforcement Officer, Government Agencies or Specified Professionals, a Class B Misdemeanor;

One count of Emergency Reporting Abuse, a Class B Misdemeanor.

## SUSPENSION

On, April 28, 2021 the Honorable Amber Mettler, Third Judicial District, entered an Order of Suspension against Ryan M. Springer, suspending his license to practice law for a period of one year. The court determined that Mr. Springer violated Rule 8.4(b) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Springer was suspended based upon the following criminal convictions:

Interference with Arresting Officer, a Class B Misdemeanor;

Criminal Mischief, a Class B Misdemeanor, Interrupt Communication Device, a Class B Misdemeanor;

Driving Under the Influence of Alcohol/Drugs, a Class A Misdemeanor;

Driving Under the Influence of Alcohol/Drugs, A Third Degree Felony;

Disorderly Conduct, a Class C Misdemeanor.

**DISCIPLINE PROCESS INFORMATION OFFICE**

The Disciplinary Process Information Office is available to all attorneys who find themselves the subject of a Bar complaint, and Jeannine Timothy is the person to contact. Jeannine will answer all your questions about the disciplinary process, reinstatement, and readmission. Jeannine is happy to be of service to you.

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## RESIGNATION WITH DISCIPLINE PENDING

On March 22, 2021, the Utah Supreme Court entered an Order Accepting Resignation with Discipline Pending concerning Abraham C. Bates, for violation of Rule 1.15(d) (Safekeeping Property), Rule 3.4(c) (Fairness to Opposing Party and Counsel), Rule 8.1(b) (Bar Admission and Disciplinary Matters), Rule 8.4(b) (Misconduct) (2 counts), and Rule 8.4(c) (Misconduct) (2 counts) of the Rules of Professional Conduct.

*In summary:*

**Trust matter:**

A relative of Mr. Bates established an irrevocable trust naming the relative's daughter as the primary beneficiary (the Trust). Mr. Bates was named trustee of the Trust. Mr. Bates applied for an account with a brokerage firm (Brokerage Firm) on behalf of the Trust (the Account). The Account was initially funded with money from the relative, who subsequently deposited additional funds into the Account.

Approximately two years later, the relative deposited money into the Account. A few days later, Mr. Bates notified the Brokerage Firm that the money was deposited in error and requested that the amount be refunded to him. In response, the Brokerage Firm issued a check to Mr. Bates. During this time period, Mr. Bates also wrote a check to either himself or his law firm from the Account. To create cash for the check, Mr. Bates sold stock.

Approximately a year later, Mr. Bates requested that money be transferred from the Account to a bank account (Bank Account) in his name. The funds were transferred. To create cash for the withdrawal, Mr. Bates sold shares and stock.

Mr. Bates requested that money be transferred from the Account to the Bank Account. The funds were transferred. To create cash for the withdrawal, Mr. Bates sold stock.

On three subsequent occasions, Mr. Bates requested that money be transferred from the Account to the Bank Account and the funds were transferred.

Thereafter, Mr. Bates requested that money be transferred from the Account to another bank account in his name. The funds were transferred. To create cash for the withdrawals, Mr. Bates sold stock on two separate occasions.

Previously, Mr. Bates had shown the relative documentation indicating the balance of the Account had increased. Despite multiple requests, the relative received no other information regarding the Trust. Mr. Bates never divulged the withdrawals he made or the stock he sold from the Account.

The relative filed a petition in Third District Court to have Mr. Bates removed as trustee of the Trust. The court granted the relative's petition and entered a judgment against Mr. Bates for the fees and costs associated with the Petition and for any enforcement of the Order. The judgment was later amended. The Order also removed Mr. Bates as the Trustee and required Mr. Bates to provide an accounting. The monetary portion of the judgment was satisfied after Mr. Bates' bank account was garnished; however, there is no evidence he provided the accounting as ordered.

After subpoenaing records from the Brokerage Firm, the relative filed a complaint against Mr. Bates in Fourth District Court for conversion, legal malpractice, breach of trust, breach of fiduciary duty, and RICO. A default judgment was entered against Mr. Bates and subsequently a satisfaction of judgment was filed.

**Criminal Matters:**

Criminal Matter #1. Mr. Bates pled guilty to Driving on Suspension, a Class C Misdemeanor.

Criminal Matter #2. Mr. Bates was convicted of Driving with a Measurable Controlled Substance, a Class B Misdemeanor.

Criminal Matter #3. Mr. Bates pled guilty to Possession of a Controlled Substance-Marijuana/Spice, a Class B Misdemeanor.

Criminal Matter #4. Mr. Bates entered a plea of guilty to two counts of Possession with Intent to Distribute a Controlled Substance, Second Degree Felonies.

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Effective December 15, 2020, the Utah Supreme Court re-numbered and made changes to the Rules of Lawyer and LPP Discipline and Disability and the Standards for Imposing Sanctions. The new rules will be in Chapter 11, Article 5 of the Supreme Court Rules of Professional Practice. The final rule changes reflect the recommended reforms to lawyer discipline and disability proceedings and sanctions contained in the American Bar Association/Office of Professional Conduct Committee's Summary of Recommendations (October 2018).

## ADMONITION

On June 9, 2021, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rule 1.1 (Competence) of the Rules of Professional Conduct.

*In summary:*
The attorney represented a client in an appeal before the Tenth Circuit Court of Appeals. The court sent an opening letter to the attorney with deadlines for filing preliminary documents. The attorney did not file any preliminary documents. The attorney then filed a deficient docketing statement and was notified three times by the court, until they filed a compliant docketing statement. The attorney asked for two extensions of time before filing the opening brief and appendix. The opening brief and appendix were deficient. After requesting an extension of time to refile the brief, the attorney filed another deficient brief. The attorney requested two extensions of time and eventually filed a brief that was compliant and was accepted by the court. The court filed an order to show cause regarding the attorney's conduct in the case. The attorney failed to adequately respond to the order to show cause and a monetary sanction was ordered.

*The following mitigating factors warranted a downward departure in discipline:*
Absence of a prior record of discipline; personal or emotional problems; timely good faith effort to rectify the consequences of the misconduct involved; good character or reputation; interim reform in circumstances not involving mental disability or impairment; imposition of other penalties or sanctions.

## ADMONITION

On June 16, 2021, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rule 5.5(a) (Unauthorized Practice of Law; Multijurisdictional Practice of Law) of the Rules of Professional Conduct.

*In summary:*
An attorney entered an appearance in a civil case. A telephonic hearing was scheduled and the attorney participated in the hearing. During the hearing, the attorney's para-professional, who is an attorney licensed in another state but not licensed to practice law in Utah, presented information regarding the client's case to a court commissioner. At the time of the hearing, the para-professional's license to practice in the other state was suspended for non-payment. The attorney did not make the commissioner aware of the para-professional's status in Utah or in the other state. At the conclusion of the hearing, opposing counsel was instructed to prepare the order. Opposing counsel contacted the attorney because they could not find the para-professional's information in order to prepare the order as instructed. The attorney informed opposing counsel that the para-professional was not licensed to practice law in Utah and the commissioner was not aware that the para-professional was not a licensed attorney at the time of the hearing.

The Disciplinary Process Information Office is available to all attorneys who find themselves the subject of a Bar complaint, and Jeannine Timothy is the person to contact. Jeannine will answer all your questions about the disciplinary process, reinstatement, and readmission. Jeannine is happy to be of service to you.

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## PUBLIC REPRIMAND

On June 9, 2021, the Chair of the Ethics and Discipline Committee entered an Order of Discipline: Public Reprimand against Tineke E. Van Dijk for violating Rules 1.3 (Diligence), 1.4(a) (Communication), and 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
A client retained Ms. Van Dijk to complete an uncontested divorce and qualified domestic relations order (QDRO). Ms. Van Dijk explained to the client that the stipulation would not be signed until ninety days after the petition for divorce was filed. Ms. Van Dijk indicated that this would give her time to prepare the QDRO and pre-submit it to the company so that she could submit it right after the decree was entered.

About a month after the decree was entered, the client contacted Ms. Van Dijk to ask how the QDRO was progressing because the client was not receiving a monthly payout. Ms. Van Dijk responded that she would get right on the QDRO to finish it up. A few weeks later, Ms. Van Dijk contacted the client and indicated she was ready to submit the documents but had some questions and the company would not speak with her. Ms. Van Dijk asked to make arrangements with the client's ex-husband to call the company together. The ex-husband received an email from the human resources provider for the company regarding their QDRO procedures and he forwarded it to Ms. Van Dijk.

Throughout the next few months, the client contacted Ms. Van Dijk several times to ascertain the status of the QDRO because both she and her ex-husband had confirmed with the company that nothing had been submitted. Ms. Van Dijk either did not respond or offered excuses as to why she could not speak with the client. She also failed to follow through with telephone calls she had scheduled with the client.

In response to a text from the ex-husband, Ms. Van Dijk stated that she had submitted the documents and had a question which the company should respond to directly. One month later, she texted the client and stated she would have the final approvable QDRO to the company by a certain day. The client followed up with an email to Ms. Van Dijk expressing her frustration that Ms. Van Dijk had become unavailable and not called her as she texted that she would. Although the company would not necessarily have call notes indicating Ms. Van Dijk had contacted them by telephone, they did not find any reference to Ms. Van Dijk in any of the correspondence regarding the matter or in any notes they did have.

*Mitigating Factors:*
Personal or emotional problems; cooperative attitude towards proceedings; interim reform in circumstances not involving mental disability or impairment; remorse; remoteness of prior offences.

## RESIGNATION WITH DISCIPLINE PENDING

On June 16, 2021, the Utah Supreme Court entered an Order Accepting Resignation with Discipline Pending concerning Amanda L. Ulland, for violation of Rule 8.4(b) (Misconduct) and Rule 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Ms. Ulland pleaded no contest to one count of providing False Information to a Law Enforcement Officer, Government Agencies or Specified Professionals, Utah Code Section 76-8-506, and one count of Emergency Reporting Abuse, Utah Code Section 76-9-202(2)(c).

Ms. Ulland's no contest plea to Utah Code Section 76-8-506 was based on her admission that she knowingly gave to a police officer information concerning the commission of an offense, knowing that the offense did not occur and knowing that she had no information relating to the offense or danger. Ms. Ulland knowingly reported to the police that she had been assaulted by an individual she named. On another occasion, she knowingly reported to police and medical personnel that she had been raped by the same individual. The information was fabricated by Ms. Ulland.

Ms. Ulland's no contest plea to Utah Code Section 76-9-202(2)(c) was based on her admission that she reported an emergency to police, when she knew the reported emergency did not exist.

## DISBARMENT

On June 15, 2021, the Honorable Roger W. Griffin Fourth Judicial District, entered an Order of Disbarment against Tate W. Bennett, disbarring him from the practice of law. The court determined

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that Mr. Bennett violated Rule 1.1 (Competence), Rule 1.3 (Diligence) (Two Counts), Rule 1.4(a) (Communication), Rule 1.5(a) (Fees), Rule 1.15(a) (Safekeeping Property), Rule 1.15(c) (Safekeeping Property), Rule 1.16(d) (Declining and Terminating Representation), Rule 3.2 (Expediting Litigation) (Two Counts), Rule 8.1(b) (Bar Admission and Disciplinary Matters) (Five Counts), Rule 8.4 (c) (Misconduct) (Two Counts), and Rule 8.4(d) (Misconduct) (Three Counts) of the Rules of Professional Conduct.

*In summary:*
This case involves five matters. In the first matter, Mr. Bennett was appointed to represent a client during criminal proceedings. The client was convicted by a jury. Following the conviction, the client retained appellate counsel who argued that Mr. Bennett was deficient in providing counsel because he failed to seek a directed verdict, failed to seek a jury instruction regarding a key element in the case and failed to request a provision on the verdict form of a lesser included offense. After appellate counsel filed the brief raising these issues, the assistant Utah Attorney General handling the appeal on behalf of the State agreed to a joint motion to reverse the client's conviction. Appellate counsel also pursued a malpractice action against Mr. Bennett for his deficient representation of the client. In the malpractice action, the trial court was required to address Mr. Bennett's failure to timely respond to discovery obligations and ultimately sanctioned him by deeming the client's requests for admissions admitted and ordered him to pay attorneys' fees. The court found that Mr. Bennett had been persistently dilatory. The OPC sent a Notice of Informal Complaint (NOIC) to Mr. Bennett. Mr. Bennett did not timely respond to the NOIC. Mr. Bennet received a Notice of Screening Panel Hearing. Mr. Bennett did not attend the hearing before the Screening Panel.

In the second matter, a client retained Mr. Bennett to file a stipulated annulment petition on her behalf. The client's spouse had previously been a criminal client of Mr. Bennett's. The client paid Mr. Bennett a retainer and filling fee. Mr. Bennett directed the client to deposit the funds into his personal bank account. At the time that the funds were deposited, there was no evidence provided to the client that Mr. Bennett had completed any work on her behalf. Mr. Bennett commingled the client's funds with his own personal funds. Mr. Bennett did not file an annulment on behalf of the client. Mr. Bennett actively deceived the client by telling her he had filed the annulment petition and that he had served the petition on her husband. The client requested a refund of her filing fee but Mr. Bennett did not respond. Mr. Bennett ceased communicating with the client while her case was yet unresolved. The OPC sent a NOIC to Mr. Bennett. Mr. Bennett did not timely respond to the NOIC. Mr. Bennett received a Notice of Screening Panel Hearing. Mr. Bennett did not attend the hearing before the Screening Panel.

In the third matter, the OPC received information from a former client alleging that Mr. Bennett was deficient in his representation. The OPC sent a NOIC to Mr. Bennett. Mr. Bennett did not timely respond to the NOIC. Mr. Bennet received a Notice of Screening Panel Hearing. Mr. Bennett did not attend the hearing before the Screening Panel.

In the fourth matter, Mr. Bennett sent a letter to officials where he expressed interest in applying for a vacant county attorney position. Included in his application was a copy of his resume. In the resume, Mr. Bennett claimed he was a member of his law school's law review. During an interview with some of the county commissioners, Mr. Bennett represented that he had been on law review. One of the commissioners asked that Mr. Bennett provide documentation of this honor. In response to the request, Mr. Bennett falsified various documents to make it appear that he was a member of the law review, including altering a masthead to replace one author's name with his own. Mr. Bennett then provided these documents to the commissioner. The OPC sent a NOIC to Mr. Bennett. Mr. Bennett did not timely respond to the NOIC.

In the fifth matter, Mr. Bennett was appointed to represent a client during appeal proceedings where he was trial counsel. Mr. Bennett failed to timely file a docketing statement. Over the course of two years, the court of appeals had problems with Mr. Bennett's noncompliance regarding a variety of deadlines and court orders. Eventually, the court of appeals issued an order to show cause to appear and explain his actions. Mr. Bennett failed to appear. The court of appeals issued an order disqualifying Mr. Bennett from appearing before the Utah Court of Appeals and the Utah Supreme Court for a period of three years. The OPC sent a NOIC to Mr. Bennett. Mr. Bennett did not timely respond to the NOIC.


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Effective December 15, 2020, the Utah Supreme Court re-numbered and made changes to the Rules of Lawyer and LPP Discipline and Disability and the Standards for Imposing Sanctions. The new rules will be in Chapter 11, Article 5 of the Supreme Court Rules of Professional Practice. The final rule changes reflect the recommended reforms to lawyer discipline and disability proceedings and sanctions contained in the American Bar Association/Office of Professional Conduct Committee's Summary of Recommendations (October 2018).

## PUBLIC REPRIMAND

On July 12, 2021, the Chair of the Ethics and Discipline Committee entered an Order of Discipline: Public Reprimand against Roy D. Cole for violating Rule 1.5(a) (Fees) of the Rules of Professional Conduct.

*In summary:*
A client retained Mr. Cole for representation in a divorce action. The client contacted the Utah State Bar's Consumer Assistance Program requesting assistance. The administrator of the program sent a letter to Mr. Cole and he responded to the letter regarding the client. Mr. Cole billed the client for his time to review the letter and dictate his response. Mr. Cole's paralegal billed the client for her time to draft a response to the letter.

*Aggravating factor:*
Prior record of discipline.

## SUSPENSION

On July 9, 2021, the Honorable Matthew D. Bates, Third Judicial District, entered an Order of Suspension, against John C. Cooper, suspending his license to practice law for a period of three years. The court determined that Mr. Cooper violated Rule 1.3 (Diligence), Rule 1.4(a) (Communication), Rule 1.5(a) (Fees), Rule 1.15(a) (Safekeeping Property), Rule 1.15(d) (Safekeeping Property), and Rule 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

*In summary:*
Mr. Cooper's violations arise out of conduct in two matters:

In the first matter, a client retained Mr. Cooper to prepare and file divorce documents. The client paid an advanced fee to Mr. Cooper for the representation. Mr. Cooper did not place the money in a trust account and did not hold the unearned fees he received in a trust account separate from his own funds until they were earned. The client agreed to an uncontested divorce in which Mr. Cooper would represent both parties. Mr. Cooper drafted documents to pursue the divorce including a property settlement stipulation signed by both parties but Mr. Cooper did not draft a summons and complaint and did not serve the client's husband. Sometime later, the husband filed a verified

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petition for divorce listing Mr. Cooper as a defendant. The client paid Mr. Cooper additional money for legal fees. Again, Mr. Cooper did not place the money in a trust account and did not hold the unearned fees he received in a trust account separate from his own funds until they were earned. Mr. Cooper filed an answer on behalf of the client. Two weeks later, the client retained new counsel to represent her. Through counsel, the client requested a detailed accounting of retainer funds, attorneys fees and costs and the original contents of her file. Mr. Cooper responded with a listing of the dates of telephone calls and text messages but no time or expense amounts associated with the work. New counsel again requested a detailed accounting. Mr. Cooper's paralegal responded with a bill showing some additional times but it showed paralegal time was billed at the same rate as attorney time and it indicated the client had a balance owed to her. The OPC sent a Notice of Informal Complaint (NOIC) to Mr. Cooper. Mr. Cooper did not timely respond to the NOIC.

In the second matter, a client retained Mr. Cooper to file a complaint against the client's employer alleging a violation of her civil rights and an appeal with the Labor Commission. The client paid a sum to Mr. Cooper to file a federal complaint and another sum to appeal her case with the Labor Commission. The client paid an additional sum to serve her employer and an additional fee for legal services during the representation. Mr. Cooper did not keep the client informed about her case and when she attempted to contact him, his phone was disconnected. Mr. Cooper did not provide the client with any copies of any documents regarding her case. Mr. Cooper filed a complaint on the client's behalf in US District Court. Mr. Cooper did not inform the client of hearing dates in her case. The court held a status conference and Mr. Cooper did not appear nor did he notify the client that a hearing was to be held. The court ordered the case dismissed for failure to prosecute. The client filed a pro se motion to reopen the case and the court held a hearing on the motion. Mr. Cooper did not appear at the hearing. Mr. Cooper was ordered by the court to refund a portion of fees paid by the client.

Based on these cases and other matters, the court found the following aggravating and mitigating factors:

*Aggravating factors:*
Dishonest or selfish motive, pattern of misconduct, multiple offenses, refusal to acknowledge the wrongful nature of the misconduct involved, either to the client or to the disciplinary authority, lack of good faith effort to make restitution or to rectify the consequences of the misconduct involved including no refund of any unearned fees and costs for the first client.

*Mitigating factors:*
Absence of a prior record of discipline, inexperience in the practice.

## SUSPENSION

On November 19, 2019, the Honorable William K. Kendall, Third Judicial District, entered an Order of Suspension, against Maria C. Santana, suspending her license to practice law for a period of one year. The court determined that Ms. Santana violated Rule 1.3 (Diligence), Rule 1.4(a) (Communication), Rule 1.16(d) (Declining or Terminating Representation), and Rule 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct. The Utah Supreme Court affirmed the District Court's Order of Suspension on July 29, 2021.

*In summary:*
A client retained Ms. Santana to represent her in a personal injury case. Shortly after initial disclosures were due in the case, Ms. Santana sent her client an email indicating that she needed work information from the client and gave a deadline to provide the information or she would withdraw from the case. Ms. Santana filed a withdrawal of counsel but one day later she agreed to represent her client again and she filed a notice of appearance in the case. Ms. Santana requested and received from opposing counsel an extension of time to provide initial

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disclosures. However, Ms. Santana never provided opposing counsel with any initial disclosures.

Opposing counsel contacted Ms. Santana twice about the initial disclosures to request the information and notify her of his intent to request the case be dismissed if the initial disclosures were not received. Ms. Santana believed the client was refusing to provide some information but she did not consult with the client about lowering the settlement offer or other options. Ms. Santana decided that she would not respond to opposing counsel or take any further steps until her client provided her additional information. For more than four months, Ms. Santana did not inform and consult with her client about the specific dates for initial disclosures and her decision to take no further action and the possibility of dismissal of the case unless the client provided her information.

Ms. Santana did not file an objection or otherwise respond to opposing counsel's motion to dismiss for failure to prosecute nor did she adequately attempt to communicate to the client her options once the motion was filed. The court dismissed the case with prejudice. The client did not understand that her case had been dismissed and that she could no longer pursue her claims. After the dismissal, the client asked various attorneys or paralegals to contact Ms. Santana to explain what happened to her claims and to request her file. The client left voicemail messages for Ms. Santana to request information about the case and for the return of her file. Ms. Santana did not respond to the client's messages nor did she provide the client's file until the Screening Panel hearing for the informal complaint in the discipline matter.

The OPC sent a Notice of Informal Complaint (NOIC) to Ms. Santana. Ms. Santana did not timely respond to the NOIC.

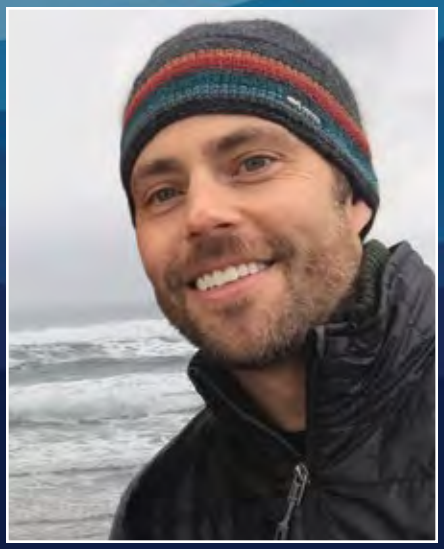
*Aggravating Circumstances:*
Prior record of discipline; dishonest or selfish motive; pattern of misconduct; multiple offences; refusal to acknowledge the

# IN MEMORIAM

Our friend and long-time colleague, Adam C. Bevis, died on September 8, 2021, from a rare form of appendiceal cancer. After graduating from the University of Utah S.J. Quinney College of Law in 2003, Adam joined the Office of Professional Conduct. In 2017, Adam was promoted to Deputy Chief Disciplinary Counsel and served in that capacity until the time of his death. Adam was decisive, cool under pressure and had exceptional public speaking and writing abilities. Adam was known and loved for his dry, self-deprecating wit, always executed flawlessly without ever cracking a smile.

Adam loved music, the outdoors, resolving disagreements with rock-paper-scissors (he almost always lost), traveling, office practical jokes (that usually backfired), and good food and drinks. Most of all, though, Adam loved his family. He was a dedicated son, brother, husband, and father. He worked hard to foster relationships with all the people he loved and went out of his way to spend individual time with each of his kids.

Adam is survived by his wife Emily McMillan; children Mya, Gretchen and Charlotte; mother, Marilyn Bevis; brother Jeff Bevis (Lisa Winn); and canine best friend Luke. Adam was preceded in death by his father John Bevis.



ADAM C. BEVIS

wrongful nature of the misconduct involved; substantial experience in the practice of law; lack of good faith effort to make restitution or to rectify the consequences of the misconduct involved.

*Mitigating Circumstances:*
Remoteness of prior discipline.

## RESIGNATION WITH DISCIPLINE PENDING

On June 16, 2021, the Utah Supreme Court entered an Order Accepting the Resignation with Discipline Pending of Shawn J. Foster for violation of Rule 1.1 (Competence), Rule 1.3 (Diligence) (Two Counts), Rule 1.4(a) (Communication) (Three Counts), Rule 1.5(a) (Fees) (Three Counts), Rule 1.16(d) (Declining or Terminating Representation), and Rule 8.1(b) (Bar Admission and Disciplinary Matters) (Three Counts) of the Rules of Professional Conduct.

*In summary:*
This matter involves three cases. In the first matter, Mr. Foster was employed at a law firm. While at the firm, he entered into an agreement with a client to represent her during immigration proceedings. The client paid a retainer to Mr. Foster for the representation. At some point after the representation began, Mr. Foster left the law firm. The client's husband contacted Mr. Foster by text message and sent a letter indicating he had been unable to get in contact with Mr. Foster since he had left the law firm and he needed to respond so he could either continue with the representation or arrange for a refund. Mr. Foster responded the same day by text that he was now working out of his own office but he would be out of town for a few days. The client provided Mr. Foster all the documents he requested and signed the U-Visa application. Further, the client obtained a money order for the filing fee. The client and her husband met with Mr. Foster and he said he would let them know when he sent in the paperwork and that they should receive confirmation that their packet had been received within six weeks. The client did not receive confirmation. The client's husband texted Mr. Foster regarding the status of the case but Mr. Foster did not respond. The client's husband requested a refund of the retainer and filing fees. The OPC sent a Notice of Informal Complaint (NOIC). Mr. Foster did not respond to the NOIC.

In the second matter, a client retained a law firm to represent him during immigration proceedings. The case was assigned to Mr. Foster and they signed an attorney-client agreement. Mr. Foster did not adequately explain the client's options to him throughout the course of the representation nor did he provide the client with updates about the case. Throughout the course of the representation, Mr. Foster continually changed law firms without notifying the client. At a master hearing, the judge stated on the record that he had earlier admitted and conceded that the client was ordered removed. Neither Mr. Foster nor the client were present at the hearing. Later, the client attempted to contact Mr. Foster at the law firm and was informed that Mr. Foster was no longer with their office and that Mr. Foster took the client's case with him when he left. The client had not previously consented to this. The client contacted Mr. Foster but was not given an explanation and was given the impression that the client had no choice but to stay with Mr. Foster for the representation. The client and Mr. Foster signed a new representation agreement with Mr. Foster's new law firm. The day before a cancellation hearing in immigration court, Mr. Foster demanded an additional sum of money for representation at the hearing. The client had no choice but to pay the fees so Mr. Foster would appear at the hearing. At the conclusion of the hearing, the client was ordered removed but was allowed voluntary removal if the client posted bond and was given instruction by the court regarding the appeal period. Mr. Foster did not explain the results to the client but only informed him that he needed to pay a sum to immigration. The client did so the next day and delivered the proof of payment to Mr. Foster. The client was unable to ever locate Mr. Foster again. Mr. Foster failed to provide the client with his file before ceasing communications with him. After retaining a new attorney, the client learned that Mr. Foster had filed an appeal but had not forwarded proof of the bond payment to the appropriate entity. The OPC sent Mr. Foster a NOIC. Mr. Foster did not respond to the NOIC.

In the third matter, a client contacted the OPC stating that she had given Mr. Foster a sum of money to help her renew her Green Card. The client provided receipts showing several payments over several years indicating she paid for legal representation. Mr. Foster performed no work and stopped communicating with the client. The OPC sent Mr. Foster a NOIC. Mr. Foster did not respond to the NOIC.

## ADMONITION

On September 20, 2021, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rule 1.1 (Competence) of the Rules of Professional Conduct.

*In summary:*
The complainant (the Complainant) in this matter was a tenant of a mobile home park (the Park) and was evicted. The Park filed a complaint for eviction against a tenant (the Tenant). The Tenant filed a complaint with the Utah Anti-Discrimination and Labor Division alleging discrimination by the Park and others. The Tenant listed the Complainant as one of the managers of the Park even though the Complainant had never been employed by the Park. The Utah Labor Commission issued a report in favor of the Tenant and eventually a complaint for enforcement of a civil action was filed in district court. The attorney accepted service of the complaint and filed documents on behalf of the Complainant without meeting the Complainant or obtaining any signatures. Later, the Complainant had their tax refund garnished and discovered that there was a judgment against them.

## PUBLIC REPRIMAND

On November 2, 2021, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against James R. Baker for violating Rule 5.5(a) (Unauthorized Practice of Law; Multijurisdictional Practice of Law) of the Rules of Professional Conduct.

*In summary:*
A person contacted the Utah State Bar expressing a concern that he had met with an individual who may be practicing law without a license. The person, his siblings and his mother met with a non-lawyer (the Non-lawyer) to explore the possibility of preparing estate planning documents for his family. During the meeting he learned that Mr. Baker provided oversight to the Non-lawyer but the Non-lawyer handled all of the document drafting.

A second person contacted the Utah State Bar regarding the Non-Lawyer, forwarding sample documents to the Utah State Bar's UPL Committee. A member of the UPL Committee contacted the Non-lawyer to investigate the allegations. In the conversations, the Non-lawyer explained that he gathered information and filled in form documents prepared by Mr. Baker. Mr. Baker then reviewed the Non-lawyer's work and provided customization if needed. Mr. Baker did not meet with the clients and did not supervise the Non-lawyer.

## PUBLIC REPRIMAND

On July 16, 2021, the Honorable Keith Kelly of the Third Judicial District entered an Order of Discipline: Public Reprimand against Jeffrey B. Brown for violating Rules 1.5(a) (Fees) and 7.3(b) (Direct Communication with Prospective Clients) of the Rules of Professional Conduct.

*In summary:*
Mr. Brown prepared estate documents, including a limited partnership agreement, for a client and her husband. Several

years later, Mr. Brown sent to the client a letter notifying her that the limited partnership had expired for failure to renew and requesting that she should let him know in writing if she would like him to assist her in refiling it. The client did not respond to the letter. Mr. Brown sent a follow-up letter asking her to reply by mail, telephone, or email, or to let him know in writing if she did not wish him to contact her. The client did not respond to the letter. Mr. Brown sent a third letter and on the first page of the letter he indicated that it was the last time he would contact her unless she notified him that she would like to move forward with the advice he was providing, and that he would close his file if she did not respond. On the fourth page of the letter Mr. Brown indicated that the client would receive a bill for the advice he was giving to her in the letter, but that he would credit the payment of the invoice toward the flat fee for his recommended services. The client did not respond to the letter. Mr. Brown subsequently sent the client a bill, including a self-addressed envelope, for the unsolicited legal advice he provided in his previous letter.

## PUBLIC REPRIMAND

On September 20, 2021, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Joshua P. Eldredge for violating Rule 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

*In summary:*
Underlying claims concerning Mr. Eldredge were dismissed by the Screening Panel. However, it was determined that Mr. Eldredge should receive a public reprimand for his failure to respond to the OPC, which caused unnecessary delay and cost in resolving the matter. The OPC was required to expend unnecessary time and resources in preparing the file for the Committee, and the Committee had to spend time preparing for and conducting the hearing. Attorneys are cautioned that failure to cooperate and provide information to the OPC may result in disciplinary action even if the underlying allegations are dismissed.

## PUBLIC REPRIMAND

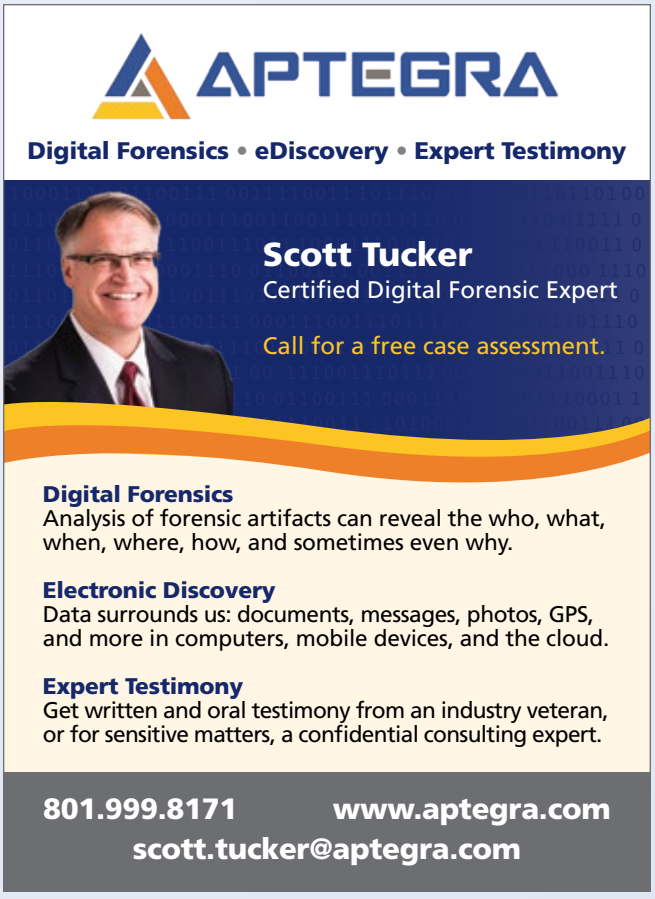
On November 2, 2021, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Matthew L. Harris for violating Rules 1.4(a) (Communication) and 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

*In summary:*
A client retained Mr. Harris to represent her in a divorce and custody matter. Mr. Harris charged the client's credit card for the representation. The client believed her husband was served with a petition but nothing was filed with the courts. About two months after she retained Mr. Harris, the client contacted Mr. Harris and informed him that she no longer wanted to pursue the divorce and asked for a refund. Mr. Harris stated he would get back to her. The client sent emails and made additional calls over the course of several months but Mr. Harris did not answer or return her calls or respond to her emails. Eventually, Mr. Harris' voicemail became full, and the client was unable to leave a message. The OPC sent a Notice to Mr. Harris. Mr. Harris did not timely respond to the Notice.

*Aggravating factors:*
Prior record of discipline.

## PUBLIC REPRIMAND

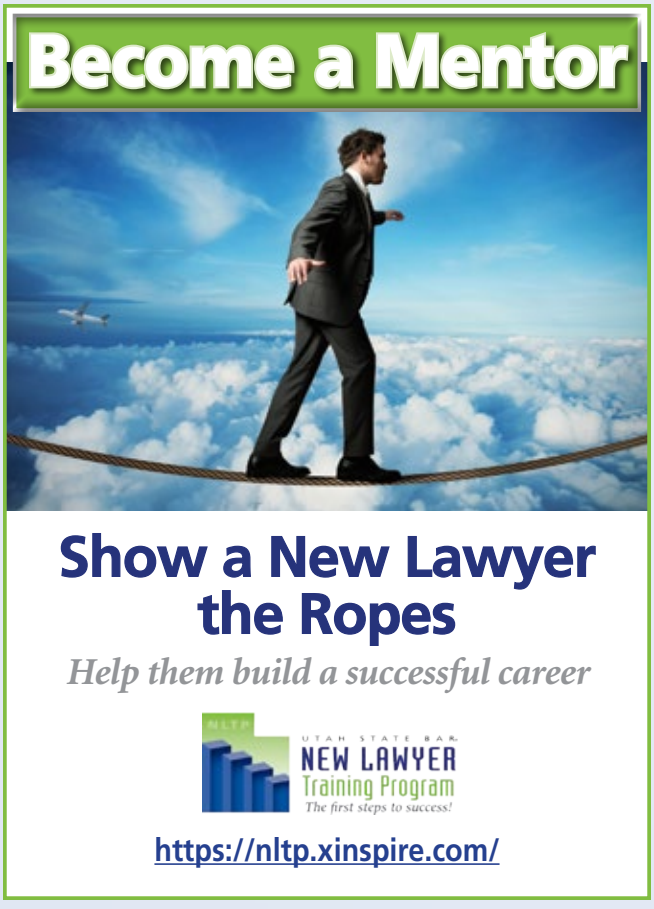
On September 16, 2021, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Gregory V. Stewart for violating Rules 1.4(a) (Communication) and 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.



*In summary:*
Mr. Stewart entered a notice of substitution of counsel and request for discovery on behalf of a client who had pled guilty to criminal charges. At an order to show cause hearing, Mr. Stewart moved to withdraw the motion to withdraw pleas and the court proceeded with sentencing. Shortly after the hearing, the client requested his file, including recordings and filings. During the representation, the client repeatedly asked Mr. Stewart to give him his file, including recordings and filings. The client repeatedly sent text messages, wrote emails and called Mr. Stewart attempting to contact Mr. Stewart and obtain updates and information about his case. The OPC sent a Notice of Informal Complaint (NOIC) to Mr. Stewart. Mr. Stewart did not timely respond to the NOIC.

## RECIPROCAL DISCIPLINE

On July 15, 2021, the Honorable Robert A. Lund, Fourth Judicial District Court, entered an Order of Reciprocal Discipline: Suspension against D. Brian Boggess suspending Mr. Boggess for a period of three years for his violation of Rules 1.4(a) (Communication), 1.15(a) (Safekeeping Property), 3.4(a) (Fairness to Opposing Party and Counsel), and 8.4(d) (Misconduct) of the Rules of Professional Conduct.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*In summary:*
On June 4, 2020, the Supreme Court of Nevada entered an Order of Suspension, suspending Mr. Boggess from the practice of law for three years with a prior 21-month suspension running concurrently. The order of suspension was predicated on the following facts in relevant part. Mr. Boggess was retained by a client to prepare a Will and Trust. Mr. Boggess was named as the First Successor Trustee and Executor of the client's Will. Mr. Boggess was responsible for the clients bills and other affairs after the client became incapacitated. After the client died, despite being responsible for the client's bills, Mr. Boggess failed to pay them. Mr. Boggess failed to make any payments, other than to himself, of behalf of the estate for several years after the client's death and one year after recovering all trust assets.

Mr. Boggess was given a twenty-four-month suspension with all but three months stayed for a period of two years based on conditions. Mr. Boggess was aware of the terms of his stayed suspension and knew of his duty to promptly distribute the estate's funds and close the estate. Mr. Boggess failed to follow the terms of his stayed suspension.

*Aggravating circumstances:*
Prior record of discipline; substantial experience in the practice of law; pattern of misconduct; multiple offenses; refusal to recognize the wrongful nature of his conduct; and vulnerability of the victims.

*Mitigating circumstance:*
Personal or emotional problems.

## RESIGNATION WITH DISCIPLINE PENDING

On September 21, 2021, the Utah Supreme Court entered an Order Accepting the Resignation with Discipline Pending of Matthew R. Kober for violation of Rules 8.4(b) (Misconduct) and 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Kober pled guilty to Money Laundering Conspiracy, a violation of 18 U.S.C. § 1956(h).

Mr. Kober and a co-defendant concocted a scheme to defraud and obtain money by false and fraudulent pretenses by offering and inducing individuals to provide money for sports betting software or for his co-defendant to use the money to place sports bets. To further the scheme, Mr. Kober formed an LLC in Nevada listing himself as the sole officer and opened a bank account where he was the only signer on the account. After his co-defendant induced individuals to transfer money to the bank account, the co-defendant would instruct Mr. Kober which prior investors to send money to in an attempt to lead them to believe that they were successful in the sports bet and were making a profit. Mr. Kober also diverted investor money for his own personal use.

# Attorney Discipline

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Effective December 15, 2020, the Utah Supreme Court re-numbered and made changes to the Rules of Lawyer and LPP Discipline and Disability and the Standards for Imposing Sanctions. The new rules will be in Chapter 11, Article 5 of the Supreme Court Rules of Professional Practice. The final rule changes reflect the recommended reforms to lawyer discipline and disability proceedings and sanctions contained in the American Bar Association/Office of Professional Conduct Committee's Summary of Recommendations (October 2018).

## SUSPENSION

On October 25, 2021, the Honorable Su J. Chon, Third Judicial District, entered an Order of Suspension against Hunt W. Garner, suspending his license to practice law for a period of three years. The court determined that Mr. Garner violated Rule 1.3 (Diligence), Rule 1.4(a) (Communication), Rule 1.4(b) (Communication), Rule 1.5(a) (Fees), Rule 1.15(a) (Safekeeping Property), Rule 1.15(c) (Safekeeping Property), Rule 1.15(d) (Safekeeping Property), and Rule 1.16(d) (Declining or Terminating Representation) of the Rules of Professional Conduct.

*In summary:*

A woman (Older Sister) retained Mr. Garner to represent her two younger siblings (Brother and Sister) to provide asylum services in immigration law. A disbarred attorney (Paralegal) worked with Mr. Garner providing interpreter and translation services. Both siblings believed that Older Sister acted like a mother to help them navigate the legal process because she spoke English and understood the immigration process better than they did. Older Sister wanted her siblings to obtain asylum status because of the political persecution of their family.

Older Sister signed an agreement for Mr. Garner to provide services for petitions for asylee or refugee status for Brother and Sister and paid a retainer in two separate checks. Mr. Garner did not endorse the checks but the checks were deposited into his bank account that was not a trust account but was a business account. According to the bank records, Mr. Garner spent the retainer money prior to it being earned. Mr. Garner did not keep any billing records.

Paralegal sent to the siblings a questionnaire requesting information regarding their entry dates and other things related to filing an application for asylum. The siblings completed the questionnaires and returned them to Paralegal. Mr. Garner did not review the questionnaires or the 1-94s that were sent to him. Older Sister sent text messages and emails to Paralegal but many of them remained unanswered. There were constant delays on Mr. Garner's part or communications that went unanswered. Sister became

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concerned as it was getting closer to the expiration of her visa and she was adamant that she wanted to maintain her legal status. Mr. Garner did not explain the matter to Sister so that she could make informed decisions regarding the representation. Mr. Garner did not diligently pursue asylum petitions or timely address Sister's concerns about the expiring tourist visa.

Older Sister and siblings retained an attorney to check the status of the immigration matter. When Mr. Garner did not respond, the attorney requested an accounting and a copy of the file. Mr. Garner did not provide an accounting or the file, nor did he refund any fees that were unearned pursuant to the terms of the fee agreement.

## DELICENSURE/DISBARMENT

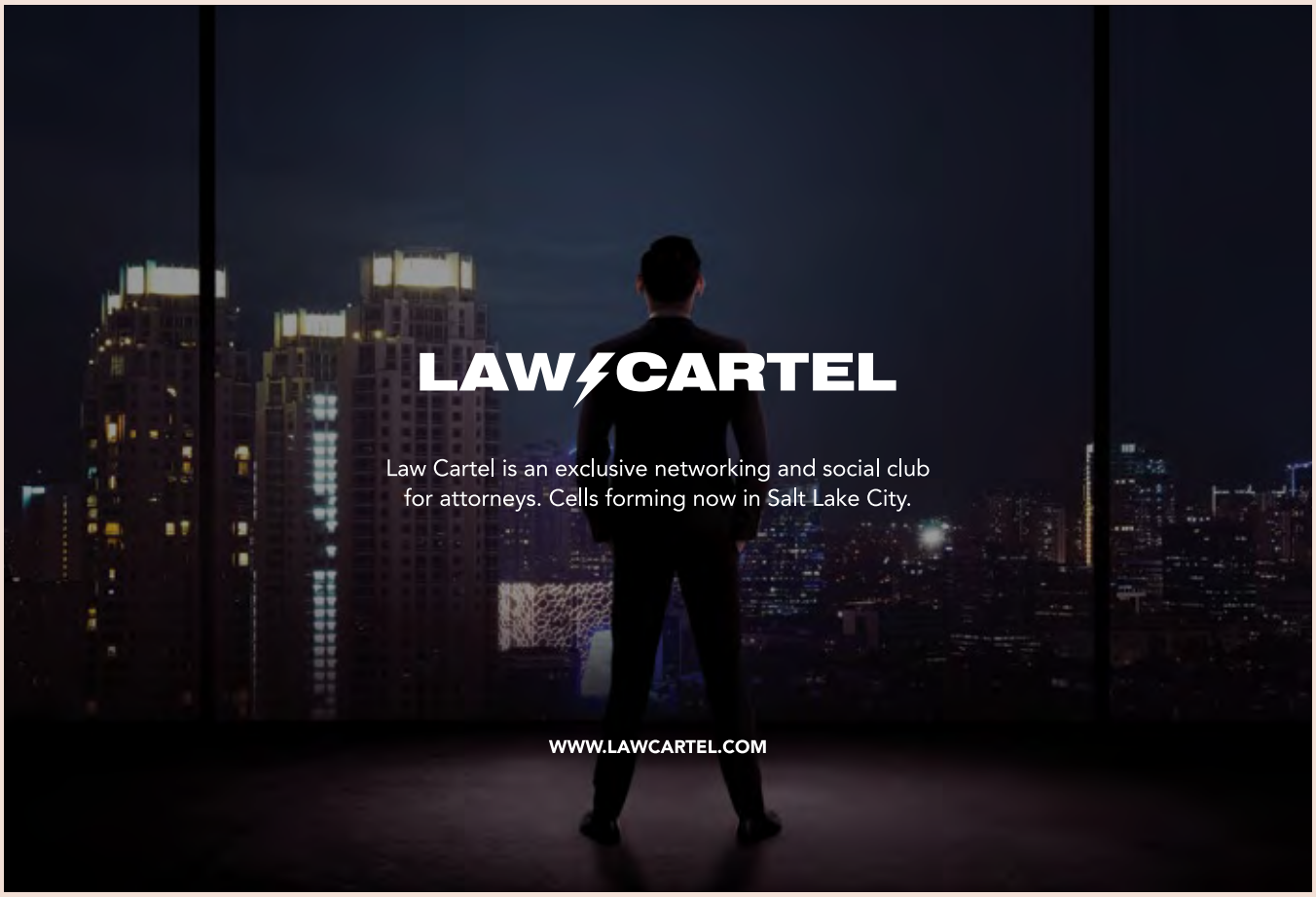
On December 23, 2021, the Honorable Todd M. Shaughnessy, Third Judicial District, entered an Order of Discipline: Delicensure/Disbarment of Calvin C. Curtis for violation of Rule 8.4(b) (Misconduct) and Rule 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Curtis pled guilty to one count of Wire Fraud, a violation of 18 U.S.C. § 1343 and one count of Money Laundering, a violation of 18 U.S.C. § 1957.

Mr. Curtis specialized in special needs trusts. He devised and intended to devise a scheme to defraud clients to obtain money and property by means of materially false and fraudulent pretenses, representations and promises. In doing so, Mr. Curtis used interstate wires.

Mr. Curtis transferred money intended for the care of his client and converted it to his own personal use to make mortgage payments on his home and office, to support a lavish lifestyle with frequent travel, to purchase tickets to basketball and football games, to give lavish gifts to others, and to support the operations of his law firm. He then created fake and fraudulent financial statements that he provided to the conservator in order to conceal the fraud.

The OPC received several other complaints from other individuals that contain similar allegations to the conduct described above. In two other matters, Mr. Curtis caused funds to be transferred by wire transfer from trusts to his bank account. Mr. Curtis used the funds for his own personal benefit knowing the funds were derived from unlawful activity. Mr. Curtis also sent doctored investment statements to interested parties to cover up the scheme.



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## PUBLIC REPRIMAND

On March 6, 2022, the Honorable Su J. Chon entered an Order of Discipline: Public Reprimand against Travis L. Bowen for violating Rule 1.15(c) (Safekeeping Property) of the Rules of Professional Conduct.

*In summary:*
Two clients retained Mr. Bowen to create a risk assessment and initial design. The clients each signed authorization letters and each paid a flat fee to Mr. Bowen's firm. The money paid was to retain Mr. Bowen for work he contemplated doing on behalf of the clients. Mr. Bowen placed the money he received from the clients into his firm's operating account without first earning the funds, not in any trust account.

## PUBLIC REPRIMAND

On February 15, 2022, the Chair of the Ethics and Discipline entered an Order of Discipline: Public Reprimand against William H. Nebeker for violating Rule 1.3 (Diligence), Rule 1.4(a) (Communication), and Rule 1.4(b) (Communication) of the Rules of Professional Conduct.

*In summary:*
A man contacted Mr. Nebeker explaining he had been referred to Mr. Nebeker through the Utah State Bar's modest means program, explaining he would like to set up an initial consultation. Mr. Nebeker's office manager sent a client agreement and fee authorization to be sent back as soon as possible. The man signed the agreement and retained Mr. Nebeker to modify custody and modify distribution of a vehicle.

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Over the course of the next several months, the client would contact Mr. Nebeker's office requesting a status update on the document being prepared by Mr. Nebeker. The client spoke with Mr. Nebeker's staff but had very little direct interaction with Mr. Nebeker and was not given information about the progress of the case or issues in Mr. Nebeker's personal life that were affecting the representation.

About one year after the client retained Mr. Nebeker, a petition to modify was filed on behalf of the client in the case. Mr. Nebeker filed the petition without having the client review the document, which contained an error. The error included information that the client had provided a letter to the Court and the opposing party, when he had not. The client contacted Mr. Nebeker's staff informing them of the error, including that Mr. Nebeker was aware of the correct information.

## PROBATION

On January 21, 2022, the Honorable James Brady, Fourth Judicial District Court, entered an order of discipline against Mari Alvardo Tsosie, placing her on probation for a period of twelve months based on Mr. Tsosie's violation of Rule 1.5(a) (Fees), Rule 1.15(d) (Safekeeping Property), Rule 1.16(d) (Declining or Terminating Representation), Rule 4.2(a) (Communications with Persons Represented by Counsel), and Rule 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

In summary, a client retained Ms. Alvarado Tsosie to represent her in a divorce matter. Ms. Alvarado Tsosie agreed to represent the client on a low-bono fee schedule due to the sympathetic situation that the client and her minor daughter were facing and considering the client's limited access to financial means. The client paid an initial retainer fee and executed a fee agreement. After a brief initial meeting, Ms. Alvarado Tsosie filed a Notice of Appearance in the case. Ms. Alvarado Tsosie contacted the client's previous attorney, discussing the case and arranging to obtain the client's file. Further, she contacted opposing counsel, introducing herself and thereafter communicating regarding an earlier mediation and settlement agreement. Ms. Alvarado Tsosie and her assistant communicated with the client by means of brief phone calls, with the majority of the communication coming from the assistant. In their second and final in person conversation, Ms. Alvarado Tsosie advised the client to agree to the terms of the proposed settlement agreement.

The client did not want to settle the case and wanted Ms. Alvarado Tsosie to file additional motions and to prepare to take the case to trial. Ms. Alvarado Tsosie told the client she had no alternative but to take the settlement offer and did not explain why she should accept the offer. Further, Ms. Alvarado Tsosie informed the client she would need to pay additional money in attorney's fees. The client retained a new attorney (Subsequent Counsel). Subsequent Counsel notified Ms. Alvarado Tsosie that he had been retained by the client and requested an accounting of Ms. Alvarado Tsosie's time and the return of the unused retainer and client file. Ms. Alvarado Tsosie did not provide an accounting or the unused portion of the retainer.

The client's case concluded sometime after Subsequent Counsel took over representation. Subsequent Counsel again requested the return of the client's unused retainer and an accounting. Ms. Alvarado Tsosie attempted to contact the client at the phone number she had for the client on file. The phone call was received by the client's daughter. In an email to Subsequent Counsel, Ms. Alvarado Tsosie stated that the client must meet with her in person if she wanted a refund and an accounting. Subsequent Counsel responded to Ms. Alvarado Tsosie and requested that she not contact the client and again asked for an accounting. Ms. Alvarado Tsosie again attempted to contact the client via text message, which was received by the client's daughter. Ms. Alvarado Tsosie did not earn the entire retainer paid by the client. The OPC sent a Notice of Informal Complaint (NOIC) to Ms. Alvarado Tsosie. Ms. Alvarado Tsosie did not timely respond to the NOIC.

*Mitigating circumstances:*
Inexperience in the practice of law; no prior record of discipline; no dishonest motive; admission that violations were wrong; admission of misconduct for failure to comply with Rule 8.1(b) was made early in the proceedings; remorse.

*Aggravating circumstances:*
Multiple rule violations: refusal to provide an accounting and refund promoted her self-interests over those of her client; failure to comply with the rules of the disciplinary authority; minimal effort or no efforts to pay any amount of restitution to her former client.

## PROBATION

On December 14, 2021, the Honorable Douglas Hogan, Third Judicial District Court, entered an order of discipline against Albert N. Pranno, placing him on probation for a period of one year based on Mr. Pranno's violation of Rule 3.4(c) (Fairness to Opposing Party and Counsel) and Rule 1.15(d) (Safekeeping Property) of the Rules of Professional Conduct.

*In summary:*
Mr. Pranno and his law partner (Partner) represented a client (Client) in a divorce action against the opposing party. The

court in the divorce action issued an order that neither party sell, transfer or otherwise dispose of any assets or incur further debt. The order also required any party who had taken, sold or disposed of any assets provide an accounting of the disposition to the other. Client sent an email to Partner stating that he was prepared to take money from his retirement fund to pay for legal fees if the divorce proceeded to trial. Partner responded to Client stating that the court had ordered the parties not to take money out of their accounts but that he might be able to take a loan against the funds with court approval. Client emailed Partner indicating he would use his retirement funds for attorney fees if they were going to trial. Partner emailed Client asking if he had started the process of taking funds out of the retirement account.

At some point, Client withdrew money from his retirement account and informed Partner of this. Partner instructed Client to sign the retirement fund check over to the law firm and they would put it in their trust account because they did not want it to hit Client's bank account. Mr. Pranno sent an email to Client informing him that they would set up a trust account for the retirement fund money where it would stay until it was used at trial. Mr. Pranno stated the money should not hit the Client's account anywhere and also told his Client that he would keep the retirement funds in his Trust Account for safekeeping. Mr. Pranno did not hold the funds in trust but used the funds for legal fees and to pay his Client's obligations. Client told Partner that he would bring in the retirement money and asked Partner if he could receive some money as cash back. After consulting with Mr. Pranno, Partner told Client that they would have cash waiting when he came in the office. The opposing party was not informed by Mr. Pranno nor Partner of the withdrawal from the retirement account.

## RECIPROCAL DISCIPLINE

On January 1, 2022, the Honorable Andrew H. Stone, Third Judicial District Court, entered an Order of Reciprocal Discipline: Suspension against George M. Allen, suspending Mr. Allen for a period of two years for his violation of Rule 1.3 (Diligence), Rule 1.5(b) (Fees), Rule 1.7(a)(1) (Conflict of Interest: Current Clients), Rule 1.7(a)(2) (Conflict of Interest: Current Clients: Specific Rules), Rule 3.1 (Meritorious Claims and Contentions), Rule 3.3(a)(1) (Candor Toward the Tribunal), Rule 3.4(a) (Fairness to Opposing Party and Counsel), and Rule 3.7 (Conflict of Interest: Current Clients) of the Rules of Professional Conduct.

*In summary:*
On June 21, 2021, the Colorado Supreme Court entered an Order Approving Conditional Admission of Misconduct and Imposing Sanctions, suspending Mr. Allen from the practice of law for two years. The Order was predicated on the following facts in relevant part:

In the first matter, Mr. Allen represented members of a family and their closely held corporation in litigation brought by another shareholder of the corporation. He did not provide his clients with a written fee agreement when he started the representation. During the litigation, Mr. Allen's clients developed conflicting interests, but he did not obtain their written informed consent to continue the representation. Mr. Allen also failed to correct a statement of material fact included in a court filing after that statement was no longer true.

Mr. Allen represented another client in multiple legal proceedings despite having a close personal relationship with her, which created a conflict of interest. Mr. Allen also provided the client financial assistance while her cases were ongoing. In one of the proceedings, the court dismissed the case and sanctioned Mr. Allen after finding that the claims he had asserted were frivolous and vexatious. A court in another proceeding disqualified Mr. Allen from representing his client because he was likely to be a necessary witness. In a third case for the client – a criminal matter – he failed to exercise reasonable diligence and promptness.

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## SUSPENSION

On October 25, 2021, the Honorable Su J. Chon, Third Judicial District, entered an Order of Suspension against Hunt W. Garner, suspending his license to practice law for a period of three years. The court determined that Mr. Garner violated Rule 1.3 (Diligence), Rule 1.4(a) (Communication), Rule 1.4(b) (Communication), Rule 1.5(a) (Fees), Rule 1.15(a) (Safekeeping Property), Rule 1.15(c) (Safekeeping Property), Rule 1.15(d) (Safekeeping Property), and Rule 1.16(d) (Declining or Terminating Representation) of the Rules of Professional Conduct.

*In summary:*

A woman (Older Sister) retained Mr. Garner to represent her two younger siblings (Brother and Sister) to provide asylum services in immigration law. A disbarred attorney (Paralegal) worked with Mr. Garner providing interpreter and translation services. Both siblings believed that Older Sister acted like a mother to help them navigate the legal process because she spoke English and understood the immigration process better than they did. Older Sister wanted her siblings to obtain asylum status because of the political persecution of their family.

Older Sister signed an agreement for Mr. Garner to provide services for petitions for asylee or refugee status for Brother and Sister and paid a retainer in two separate checks. Mr. Garner did not endorse the checks but the checks were deposited into his bank account that was not a trust account but was a business account. According to the bank records, Mr. Garner spent the retainer money prior to it being earned. Mr. Garner did not keep any billing records.

Paralegal sent to the siblings a questionnaire requesting information regarding their entry dates and other things related to filing an application for asylum. The siblings completed the questionnaires and returned them to Paralegal. Mr. Garner did not review the questionnaires or the 1-94s that were sent to him. Older Sister sent text messages and emails to Paralegal but many of them remained unanswered. There were constant delays on Mr. Garner's part or communications that went unanswered. Sister became

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concerned as it was getting closer to the expiration of her visa and she was adamant that she wanted to maintain her legal status. Mr. Garner did not explain the matter to Sister so that she could make informed decisions regarding the representation. Mr. Garner did not diligently pursue asylum petitions or timely address Sister's concerns about the expiring tourist visa.

Older Sister and siblings retained an attorney to check the status of the immigration matter. When Mr. Garner did not respond, the attorney requested an accounting and a copy of the file. Mr. Garner did not provide an accounting or the file, nor did he refund any fees that were unearned pursuant to the terms of the fee agreement.

## DELICENSURE/DISBARMENT

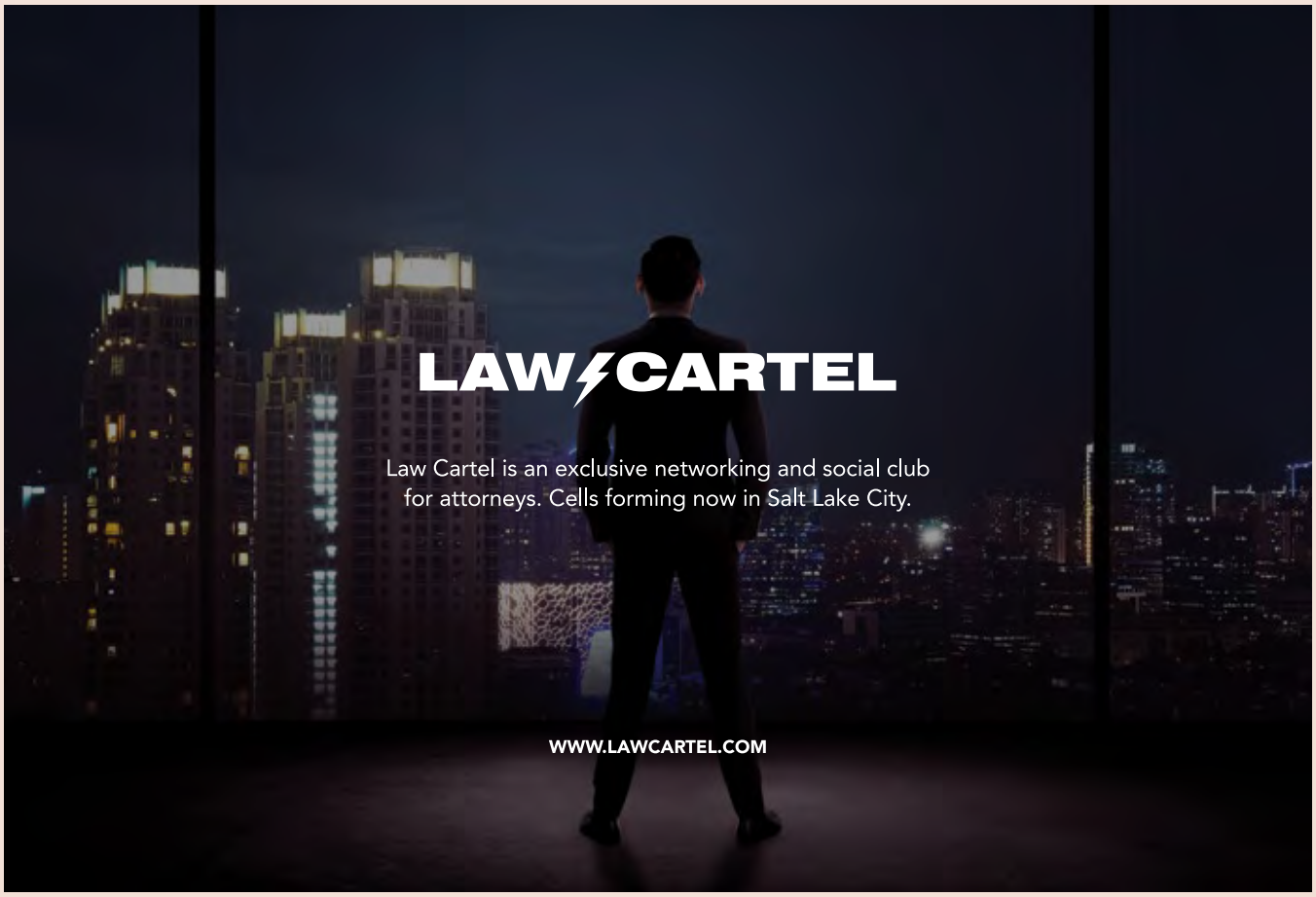
On December 23, 2021, the Honorable Todd M. Shaughnessy, Third Judicial District, entered an Order of Discipline: Delicensure/Disbarment of Calvin C. Curtis for violation of Rule 8.4(b) (Misconduct) and Rule 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Curtis pled guilty to one count of Wire Fraud, a violation of 18 U.S.C. § 1343 and one count of Money Laundering, a violation of 18 U.S.C. § 1957.

Mr. Curtis specialized in special needs trusts. He devised and intended to devise a scheme to defraud clients to obtain money and property by means of materially false and fraudulent pretenses, representations and promises. In doing so, Mr. Curtis used interstate wires.

Mr. Curtis transferred money intended for the care of his client and converted it to his own personal use to make mortgage payments on his home and office, to support a lavish lifestyle with frequent travel, to purchase tickets to basketball and football games, to give lavish gifts to others, and to support the operations of his law firm. He then created fake and fraudulent financial statements that he provided to the conservator in order to conceal the fraud.

The OPC received several other complaints from other individuals that contain similar allegations to the conduct described above. In two other matters, Mr. Curtis caused funds to be transferred by wire transfer from trusts to his bank account. Mr. Curtis used the funds for his own personal benefit knowing the funds were derived from unlawful activity. Mr. Curtis also sent doctored investment statements to interested parties to cover up the scheme.



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## PUBLIC REPRIMAND

On March 6, 2022, the Honorable Su J. Chon entered an Order of Discipline: Public Reprimand against Travis L. Bowen for violating Rule 1.15(c) (Safekeeping Property) of the Rules of Professional Conduct.

*In summary:*
Two clients retained Mr. Bowen to create a risk assessment and initial design. The clients each signed authorization letters and each paid a flat fee to Mr. Bowen's firm. The money paid was to retain Mr. Bowen for work he contemplated doing on behalf of the clients. Mr. Bowen placed the money he received from the clients into his firm's operating account without first earning the funds, not in any trust account.

## PUBLIC REPRIMAND

On February 15, 2022, the Chair of the Ethics and Discipline entered an Order of Discipline: Public Reprimand against William H. Nebeker for violating Rule 1.3 (Diligence), Rule 1.4(a) (Communication), and Rule 1.4(b) (Communication) of the Rules of Professional Conduct.

*In summary:*
A man contacted Mr. Nebeker explaining he had been referred to Mr. Nebeker through the Utah State Bar's modest means program, explaining he would like to set up an initial consultation. Mr. Nebeker's office manager sent a client agreement and fee authorization to be sent back as soon as possible. The man signed the agreement and retained Mr. Nebeker to modify custody and modify distribution of a vehicle.

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Over the course of the next several months, the client would contact Mr. Nebeker's office requesting a status update on the document being prepared by Mr. Nebeker. The client spoke with Mr. Nebeker's staff but had very little direct interaction with Mr. Nebeker and was not given information about the progress of the case or issues in Mr. Nebeker's personal life that were affecting the representation.

About one year after the client retained Mr. Nebeker, a petition to modify was filed on behalf of the client in the case. Mr. Nebeker filed the petition without having the client review the document, which contained an error. The error included information that the client had provided a letter to the Court and the opposing party, when he had not. The client contacted Mr. Nebeker's staff informing them of the error, including that Mr. Nebeker was aware of the correct information.

## PROBATION

On January 21, 2022, the Honorable James Brady, Fourth Judicial District Court, entered an order of discipline against Mari Alvardo Tsosie, placing her on probation for a period of twelve months based on Mr. Tsosie's violation of Rule 1.5(a) (Fees), Rule 1.15(d) (Safekeeping Property), Rule 1.16(d) (Declining or Terminating Representation), Rule 4.2(a) (Communications with Persons Represented by Counsel), and Rule 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

In summary, a client retained Ms. Alvarado Tsosie to represent her in a divorce matter. Ms. Alvarado Tsosie agreed to represent the client on a low-bono fee schedule due to the sympathetic situation that the client and her minor daughter were facing and considering the client's limited access to financial means. The client paid an initial retainer fee and executed a fee agreement. After a brief initial meeting, Ms. Alvarado Tsosie filed a Notice of Appearance in the case. Ms. Alvarado Tsosie contacted the client's previous attorney, discussing the case and arranging to obtain the client's file. Further, she contacted opposing counsel, introducing herself and thereafter communicating regarding an earlier mediation and settlement agreement. Ms. Alvarado Tsosie and her assistant communicated with the client by means of brief phone calls, with the majority of the communication coming from the assistant. In their second and final in person conversation, Ms. Alvarado Tsosie advised the client to agree to the terms of the proposed settlement agreement.

The client did not want to settle the case and wanted Ms. Alvarado Tsosie to file additional motions and to prepare to take the case to trial. Ms. Alvarado Tsosie told the client she had no alternative but to take the settlement offer and did not explain why she should accept the offer. Further, Ms. Alvarado Tsosie informed the client she would need to pay additional money in attorney's fees. The client retained a new attorney (Subsequent Counsel). Subsequent Counsel notified Ms. Alvarado Tsosie that he had been retained by the client and requested an accounting of Ms. Alvarado Tsosie's time and the return of the unused retainer and client file. Ms. Alvarado Tsosie did not provide an accounting or the unused portion of the retainer.

The client's case concluded sometime after Subsequent Counsel took over representation. Subsequent Counsel again requested the return of the client's unused retainer and an accounting. Ms. Alvarado Tsosie attempted to contact the client at the phone number she had for the client on file. The phone call was received by the client's daughter. In an email to Subsequent Counsel, Ms. Alvarado Tsosie stated that the client must meet with her in person if she wanted a refund and an accounting. Subsequent Counsel responded to Ms. Alvarado Tsosie and requested that she not contact the client and again asked for an accounting. Ms. Alvarado Tsosie again attempted to contact the client via text message, which was received by the client's daughter. Ms. Alvarado Tsosie did not earn the entire retainer paid by the client. The OPC sent a Notice of Informal Complaint (NOIC) to Ms. Alvarado Tsosie. Ms. Alvarado Tsosie did not timely respond to the NOIC.

*Mitigating circumstances:*
Inexperience in the practice of law; no prior record of discipline; no dishonest motive; admission that violations were wrong; admission of misconduct for failure to comply with Rule 8.1(b) was made early in the proceedings; remorse.

*Aggravating circumstances:*
Multiple rule violations: refusal to provide an accounting and refund promoted her self-interests over those of her client; failure to comply with the rules of the disciplinary authority; minimal effort or no efforts to pay any amount of restitution to her former client.

## PROBATION

On December 14, 2021, the Honorable Douglas Hogan, Third Judicial District Court, entered an order of discipline against Albert N. Pranno, placing him on probation for a period of one year based on Mr. Pranno's violation of Rule 3.4(c) (Fairness to Opposing Party and Counsel) and Rule 1.15(d) (Safekeeping Property) of the Rules of Professional Conduct.

*In summary:*
Mr. Pranno and his law partner (Partner) represented a client (Client) in a divorce action against the opposing party. The

court in the divorce action issued an order that neither party sell, transfer or otherwise dispose of any assets or incur further debt. The order also required any party who had taken, sold or disposed of any assets provide an accounting of the disposition to the other. Client sent an email to Partner stating that he was prepared to take money from his retirement fund to pay for legal fees if the divorce proceeded to trial. Partner responded to Client stating that the court had ordered the parties not to take money out of their accounts but that he might be able to take a loan against the funds with court approval. Client emailed Partner indicating he would use his retirement funds for attorney fees if they were going to trial. Partner emailed Client asking if he had started the process of taking funds out of the retirement account.

At some point, Client withdrew money from his retirement account and informed Partner of this. Partner instructed Client to sign the retirement fund check over to the law firm and they would put it in their trust account because they did not want it to hit Client's bank account. Mr. Pranno sent an email to Client informing him that they would set up a trust account for the retirement fund money where it would stay until it was used at trial. Mr. Pranno stated the money should not hit the Client's account anywhere and also told his Client that he would keep the retirement funds in his Trust Account for safekeeping. Mr. Pranno did not hold the funds in trust but used the funds for legal fees and to pay his Client's obligations. Client told Partner that he would bring in the retirement money and asked Partner if he could receive some money as cash back. After consulting with Mr. Pranno, Partner told Client that they would have cash waiting when he came in the office. The opposing party was not informed by Mr. Pranno nor Partner of the withdrawal from the retirement account.

## RECIPROCAL DISCIPLINE

On January 1, 2022, the Honorable Andrew H. Stone, Third Judicial District Court, entered an Order of Reciprocal Discipline: Suspension against George M. Allen, suspending Mr. Allen for a period of two years for his violation of Rule 1.3 (Diligence), Rule 1.5(b) (Fees), Rule 1.7(a)(1) (Conflict of Interest: Current Clients), Rule 1.7(a)(2) (Conflict of Interest: Current Clients: Specific Rules), Rule 3.1 (Meritorious Claims and Contentions), Rule 3.3(a)(1) (Candor Toward the Tribunal), Rule 3.4(a) (Fairness to Opposing Party and Counsel), and Rule 3.7 (Conflict of Interest: Current Clients) of the Rules of Professional Conduct.

*In summary:*
On June 21, 2021, the Colorado Supreme Court entered an Order Approving Conditional Admission of Misconduct and Imposing Sanctions, suspending Mr. Allen from the practice of law for two years. The Order was predicated on the following facts in relevant part:

In the first matter, Mr. Allen represented members of a family and their closely held corporation in litigation brought by another shareholder of the corporation. He did not provide his clients with a written fee agreement when he started the representation. During the litigation, Mr. Allen's clients developed conflicting interests, but he did not obtain their written informed consent to continue the representation. Mr. Allen also failed to correct a statement of material fact included in a court filing after that statement was no longer true.

Mr. Allen represented another client in multiple legal proceedings despite having a close personal relationship with her, which created a conflict of interest. Mr. Allen also provided the client financial assistance while her cases were ongoing. In one of the proceedings, the court dismissed the case and sanctioned Mr. Allen after finding that the claims he had asserted were frivolous and vexatious. A court in another proceeding disqualified Mr. Allen from representing his client because he was likely to be a necessary witness. In a third case for the client – a criminal matter – he failed to exercise reasonable diligence and promptness.

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## PRIVATE PROBATION

On January 31, 2022, the Honorable Douglas Hogan entered an Order of Discipline: Probation against an attorney for violating Rule 1.15(d) (Safekeeping Property) and Rule 3.4(c) (Fairness to Opposing Party and Counsel) of the Rules of Professional Conduct.

*In summary:*

The attorney's partner and Attorney represented a client (Client) in a divorce action against the opposing party. The court in the divorce action issued an order that neither party sell, transfer, or otherwise dispose of any assets or incur further debt. The order also required any party who had taken, sold or disposed of any assets provide an accounting of the disposition to the other. Client sent an email to Attorney stating that they were prepared to take money from their retirement fund to pay for legal fees if the divorce proceeded to trial. Attorney responded to Client stating that court had ordered the parties not to take money out of their accounts but that they might be able to take a loan against the funds with court approval. Client emailed Attorney indicating they would use retirement funds for attorney fees if they were going to trial. Attorney emailed Client asking if they had started the process of taking funds out of the retirement account.

At some point, Client withdrew money from the retirement account and informed Attorney of this. Attorney instructed Client to sign the retirement fund check over to the law firm and they would put it in their trust account because they did not want it to hit Client's bank account. Attorney's partner sent an email to Client informing him that they would set up a trust account for the retirement fund money where it would stay until it was used at trial. Attorney's partner stated the money should not hit the Client's account anywhere and also told Client that they would keep the retirement funds in their trust account for safekeeping. Attorney's partner did not hold the funds in trust but used the funds for legal fees and to pay Client's obligations. Client told Attorney that they would bring in the retirement money and asked Attorney if they

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could receive some money as cash back. After consulting with partner, Attorney told Client that they would have cash waiting when they came in the office. The opposing party was not informed by partner nor Attorney of the withdrawal from the retirement account.

*Mitigating Circumstances:*
Attorney admitted violation of Rule 3.4(c) immediately at the beginning of trial; remorse; delay between the alleged violations and trial through no fault of the parties; inexperience in the practice of law; more than enough assets in the estate to cover the amount of money used for fees; absence of prior record of discipline.

## ADMONITION

On February 18, 2022, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rule 1.2(c) (Scope of Representation) and Rule 1.7(a) (Conflict of Interest: Current Clients) of the Rules of Professional Conduct.

*In summary:*
An attorney and their law firm (Firm) represented a professional on various matters related to the professional's practice. The Firm also represented a University which was a significant client of the Firm. The attorney represented both the professional and the University in a matter where there was a significant risk that the representation of the professional and/or the University would be materially limited by the representation of the other client. The attorney continued with the representation despite the potential conflict and without obtaining informed consent, confirmed in writing, of either client.

The attorney represented the professional on a limited-scope representation without obtaining informed consent. Although the attorney stated that Firm represented University, he did not provide an engagement letter or retainer specifically limiting the representation clarifying his scope of his representation of the professional. The limitation on the representation was not made fully apparent to the professional until more than two years after the representation began.

*Mitigating Circumstances:*
Lack of prior record of discipline; reputation and good character; substantial length in the practice of law.

## ADMONITION

On April 19, 2022, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rule 1.5(c) (Fees) of the Rules of Professional Conduct.

*In summary:*
A client retained an attorney to represent the client in a substantial personal injury case, entering into a contingent fee contract. Part of the contingent fee agreement provided that the attorney would receive a fee for his services only if the attorney was successful in obtaining a recovery through negotiation, verdict or other legal means. Costs and expenses were to be advanced by attorney and approved by client prior to being incurred.

The attorney told the client that litigation financing was necessary in order to advance the client's case and the funds were required to pay experts to work on the client's case. The attorney and the client met with a representative from a litigation financing company, terms were discussed and a litigation funding agreement was signed. The attorney took the client to the client's bank and assisted the client in depositing a portion of the funds into the client's account. The client was not given any more information regarding the litigation financing funds, including information on what costs the funds were being applied, who was being paid, if the attorney received funds as an attorney fee, or in which account the balance of the funds were being kept. The client and attorney never executed a written amendment to the contingent fee contract.

The client retained new counsel to represent the client in the matter. New counsel eventually received a simplistic handwritten ledger from attorney showing payment to client and attorney and another attorney who was assisting on the matter.

The client passed away before the client's personal injury case could be prosecuted to a conclusion.

## PROBATION

On January 26, 2022, the Honorable Todd M. Shaughnessy, Third Judicial District Court, entered an order of discipline against Kevin C. Sullivan, placing him on probation for a period of twenty-four months based on Mr. Sullivan's violation of Rule 8.4(b) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Sullivan followed another vehicle too close and was involved in an accident that caused property damage. Mr. Sullivan left the scene of the accident. In another incident the same day, Mr. Sullivan drove the wrong way on an off-ramp and hit another vehicle. Mr. Sullivan attempted to get into the other vehicle and drive away. Mr. Sullivan's blood alcohol level was above the legal limit.

Mr. Sullivan pled guilty to one count of driving under the influence of alcohol and/or drugs, a class A misdemeanor and one count of attempted theft, a class A misdemeanor.

Mr. Sullivan pled guilty to accident involving property damage, a Class B misdemeanor.

*Mitigating circumstances:*
Absence of a prior record of discipline; absence of a dishonest or selfish motive; personal problems; timely good faith effort to make restitution or to rectify the consequences of the misconduct; full and free disclosures to the disciplinary authority prior to the discovery of the misconduct; and remorse.

## SUSPENSION

On March 15, 2022, the Honorable Jennifer Valencia, Second Judicial District, entered an Order of Suspension against Adam S. Hensley, suspending his license to practice law for a period of three years. The court determined that Mr. Hensley violated Rule 1.15(d) (Safekeeping Property) and Rule 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Hensley was affiliated with a law firm and although he did not sign an employment agreement, he was provided with an outline that listed the parameters of the fee and expense structure. Mr. Hensley verbally agreed to the pay the firm a percentage of gross fees on cases he originated.

A client entered into a contract for attorney services with Mr. Hensley and the firm for a personal injury matter. Mr. Hensley negotiated the client's matter and sometimes used firm letterhead for correspondence. The insurance company sent correspondence to the attention of the firm. Mr. Hensley negotiated a settlement of the claim, one for a bodily injury settlement and one for underinsured motorist coverage.

A partner of the firm discovered Mr. Hensley's scanned client file for the client on the firm's network server. The file contained two releases from two insurance companies. Neither the firm trust nor operating accounts contained any record of a payment for the client. Another partner of the firm contacted one of the insurance companies who confirmed it had settled the client's case and that the settlement check had been cashed. A copy of the cleared settlement check showed the check was made payable to the client, the firm, and Mr. Hensley. The back of the check appeared to have been signed by Mr. Hensley and another firm partner. The firm partner reviewed the signature on the back of the check and did not recognize it as his signature and had no knowledge of how it ended up on the check but is certain he did not personally sign the check. The check was deposited into the client-trust account for Mr. Hensley's professional limited liability company. The client received the full amount to which the client was entitled.


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The firm identified thirty-seven clients they believe Mr. Hensley hid from the firm and/or failed to disclose payments to the firm.

In a second matter, a client retained Mr. Hensley to represent her to resolve contractual issues regarding a mini mall, and paid a retainer for his services. A complaint was filed against the client and Mr. Hensley filed an answer on behalf of the client. The client retained new counsel to represent her in the matter. The client contacted Mr. Hensley and requested an accounting of everything he had done for her on the case. New counsel contacted Mr. Hensley and requested a copy of the client's file and an accounting for the legal services Mr. Hensley provided. Mr. Hensley mailed a copy of the client's file but did not provide an accounting.

## RESIGNATION WITH DISCIPLINE PENDING

On March 1, 2022, the Utah Supreme Court entered an Order Accepting the Resignation with Discipline Pending of Steven M. Dubreuil for violation of Rule 1.1 (Competence), Rule 1.3 (Diligence), Rule 1.4(a) (Communication), Rule 1.5(a) (Fees), Rule 8.4(b) (Misconduct), and Rule 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
This case involves two matters.

A client retained Mr. Dubreuil for representation in a justice court criminal matter. Mr. Dubreuil, but not the client, attended the pretrial hearing and a date for a bench trial was set. The client informed Mr. Dubreuil that he would be traveling out of state and was informed by Mr. Dubreuil that it would not be a problem. The client did not appear at the bench trial and was tried in absentia and found guilty. Mr. Dubreuil contacted the client and told him he needed to hurry back for a court date but did not inform him that he had already been found guilty. At the change of plea/sentencing hearing Mr. Dubreuil told the client to be quiet and not say anything because Mr. Dubreuil would appeal.

Mr. Dubreuil appealed the decision to the district court. Neither Mr. Dubreuil nor the client appeared at the appeal hearing. The case was remanded to the justice court. Mr. Dubreuil did not notify the client of the appeal ruling. A remand hearing was held and neither Mr. Dubreuil nor the client attended the hearing. A bench warrant was issued for the client for his failure to appear. A warrant hearing was held and neither Mr. Dubreuil nor the client appeared at the hearing and the bench warrant remained in place. The client claims he could not contact Mr. Dubreuil during this time period and Mr. Dubreuil admits he tried to ignore the client.

Some time later, Mr. Dubreuil contacted the client to ask if he wanted him to finish the case. Mr. Dubreuil indicated he would request a disposition hearing and that it should be finished within two to three weeks. Mr. Dubreuil texted the client and indicated he was working on the case and found out the judge issued a warrant and explained he needed to get the warrant recalled. Mr. Dubreuil texted the client a number of available court dates and the client chose one. The day before the purported hearing, the client contacted Mr. Dubreuil via text. Mr. Dubreuil replied and indicated that he had called the court and they reissued a warrant, set a new court for the next month and Mr. Dubreuil would see if he could get the warrant recalled. No hearing was scheduled for the client's case during that month.

Prior to a court scheduled hearing, Mr. Dubreuil told the client that there was still a warrant for his arrest and advised the client that he should not appear. Mr. Dubreuil attended the hearing on the client's behalf but the bench warrant remained in place. The client retained new counsel. With the assistance of new counsel, the bench warrant was recalled and the case was closed shortly thereafter.

In the second matter, Mr. Dubreuil was charged with two counts of Retail Theft, a Class B Misdemeanor. Mr. Dubreuil pled guilty to both charges and the court granted a motion for the pleas to be held in abeyance. The charges were dismissed with prejudice. Later, a notice of order to show cause was issued after Mr. Dubreuil failed to pay his fine as ordered. The orders to show cause were cancelled after Mr. Dubreuil's fines were paid and the cases were closed.

## RESIGNATION WITH DISCIPLINE PENDING

On March 1, 2022, the Utah Supreme Court entered an Order Accepting the Resignation with Discipline Pending of Rhett G. Lunceford for violation of Rule 1.3 (Diligence) and Rule 8.4(c) (Misconduct) of the Rules of Professional Conduct.

In summary, in one matter a client retained Mr. Lunceford to represent her in a medical malpractice matter in 2010. Mr. Lunceford told the client that she had a good case, that he would have the medical records reviewed, and that her deposition would be taken before the insurance company would settle with her. Mr. Lunceford obtained the client's medical records shortly after he was retained.

About two years later, the client contacted Mr. Lunceford requesting a status update, indicating that it had been about a year since she had any contact or follow up from him. Mr. Lunceford informed the client that he was preparing documentation to present the case to the court and would follow up with her. In May of 2014, Mr. Lunceford told the client that an independent medical evaluation would be scheduled. No evaluation was ever scheduled. Mr. Lunceford told the client that a deposition was scheduled twice and cancelled, when in fact a deposition was never scheduled.

The client contacted Mr. Lunceford and/or his office many times for several years to request an update on the progress of her case but received no response from Mr. Lunceford. In 2016, Mr. Lunceford told the client they were looking for an expert. In seven years, Mr. Lunceford did nothing to determine the validity of the claims, nor did he have the records reviewed by any experts.

Mr. Lunceford told the client that the statute of limitations for her case was seven years. The client later discovered from another attorney who reviewed the case that the statute of limitations had run and that a case was never filed on her behalf by Mr. Lunceford.

In a second matter, a client retained Mr. Lunceford in 2006 to represent him in a medical malpractice case from an injury that occurred in 2005. Mr. Lunceford told the client he had a strong case and he would be going to California to hire an expert to review the records. Mr. Lunceford never hired an expert to review the records.

After obtaining some relief through an administrative process, Mr. Lunceford told the client that he would file a medical malpractice action in federal court. Mr. Lunceford led the client to believe that something had been filed in federal court and he was seeking a hearing. Mr. Lunceford had not filed anything in federal court and a hearing had not been requested.

Over a period of several years, the client asked about the status of his case. Mr. Lunceford told the client that he was working on it. Mr. Lunceford told the client that a court date was scheduled in 2017. A few days prior to the court date, Mr. Lunceford told the client that the expert witness for the opposing party had a medical emergency so the court date was continued. The court date was never scheduled. Mr. Lunceford fabricated this information. Mr. Lunceford then told the client the court date had been rescheduled. Mr. Lunceford met with the client and the client's wife the day before the new purported court date to prepare them. During the meeting, Mr. Lunceford told the client and his wife that he had received notice from the court clerk that opposing counsel had died and as a result the court date was continued. The client's wife contacted the court and discovered there was no scheduled court date.

Mr. Lunceford failed to file the malpractice case on behalf of the client within the statute of limitations. The client lost his claim due to Mr. Lunceford's failure to file.

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## SUSPENSION

On April 13, 2022, the Honorable Samuel P. Chiara, Eighth Judicial District, entered an Order of Suspension against Roland F. Uresk, suspending his license to practice law for a period of one year. The court determined that Mr. Uresk violated Rule 1.1 (Competence), Rule 1.3 (Diligence), and Rule 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

*In summary:*

In 2018, the court entered an order of discipline placing Mr. Uresk on probation for three years. One of the conditions of the probation was that complaints received by the Office of Professional Conduct (OPC) during the probationary period would be reviewed by the Court as a possible material breach. During the term of probation, the OPC received three complaints against Mr. Uresk. As the subject of the three investigations by the OPC during the probationary period, Mr. Uresk was sent various requests for information by the OPC. Mr. Uresk failed to respond to the requests for information from the OPC.

Mr. Uresk failed to perfect an appeal for his client resulting in the Utah Court of Appeals affirming the lower court's decision to the detriment of Mr. Uresk's client. On three occasions, the court of appeals indicated to Mr. Uresk that payment had not been made for the transcript. In one instance, the court of appeals noted in an order that the transcript still needed to be paid for. Mr. Uresk received that order, but he did not fully read the order, including the note about the transcript. At no time did Mr. Uresk follow up with the court of appeals or the County, who Mr. Uresk believed had paid for the transcript, about the transcript. He simply assumed it had been taken care of.

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## SUSPENSION

On September 14, 2020, the Honorable David J. Williams, Second Judicial District, entered an Order of Suspension against Dustin R. Matthews, suspending his license to practice law for a period of three years. The court determined that Mr. Matthews violated 8.4(b) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

**Criminal matter #1**

Mr. Matthews violated a protective order in place that prohibited him from having any contact with the victim. Mr. Matthews violated this order by repeatedly contacting her via text messages, emails, and phone calls. In addition, Mr. Matthews logged into her Facebook page and posted personal messages. Mr. Matthews was convicted of one count of Attempted Stalking.

**Criminal matter #2**

Mr. Matthews attempted to make a turn while riding his motorcycle and crashed. Officers at the scene reported a strong odor of alcohol coming from Mr. Matthews. Mr. Matthews was transported to the hospital for his injuries. The police department obtained a warrant for Mr. Matthews' blood to test his blood alcohol level. When officers attempted to take his blood, Mr. Matthews resisted and repeatedly kicked the officers. Mr. Matthews was convicted of one count of Assault Against a Police Officer/Military Service Member, one count of Attempted Obstructing Justice, one count of Driving Under the Influence of Alcohol/Drugs, and one count of Disorderly Conduct After Request to Stop.

**Criminal Matter #3**

The police were dispatched to Mr. Matthews's residence after a report of an assault. After questioning, the police gathered that Mr. Matthews had gotten into an argument with his wife. During the argument, Mr. Matthews pushed his wife to the ground, grabbed her hair, and slammed her head against the floor. His wife was pregnant at the time and two children were in the home. Mr. Matthews was convicted of one count of Assault and two counts of Domestic Violence in the Presence of a Child.

## RESIGNATION WITH DISCIPLINE PENDING

On April 12, 2022, the Utah Supreme Court entered an Order Accepting the Resignation with Discipline Pending of D. Brian Boggess for violation of Rule 1.2(a) (Scope of Representation), Rule 1.3 (Diligence), Rule 1.4(a) (Communication), Rule 1.4(b) (Communication), Rule 1.5(a) (Fees), Rule 1.15(c) (Safekeeping Property), 1.15(d) (Safekeeping Property), Rule 1.16(d) (Declining or Terminating Representation), Rule 7.1 (Communications Concerning a Lawyers Services), Rule 8.1(b) (Bar Admission and Disciplinary Matters), Rule 8.4(b) (Misconduct), and Rule 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary*

This case involves several matters. In the first matter, a client retained Mr. Boggess for two separate accident claims. The client had a claim against an auto insurance company for an automobile accident and a claim against a drug store for a slip and fall accident. Mr. Boggess received a settlement check for the slip and fall accident. The check was made out to Mr. Boggess and the client. Mr. Boggess signed the back of the check as the client's attorney in fact. The client was never notified a settlement had been reached and never received any funds from Mr. Boggess.

Mr. Boggess signed the client's name to a release and settlement with the auto insurance company without her knowledge or authorization. Mr. Boggess received a settlement check from the auto insurance company made out to himself, the client, a law firm and Medicare Secondary Payer Recovery. Mr. Boggess signed the back of the check for all parties as their attorney in fact. The client was never notified that a settlement had been reached in the auto insurance matter and never received any of the funds from Mr. Boggess. The client's Social Security payments were offset to pay Medicare.

The OPC sent letters to Mr. Boggess requesting his response to the allegations. Mr. Boggess did not respond at first, eventually sending a letter stating that he had attempted to send the client her settlement proceeds but was unable to locate her. The OPC requested banks records to demonstrate that the client's money remained in Mr. Boggess' trust account. Mr. Boggess did not respond. A review of Mr. Boggess' trust account records demonstrated that the account dropped below the amount he was supposed to be holding for the client.

In the second matter, a federal employee was injured at work. The employee filed a claim for compensation under Federal Employees Compensation Act (FECA) with the Office of Worker's Compensation (OWCP) for her medical expenses and lost wages. OWCP accepted the claim and began paying compensation to the employee. Later, the employee retained Mr. Boggess to represent her in filing a lawsuit against the negligent third-party that caused the injuries for which she received FECA

benefits. Prior to filing the lawsuit, Mr. Boggess was advised, in writing, of the government's statutory right of reimbursement under FECA out of any proceeds from the lawsuit.

The lawsuit settled but Mr. Boggess did not satisfy or otherwise assure satisfaction of the United States' FECA disbursements upon receipt of the settlement proceeds but instead deposited the settlement proceeds in his trust account and distributed the proceeds to himself and his client.

In the third matter, a client retained Mr. Boggess to represent him in a child support and custody matter. Other than the assignment of a Commissioner to the case in 2019, there is no activity on the docket from the time Mr. Boggess entered his appearance until mid-2020 when the client filed a pro se petition to modify.

Mr. Boggess' communication with the client decreased in frequency and Mr. Boggess has not communicated with the client since 2019. The client never received an invoice from Mr. Boggess. The OPC issued a Notice of Informal Complaint (NOIC) to Mr. Boggess. Mr. Boggess requested and was granted an extension of time to respond. Mr. Boggess did not respond to the NOIC.

In the fourth matter, a client retained Mr. Boggess after he was involved in a motor vehicle accident. The client received a settlement offer from opposing counsel where the client would make a single payment to the opposing party. The client made many attempts to obtain information from Mr. Boggess about the advisability of accepting the settlement offer but Mr. Boggess was either unavailable or delayed providing information. The client contacted a second attorney to encourage Mr. Boggess to move faster. The second attorney and client continued to attempt to contact Mr. Boggess.

The client terminated Mr. Boggess' services and requested an accounting and a refund of unearned fees. Mr. Boggess did not provide either. The OPC issued a NOIC to Mr. Boggess. Mr. Boggess did not respond to the NOIC.

In the final matter, a client retained Mr. Boggess to represent her in a grandparent custody case in Nevada. A couple months later, the client contacted Mr. Boggess asking for an update and expressed her concern about not hearing from him. Mr. Boggess responded and indicated that he had filed the documents. About six weeks later, the client asked for a status update. About a week later, Mr. Boggess filed a Petition for Visitation in the district court in Nevada.

Shortly thereafter, an Order of Suspension was entered in the Supreme Court of Nevada against Mr. Boggess. The Order indicated, in part, that Mr. Boggess violated the terms of his stayed suspension and imposed the previously stayed twenty-one-month suspension and imposed a three-year suspension.

The client attempted to contact Mr. Boggess. Mr. Boggess did not respond. The client requested an accounting and a refund from Mr. Boggess. Mr. Boggess apologized and said he would provide a partial refund. The client again requested an accounting and refund. Mr. Boggess did not respond.

## DELICENSURE

On March 5, 2021, the Honorable Noel S. Hyde, Second Judicial District, entered an Order of Delicensure against Richard H. Reeve, delicensing him from the practice of law. The court determined that Mr. Reeve violated Rule 1.15(a) (Safekeeping Property), Rule 1.15(d) (Safekeeping Property), Rule 5.4(a) (Professional Independence of a Lawyer), and Rule 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
A client retained Mr. Reeve following the wrongful death of her husband. At the time, Mr. Reeve was an employee of a law firm. The litigation involved was a federal class action that resulted in a master settlement agreement (Agreement). This Agreement resolved all issues related to the claims that resulted from the death of the client's husband. The administrators of the Agreement indicated that the amount of the settlement would be made payable to the law firm. However, Mr. Reeve intervened and insisted that the check be made payable to himself, individually. Mr. Reeve deposited the funds into a personal account. Mr. Reeve thereafter accessed funds in the account for his personal use and purposes. Mr. Reeve did not communicate to the client that the funds had been received.

Mr. Reeve left the employment of the first law firm and became employed with a second law firm. There was an agreement that Mr. Reeve would continue to act in connection with the case when the matter arrived at the second law firm. The client contacted Mr. Reeve's paralegal regarding the status of her case. The paralegal communicated concerns regarding the case to representatives of the second law firm. The representatives made a phone call to Mr. Reeve who falsely represented that all funds received in the case were in first law firm's trust account and he had not used any funds. The representatives contacted the first law firm

and confirmed that no funds had been deposited or held in their trust account. Mr. Reeve substantially misrepresented facts in relation to the settlement, receipt of funds, continuing of litigation, and disbursement of funds.

The client expressed concern over the continuous integrity of the funds. Mr. Reeve prepared a screenshot of the funds to suggest to the client and her son that the funds had been preserved and had just been turned over to her several months late. The Court found that the screenshot was a misrepresentation and did not accurately represent the facts, that Mr. Reeve knew this at the time he prepared the document.

Mr. Reeve made an agreement with his paralegal wherein he agreed to pay her a certain percentage of the attorney's fee portion from any personal injury or wrongful death matters on which she assisted him. The paralegal was to be paid a specific amount tied to this case, and even calculated the amount due to her. The case in which she was to receive funds was a case in which the attorney who signed the agreement had failed to safeguard the funds of the client.

## DELICENSURE

On April 1, 2022, the Honorable Robert C. Lunnen, Fourth Judicial District, entered an Order of Delicensure against Aaron D. Banks, delicensing him from the practice of law. The court determined that Mr. Banks violated Rule 1.1 (Competence), Rule 1.3 (Diligence), Rule 1.4(a) (Communication), Rule 1.5(a) (Fees), Rule 1.16(d) (Declining or Terminating Representation), and 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
This case involves two client matters. In the first matter, a client was involved in an automobile accident and retained Mr. Banks to represent her and her claim for damages to her automobile and personal injuries she incurred as a result of the accident. During the months after the client retained Mr. Banks, she often expressed concern about the payment of numerous medical bills that she was incurring as a result of her injuries and corresponding medical treatment. During this time, Mr. Banks did not discuss with or explain to the client any requirement to satisfy her personal injury protection (PIP) coverage. Mr. Banks failed to timely obtain the needed information to obtain a PIP exhaustion letter from her auto insurance carrier which caused unreasonable delay in the payment of her of medical bills and asserting her claim.

Mr. Banks informed the client that he was communicating with the insurance adjustor for her claim. The insurance adjustor only had one or two conversations with Mr. Banks and they never discussed settling the client's claim. Mr. Banks falsely represented to the client that the insurance company had made an offer to settle the client's personal injury claim. Mr. Banks generated an email purportedly from the insurance adjustor to the client with a settlement and release. The settlement and release was not sent by the insurance company. The client signed the settlement and release and Mr. Banks told the client payment would be received within three weeks. Mr. Banks later claimed the payment was delayed because the insurance company had hired outside counsel to review the claim.

The client attempted to obtain her case file from Mr. Banks but was unsuccessful. Additional efforts by her new attorneys to obtain the case file were not successful.

In the second matter, a client hired Mr. Banks to file a petition to adopt her biological daughter. The client's father (Father) had adopted her daughter a few years prior and agreed to consent to the adoption. Mr. Banks sent a consent form to Father and requested he sign and return the document to Mr. Banks. Father signed the consent form promptly, had it notarized and returned the completed form to Mr. Banks.

Mr. Banks told the client that he needed to postpone the final adoption hearing, the court had dropped the ball but he would set a new hearing, proposing two different dates for the client. The client selected a new date and made arrangements with Mr. Banks for Father to receive a subpoena by email. Then, Mr. Banks again informed the client the hearing was cancelled and gave a new date for the final adoption hearing. The client received a message from Mr. Banks after arriving at the courthouse for the new final adoption hearing date. The message from Mr. Banks indicated that he had received a signed order from the judge and a hearing was no longer necessary. Mr. Banks claimed that he sent the order to the client by mail.

Mr. Banks never filed a petition for adoption on behalf of the client, so there were no proceedings and no order as represented by Mr. Banks to the client. The client was unable to hire another attorney to file the adoption because she did not have the money to pay for another round of legal fees.

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Effective December 15, 2020, the Utah Supreme Court re-numbered and made changes to the Rules of Lawyer and LPP Discipline and Disability and the Standards for Imposing Sanctions. The new rules will be in Chapter 11, Article 5 of the Supreme Court Rules of Professional Practice. The final rule changes reflect the recommended reforms to lawyer discipline and disability proceedings and sanctions contained in the American Bar Association/Office of Professional Conduct Committee's Summary of Recommendations (October 2018).

## ADMONITION

On July 28, 2022, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rule 1.8(i) (Conflict of Interest: Current Clients: Specific Rules) of the Rules of Professional Conduct.

*In summary:*
A client retained an attorney to represent him in divorce proceedings. During a temporary orders hearing, the client and his wife stipulated to the sale of the marital home. Five days later, the attorney filed a Notice of Lien on the home pursuant to Utah Code Section 38-2-7. The client agreed to have the lien taken however, the lien was taken inconsistent with the statute. The home was sold and the attorney's lien for attorney's fees were paid in full from the proceeds of that sale. The attorney withdrew from his representation of the client. A final decree of divorce was later entered.

## PUBLIC REPRIMAND

On August 8, 2022, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Paul D. Benson for violating Rules 1.1 (Competence), 1.3 (Diligence), 1.4(a) (Communication), 1.4(b) (Communication), and 1.5(a) (Fees) of the Rules of Professional Conduct.

*In summary:*
This case involves three matters. In the first matter, a client retained Mr. Benson for the purpose of filing for bankruptcy.

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The client understood from Mr. Benson that they should spend their tax refund before filing for bankruptcy, so they spent their tax refund and dropped off the receipts to Mr. Benson's office. The client also understood from Mr. Benson's staff that it would take two to three weeks before they would have the bankruptcy case number. When the client had not heard anything, they began calling Mr. Benson's office but did not receive a call back. Eventually, the client was able to speak with a staff member who stated Mr. Benson needed more information. The client provided the information and indicated they had left messages regarding questions they had but had not received a response. Eventually, Mr. Benson filed the client's bankruptcy petition. Mr. Benson failed to provide a thorough explanation to the client regarding how her tax refund would be calculated and how much of it would be taken by the trustee when Mr. Benson filed the client's bankruptcy petition.

In the second matter, a client retained Mr. Benson to file a Chapter 13 bankruptcy. Mr. Benson filed the petition but failed to provide required information to the Court to further the client's case. The client faxed information on multiple occasions to Mr. Benson but did not receive a response. The client also faxed information to Mr. Benson regarding a dispute with a creditor but did not receive a response. The client only had contact with Mr. Benson two or three times during the representation. Mr. Benson failed to timely respond to motions to dismiss filed by the trustee in the client's case.

In the third matter, Mr. Benson filed a bankruptcy petition on behalf of a client. Mr. Benson failed to timely pursue the bankruptcy in a manner consistent with the client's interest. Mr. Benson failed to timely submit proof of the financial education class in the first bankruptcy and failed to timely file a motion to reopen. Mr. Benson filed a second bankruptcy on behalf of the client. Regarding the second bankruptcy, Mr. Benson failed to timely submit proof of the financial education class. Mr. Benson failed to respond to the client's attempts to communicate with them. Mr. Benson charged and collected excessive fees from the client considering the work completed and results obtained, particularly given that the bankruptcy had to be refiled.

## INTERIM SUSPENSION

On May 23, 2022, the Honorable Sean M. Petersen, Fourth Judicial District Court, entered an Order of Interim Suspension, pursuant to Rule 11-564 of the Rules of Lawyer Discipline, Disability and Sanctions against Sonny J. Olsen, pending resolution of the disciplinary matter against him.

*In summary:*
Mr. Olsen was placed on interim suspension based upon convictions for the following criminal offenses: Aggravated Assault, a 3rd Degree Felony; and Criminal Mischief (DV), a Class A Misdemeanor.

## RESIGNATION WITH DISCIPLINE PENDING

On May 6, 2022, the Utah Supreme Court entered an Order Accepting the Resignation with Discipline Pending of Kyle W. Jones for violation of Rule 1.15(a) (Safekeeping Property), Rule 1.15(c) (Safekeeping Property), Rule 8.1(b) (Bar Admission and Disciplinary Matters), and Rule 8.4(b) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Jones represented a mortgage lender (Lender) in a debt collection matter against a husband (Husband) and wife (Wife). Another company (Second Lender) acquired the account and at that time Mr. Jones was instructed to take no further action on behalf of the Lender.

Mr. Jones negotiated with the debtors representing that he was negotiating on behalf of his client. The couple agreed to settle the matter for a sum, payable before a certain date. During the negotiations, Mr. Jones represented that he had talked with his client and they had given a large discount to the couple but would not give another discount. Mr. Jones also indicated that the offer needed to be accepted and paid by a certain date.

Wife sent Mr. Jones a settlement check in the amount of $13,000 payable to Lender for a portion of the settlement amount. Mr. Jones acknowledged receipt of the payment and told Wife the balance owing to fully resolve the matter and gave a date it was purportedly due. Mr. Jones did not inform Wife the loan had been sold and did not tell Wife that Lender was not the current entity to whom the check should be made payable. Mr. Jones endorsed the check and presented it for deposit.

At that time, the couple was unable to pay the remaining balance. Mr. Jones continued settlement negotiations with the couple and indicated he was speaking on behalf of Lender. Wife asked if Lender would accept a certain amount to settle the account. Mr. Jones emailed Wife stating the amount was acceptable. He further stated that once he received the money, the debt would be satisfied, he would mail the Satisfaction of Judgment and the lien on the couple's home would be lifted. Mr. Jones did not inform Wife the loan had been sold nearly

three years prior and did not explain the correct entity to whom the check should be made payable. When Wife asked if the check should be sent to Mr. Jones' office and made out to Lender, Mr. Jones responded in the affirmative. Mr. Jones endorsed the check in the amount of $20,000 and presented it for deposit.

The case against the couple was dismissed with prejudice. In additional to the removal of the lien by Lender, Wife also requested a "charge off" letter from Lender. Mr. Jones indicated he would obtain the letter from Lender or provide one himself. Wife continued to email Mr. Jones because she had not received the Satisfaction of Judgment or Release of Lien. Mr. Jones did not respond.

The couple decided to sell their home and requested documentation from Mr. Jones demonstrating the loan had been paid off so they could provide proof to the title company. Mr. Jones responded stating that the full amount had been paid and that the case had been dismissed with prejudice. He attached a copy of the order of dismissal. Wife spoke to the loan companies to sort out why there was still a lien attached to her home. Wife discovered that Lender and Second Lender had no record of receiving the funds she paid to Mr. Jones.

The OPC requested that Mr. Jones provide documents demonstrating where the first payment to Mr. Jones had been held during the pendency of the matter. The letter also requested that Mr. Jones specify when he sent the second payment to Second Lender given the delay in releasing the lien. Mr. Jones responded but did not provide the requested records. The OPC wrote to Mr. Jones and again requested the documents he previously failed to provide. Mr. Jones responded again claiming the funds were held in trust but without providing the records.

The OPC obtained the bank records by Subpoena. An examination of the records demonstrated that the first payment was not held in trust during the pendency of the matter. There were no checks issued from Mr. Jones' trust account to First or Second Lender either referencing Wife or in an amount near the payment she made. Shortly after Wife's second payment was deposited into Mr. Jones' trust account, Mr. Jones began transferring money to his personal account. There were no checks issued from Mr. Jones' trust account to First or Second Lender either referencing Wife or in an amount near the second payment she made.


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## PUBLIC REPRIMAND

On October 19, 2022, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Margaret S. Edwards for violating Rules 8.4(b) (Misconduct) and 8.4(d) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
A prosecutor was assigned to prosecute a defendant for three domestic violence felonies. The prosecutor and the defendant's attorney negotiated a plea agreement where the defendant would plead guilty to two third degree felonies and two misdemeanors. As the prosecutor was in the courtroom waiting for the judge to take the bench, Ms. Edwards approached the prosecutor and asked to speak with him about the case. Ms. Edwards informed the prosecutor that she represented third-parties who had an interest in the defendant's cases. Ms. Edwards represented that her clients were friends of the defendant who had served with him multiple tours of duty during his extensive time in the military. Ms. Edwards represented that these friends were taking a special interest in the case and they were concerned that the defendant would be pleading guilty to felony-level offenses.

The prosecutor said he could not discuss the case with Ms. Edwards. However, she made statements to him to the effect that "he could be a hero" if he were to reduce the charges, and that she had "looked [him] up on line." Ms. Edwards made additional statements including that: "he was a smart person who could be counted on to the right thing," that the defendant's friends were "dangerous people," and that he would potentially "make enemies" if the plea were to be entered as planned. The prosecutor felt Ms. Edwards was threatening him and was also concerned for the victim.

Ms. Edwards was charged with one count of Threats to Influence Official Action in violation of Utah Code Section 76-8-104.

*Aggravating Factor:*
Ms. Edwards was criminally charged and entered into a diversion agreement on an issue that affects public trust.

## SUSPENSION

On April 7, 2022, the Honorable Matthew Bates, Third Judicial District, entered an Order of Suspension against Joshua Paul Eldredge, suspending his license to practice law for a period of two years. The court determined that Mr. Eldredge violated Rule 1.3 (Diligence), Rule 1.4(a) (Communication), Rule 1.5(a) (Fees), Rule 8.1(b) (Bar Admission and Disciplinary Matters), Rule 8.4(b) (Misconduct), and Rule 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
This case involves two client matters. In the first matter, a man filed a petition for divorce and a few months later retained Mr. Eldredge to represent him in the matter. Initially, Mr. Eldredge filed documents in the case that contained errors. The client told Mr. Eldredge he had not been able to spend time with his daughter. Mr. Eldredge stated he would see what he could do but failed to pursue visitation rights on behalf of his client. Throughout the litigation, the client attempted to contact Mr.


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Eldredge for updates and left messages. Mr. Eldredge failed to respond to the requests for information.

The court scheduled an evidentiary hearing in the matter but neither Mr. Eldredge nor the client appeared for the hearing. The client contacted Mr. Eldredge's previous firm after the hearing and asked why he was not notified of the hearing. Eventually the court scheduled and held a pretrial conference after an unsuccessful mediation. The client continued to attempt to contact Mr. Eldredge to obtain information about the status of his case and the next steps in the matter. The court gave notice that due to inactivity, the case would be dismissed. Mr. Eldredge failed to address the court's notice and failed to appear at the order to show cause hearing and the case was dismissed. The client continued to contact Mr. Eldredge after the case was dismissed. The OPC sent a Notice requesting Mr. Eldredge's response. Mr. Eldredge did not timely respond to the Notice.

In the second matter, a client retained Mr. Eldredge to represent her in her divorce matter, paying a fee for his services. The client sent Mr. Eldredge the necessary paperwork to draft the petition for divorce. Mr. Eldredge stated that he would provide a draft copy to the client. Several months passed while the client attempted to contact Mr. Eldredge to obtain status updates or a copy of the draft petition. Meanwhile, the client's husband filed his own petition for divorce and a motion for temporary orders. The client contacted Mr. Eldredge indicating her husband gave her documents, including one that awarded him custody of their children and she didn't know what to do with them and asked that he contact her as soon as possible. Mr. Eldredge stated that he filed the client's petition for divorce and that it was out for service, neither of which was true. The client continued to attempt to contact Mr. Eldredge until he recommended that she retain another attorney for representation. The client requested a refund to hire another attorney to represent her.

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Mr. Eldredge was charged with DUI and other violations. Mr. Eldredge was sentenced to thirty days in jail for impaired driving. The total time was suspended, and a fine was imposed.

## RESIGNATION WITH DISCIPLINE PENDING

On September 7, 2022, the Utah Supreme Court entered an Order Accepting the Resignation with Discipline Pending of James J. Packer for violation of Rules 8.4(b) (Misconduct) and 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Packer entered a plea of no contest to one count of Communications Fraud, a second-degree felony in violation of Utah Code Section 76-10-1801(1)(d).

Mr. Packer was working as general counsel for a company and met with a man interested in investing funds in a company on behalf of Chinese citizens trying to obtain visas through investment properties. When the company failed to meet the statutory requirements to obtain the visas, Mr. Packer advised the man to invest in a different company. Mr. Packer was the owner of the second company but this was not disclosed to the man. Mr. Packer created documents and made statements that made the business venture look promising and to make it seem like a profitable investment. Mr. Packer pretended to invest money of his own presenting the man with a withdrawal slip from one bank account and then a subsequent deposit slip to into the company's account.

The man invested money in the scheme and later discovered that Mr. Packer had taken some of the money intended for the company and deposited it into his personal account. The remaining funds were used by Mr. Packer to pay off loans.

## RESIGNATION WITH DISCIPLINE PENDING

On September 27, 2022, the Utah Supreme Court entered an Order Accepting the Resignation with Discipline Pending of Jeffery Price for violation of Rule 1.15(a) (Safekeeping Property), Rule 1.15(c) (Safekeeping Property), and Rule 1.15(d) (Safekeeping Property) of the Rules of Professional Conduct.

*In summary:*
Jeffery Price was the personal and business attorney for a client for many years. The client's company (Company) entered into a purchase agreement with a construction company for equipment built by the Company. The terms of the purchase agreement required the construction company to deliver a portion of the purchase price into Mr. Price's attorney trust account with subsequent payments to be made into the trust account as terms of the agreement were fulfilled. The money was then to be wired to the Company's designated account at different stages of the manufacturing and shipping process. Mr. Price received the

funds for the initial payment and subsequent payments and transferred them to the Company. Mr. Price received the final payment from the Company. Four days later the client provided Mr. Price with bills of lading for delivery of the equipment and requested that Mr. Price make the final wire transfer to the Company. Over the next several days, the client sent follow-up texts and emails to Mr. Price because he had not received the wire transfer. Mr. Price admitted to the client that he had used the remaining funds for his own personal use.

## DELICENSURE

On October 24, 2022, the Honorable Kent Holmberg, Third Judicial District, entered an Order of Delicensure/Disbarment against David M. Rees, delicensing him from the practice of law. The court determined that Mr. Rees violated Rules 8.4(b) (Misconduct) and 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Rees was subject to an indictment and charged with twenty-seven offenses. Based upon the indictment, Mr. Rees accepted a plea agreement, charging him with conspiracy, a class D felony in violation of 18 U.S.C. § 371.

Mr. Rees met a man (co-defendant) and started obtaining hard-money loans from him to fund his own business ventures. Mr. Rees never acted as co-defendant's attorney, never provided legal advice or billed for legal services. Mr. Rees was aware that co-defendant used various illegal practices to increase his stock holdings and proceeds and assisted co-defendant with some of those practices. Mr. Rees knew that co-defendant routinely used "straw" owners or nominees to open accounts, hold shares of stock, and incorporate entities. Co-defendant also instructed Mr. Rees to facilitate the sale of stocks using the nominees. Whenever co-defendant used a nominee, he continued to exercise control over the asset.

Mr. Rees participated in establishing nominees for co-defendant including nominees for transactions that co-defendant did not want to perform under his name in the United States. Mr. Rees' law firm received proceeds from the sale of stock and Mr. Rees arranged for those proceeds to be forwarded from the firm's IOLTA account to co-defendant's account. Mr. Rees assisted in diverting funds that were for international nominee transactions, instead the funds were divided among Mr. Rees, his assistant and others. Mr. Rees also participated in the publication of misleading promotional materials to increase liquidity of stock.

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## PROBATION

On December 9, 2022, the Honorable Joseph M. Bean, Second Judicial District Court, entered an order of discipline against Roy D. Cole, placing him on probation for a period of one year based on Mr. Cole's violation of Rule 1.16(b) (Declining or Terminating Representation), Rule 1.16(c) (Declining or Terminating Representation), and Rule 1.16(d) (Declining or Terminating Representation) of the Rules of Professional Conduct.

*In summary:*
A client retained Mr. Cole to represent him in a custody matter. The court sent notice of an order to show cause hearing that was to be an evidentiary hearing. Two days before the hearing, Mr. Cole requested to appear at the hearing by telephone. A day before the hearing, Mr. Cole notified the client he was going to withdraw if the client did not bring his bill current or if Mr. Cole was unable to get a continuance. That same day, Mr. Cole filed a motion to withdraw from the case.

The court denied Mr. Cole's request to appear by telephone. Mr. Cole did not appear at the hearing and the client proceeded *pro se* after the court denied the request for a continuance. The client was not prepared for an evidentiary hearing without counsel but had to proceed because Mr. Cole did not appear. The court granted an award of attorney's fees against the client. At the time of the hearing, the client believed Mr. Cole was his attorney and would appear at the hearing on his behalf.

*Aggravating factors:*
Prior record of discipline; selfish motive; and substantial experience in the practice of law.

## SUSPENSION

On October 19, 2022, the Honorable Samuel P. Chiara, Eighth Judicial District, entered an Order against Roland F. Uresk, extending the suspension of his license to practice law for one additional year and imposing a fine of $500 for contempt of court.

*In summary:*
Mr. Uresk was suspended from the practice of law for a period of one year effective June 1, 2022 (Order). On at least three occasions after the effective date of his suspension, Mr. Uresk was listed as the attorney of record, appeared before a court on behalf of another and allowed that court to believe that Mr. Uresk was a practicing lawyer. In one case, Mr. Uresk sought a continuance on behalf of a client, which was granted. By doing


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so, he was practicing law while on suspension.

Mr. Uresk failed to comply with Rule 11-570 of the Utah Supreme Court Rules of Professional Practice upon his suspension. This rule would have alerted a court and opposing counsel of the status of his license after suspension and would have alerted the court of Mr. Uresk's inability to represent any individual. Mr. Uresk was aware of the original Order of Suspension and he knew or should have known what was required of him under the Order. Mr. Uresk misled the court by not withdrawing, not filing the correct notice under Rule 11-570 and by not indicating to the court on the record that he could not represent a client for any purpose.

## DELICENSURE/DISBARMENT

On September 21, 2022, the Honorable Chelsea Koch, Third Judicial District, entered an Order of Delicensure against Russell W. Hartvigsen, delicensing him from the practice of law. The court determined that Mr. Hartvigsen violated Rule 1.1 (Competence), Rule 1.3 (Diligence), Rule 1.4(a) (Communication), Rule 1.4(b) (Communication), Rule 1.5(a) (Fees), Rule 1.15(a) (Safekeeping Property), Rule 1.15 (d) (Safekeeping Property), Rule 1.16(a) (Declining or Terminating Representation), Rule 1.16(d) (Declining or Terminating Representation), Rule 3.4(c) (Fairness to Opposing Party and Counsel), Rule 8.1(b) (Bar Admissions and Disciplinary Matters), and Rule 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
This case involves multiple client matters. In one matter Mr. Hartvigsen failed to competently prepare and arrange service of the petition for divorce and in another case, he failed to adequately prepare and schedule a mediation for the case or otherwise provide competent representation.

In all of the matters, Mr. Hartvigsen failed to diligently represent his clients. In a few cases, clients paid him for mediations, but he did not schedule or participate in the mediations. In several other matters, he did not timely file petitions for family law matters and/or he failed to timely serve petitions or other pleadings on opposing parties. In other cases, Mr. Hartvigsen failed to diligently pursue cases, including failing to pursue issues, missing hearings or failing to communicate with opposing counsel or third parties. In one case the client requested that the Office of Recovery Services (ORS) recalculate child support because her ex-spouse had become employed. Mr. Hartvigsen agreed to accept service on the client's behalf but failed to file anything to that effect with ORS. Mr. Hartvigsen also failed to respond to his client's requests for information. After about three months, ORS finally agreed to work directly with the client. Mr. Hartvigsen did not file a notice or request to withdraw, nor did he notify the client of a hearing date in her court case or appear for the hearing.

In three other cases, Mr. Hartvigsen failed to provide his clients' financial disclosures or discovery responses to opposing parties, even when ordered to do so by the court. Opposing parties were awarded attorney's fees. In one of those cases, after failing to provide his client's financial disclosures, Mr. Hartvigsen did not notify the client about a petition to modify temporary orders and he and the client did not appear at the hearing. Opposing party was awarded sole custody of the children, the client's visitation was ordered to be supervised, and the client was found in contempt and ordered to pay attorney's fees. In a different matter, Mr. Hartvigsen was directed at a hearing on an order to show cause for dismissal to certify the case for trial or request a mediated pretrial settlement conference within sixty days but he did not file anything.

In all the matters, Mr. Hartvigsen failed to reasonably communicate with his clients about matters in the case, failed to respond to requests for information and/or failed to explain matters and developments in the case to the clients so they could make informed decisions regarding the representation. In the case involving the order to show cause for dismissal, the client visited Mr. Hartvigsen's office and found it closed with no forwarding address. In another case, the client contacted Mr. Hartvigsen about questions related to opposing party moving

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out of state and other time sensitive issues but he failed to adequately respond. In a paternity case, the client sent Mr. Hartvigsen multiple requests for information and documents but Mr. Hartvigsen failed to respond or he provided little meaningful information.

In four of the cases, Mr. Hartvigsen misrepresented to clients the status of the clients' cases, the work being done and that he had or would be sending refunds of fees. In one of these cases, he made misrepresentations about his efforts to serve and send the complaint and proposed stipulations to an opposing party. In two of the cases, he informed the client that he was contacting the court to schedule hearings in the case when the dockets did not reflect that this was happening.

In three of the matters, Mr. Hartvigsen had a fee agreement with the clients stating the fees were earned upon receipt, but Mr. Hartvigsen did nothing to earn the fees when they were collected. In eleven of the matters, Mr. Hartvigsen collected an excessive fee to represent the client given the work performed and the results obtained. In one case, the client paid a flat fee to request and attend a judicial settlement conference. A week later, a second fee was taken from the client without authorization. Mr. Hartvigsen indicated he would reverse the second charge but failed to do so and did little meaningful work for the funds received. After not hearing back from Mr. Hartvigsen, the client requested the entire payment be refunded and for Mr. Hartvigsen to withdraw. Mr. Hartvigsen did not timely refund any of the money and he stopped returning the client's communications.

In two of the matters, Mr. Hartvigsen failed to deposit advanced fees into an attorney trust account and failed to maintain the funds he collected from the clients in an attorney trust account until the fees were earned and costs were incurred. In another matter, Mr. Hartvigsen failed to timely provide, upon request, an accounting of funds collected in advance. In seven matters, Mr. Hartvigsen failed to protect his clients' interests when the representation ended by failing to timely refund the advanced payments he had not earned in six of those matters, failing to file a withdrawal from the matter when the representation terminated in five of those matters and failing to return client files as requested in two of the seven matters. In one case, he stopped communicating with the client after he was paid and did not provide the client with a refund. Also, in the matter with


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ORS and another case, the clients made multiple requests for Mr. Hartvigsen to file a withdrawal as their attorney of record, but he failed to do so.

In a few cases, Mr. Hartvigsen failed to prepare proposed orders as ordered by the court. In one of these matters, he failed to prepare a proposed temporary order awarding child support to his client. Instead, opposing party filed a proposed order requiring Mr. Hartvigsen's client to pay child support to the opposing party. Mr. Hartvigsen did not object and the court signed the order. The client contacted Mr. Hartvigsen when she learned of the order. Mr. Hartvigsen filed a proposed corrected temporary order but the court declined to sign it because of opposing party's prior order that had been signed without objection. Mr. Hartvigsen did not file any motions or take any other action to correct the order and the client's paycheck was garnished for several months. The client retained new counsel who was able to correct the prior order. The OPC also sent a Notice of Informal Complaint in each matter requesting Mr. Hartvigsen's responses. Mr. Hartvigsen did not timely respond to the notices.

Based on these cases and additional other matters, the court found the following aggravating and mitigating factors:

*Aggravating factors:*
Dishonest or selfish motive, pattern of misconduct and multiple offenses involving twenty-three matters, refusal to acknowledge the wrongful nature of the misconduct involved either to the client or to the disciplinary authority, and lack of good faith effort to make restitution or to rectify the consequences of the misconduct involved.

*Mitigating factor:*
Absence of a prior record of discipline.

## DELICENSURE/DISBARMENT

On November 30, 2022, the Honorable Sean Petersen, Fourth Judicial District, entered an Order of Discipline: Delicensure of Sonny J. Olsen for violation of Rule 1.8(a) (Conflict of Interest: Current Clients: Specific Rules), Rule 1.8(h) (Conflict of Interest: Current Clients: Specific Rules), Rule 8.4(b) (Misconduct), and Rule 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
This case involves two matters. The first matter involved the following convictions: Mr. Olsen pled guilty to one count of Aggravated Assault, a 3rd Degree Felony, Utah Code Section 76-5-103(1) and one count of Criminal Mischief, a Class A Misdemeanor, Utah Code Section 76-6-106(2)(c).

Mr. Olsen's convictions were based on his knowingly threatening another with unlawful force to cause bodily injury with a dangerous weapon. Mr. Olsen also intentionally damaged the property of another who was a cohabitant.

In the second matter, a woman was facing the prospect of Guardianship proceedings by her family due to her increasing incapacity. The woman retained Mr. Olsen as her attorney to provide legal, business management, and consulting services for a monthly fee. Mr. Olsen assumed the additional role as the client's attorney-in-fact under a durable power of attorney, which gave him wide-ranging power to act on the client's behalf, including control of her bank accounts and the ability to sign checks on the client's behalf. Mr. Olsen nominated himself as the conservator of the client's estate in the event of her incapacity and made himself the co-trustee of her living trust agreement.

Approximately a year and a half later, Mr. Olsen formed a limited liability company (Company). Mr. Olsen drafted the Company's operating agreement which stated that its purpose was to hold and own control of interests in real property and manage other assets of the sole member, his client. Mr. Olsen drafted five separate assignments of interest, which transferred the client's interests in various real estate investments to the Company. Mr. Olsen drafted a vesting agreement that gave him a certain percentage of interest in the Company and a new employment agreement that increased his salary to provide more compensation to him and his client's financial advisor. Mr. Olsen failed to advise the client of the terms of the agreements and misrepresented the value of the Company's assets after the transfer. After the client's accountant learned that Mr. Olsen had created the operating agreement, Mr. Olsen misrepresented to the accountant that the client had approved the agreement and was represented by independent counsel in the transaction.

Mr. Olsen and the financial advisor each vested additional units in the Company. Using the access he had to the client's bank account, Mr. Olsen transferred money to himself to pay his personal tax liability associated with the transfer of units in the Company. Later, Mr. Olsen determined to sell back to his client the same units he received at double the price, using his authority under the durable power of attorney to transfer funds from the client's accounts to himself.

Early the next year, Mr. Olsen again amended his employment agreement increasing his salary and, among other things, providing him additional vested units in the Company. While the client was hospitalized and in critical condition, Mr. Olsen transferred money from her bank accounts to himself and the financial advisor for the resale of Company units. These units were sold to the client at double the price. A few days later, the client was transferred to an intensive care until of a hospital out of state. The next day, Mr. Olsen instructed the financial advisor to transfer money to the client's account and he would make payments to each of them for their remaining Company units. Mr. Olsen used the client's funds to pay his and the financial advisor's personal tax liabilities associated with this resale. The client was transferred from the hospital to a rehabilitation facility. The next day, the client offered Mr. Olsen money to remove her from the facility. Mr. Olsen took a private plane to remove the client from the facility against medical advice. Mr. Olsen drafted a handwritten directive for the client that absolved him of liability if harm came to the client due to leaving the facility. The agreement also made Mr. Olsen the fully vested CEO


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of the Company. Under threats from the client's family regarding his responsibility for her condition, Mr. Olsen sought a more formal agreement from the client to indemnify him against the claims. Mr. Olsen hired another attorney (Attorney) to represent him in drafting of the indemnification agreement, which the client signed. Mr. Olsen later misrepresented to the client and a third attorney that Attorney was the Company's attorney.

Over the following months, Mr. Olsen continued to sell Company units back to the client and transferred money from the client's accounts to himself. Mr. Olsen did not obtain a valuation of the units. The client's accountants sent a letter to the client, Mr. Olsen and the financial advisor raising concerns regarding the transactions of the Company and its members and recommended an independent audit. Around this same time, the client was again hospitalized. Mr. Olsen drafted an agreement authorizing additional payments by the client to pay his personal tax liabilities. Mr. Olsen misrepresented the date the client signed the document.

An accounting firm was retained to conduct an audit and investigate Company transactions. Mr. Olsen represented to the accounting firm that Attorney was Company's attorney when in fact he was Mr. Olsen's personal attorney.

The client's condition continued to deteriorate to the point where her nurse told Mr. Olsen that the client required round the clock care. That same day, Mr. Olsen executed yet another employment agreement for the client to sign which included language purporting to release Mr. Olsen from all claims relating to his compensation and employment services or activities. The client terminated Mr. Olsen's employment.

## DELICENSURE/DISBARMENT

On November 21, 2022, the Honorable Linda M. Jones, Third Judicial District, entered an Order of Discipline: Delicensure of Eric C. Singleton for violation of Rule 8.4(b) (Misconduct) and Rule 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Singleton pled guilty to one count of Felony Bankruptcy Fraud, a violation of 18 U.S.C § 157(1) and (2).

Mr. Singleton devised, intended to devise and participated in a scheme to defraud the bankruptcy court, the bankruptcy trustee, his clients and their creditors through bankruptcy proceedings under Title 11, United States Code. Prior to filing bankruptcy for his clients, Mr. Singleton advised them to transfer money from the sale of their company to his client trust account to hold from the collection of a judgment in a state court collection case. Mr. Singleton represented to his clients that a portion of the money included his attorney's fees to represent them in the state case and he would maintain the remainder of the funds in his client trust account for safe keeping until their bankruptcy case was completed and he would return the money to them. Despite the promises and without their knowledge, Mr. Singleton withdrew the money from the account and spent the money for his business and personal benefit.

To avoid his clients' appearance at state court supplemental hearings and to hide that the money had been removed from his trust account, Mr. Singleton filed three bankruptcy petitions on behalf of his clients. In connection with his filings in the three cases, he falsely represented the value of his clients' assets, their liabilities, that his client had signed the documents in one case, and the amount of their unsecured debt. He also failed to disclose that his client had received funds from the sale of the client's assets and that the funds had been transferred to Mr. Singleton. In one of the cases, the court made findings that Mr. Singleton knew the clients were not eligible to file a chapter 13 case. All three bankruptcy cases filed for his clients were dismissed.

At a state court supplemental hearing, Mr. Singleton lied to the court about still having funds of his clients in his trust account although he knew he had withdrawn and spent the money a year prior to his testimony. The court ordered Mr. Singleton to appear at another supplemental hearing. In an effort to delay supplemental hearings in the state case, Mr. Singleton filed two bankruptcy petitions for himself. In the first petition, he falsely stated his estimated liabilities. The bankruptcy court dismissed the first case because of Mr. Singleton's failure to comply with the credit counseling requirements. Mr. Singleton allowed the bankruptcy court to dismiss the second bankruptcy case because he failed to file all the required bankruptcy documents.

Based on this case and another matter, the court found the following aggravating and mitigating factors:

*Aggravating factors:*
Prior record of discipline, dishonest or selfish motive, pattern of misconduct and multiple offenses, refusal to acknowledge the wrongful nature of the misconduct, substantial experience in the practice of law, lack of good faith effort to make restitution or to rectify the consequences of the misconduct involved, and illegal conduct.

*Mitigating factors:*
Imposition of other penalties.

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## ADMONITION

On December 20, 2022, the Honorable Andrew H. Stone entered an Order of Discipline: Admonition against an attorney for violating Rules 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

*In summary:*
Underlying claims concerning the attorney were dismissed by the court. However, it was determined that the attorney should receive an admonition for failing to timely respond to the OPC.

Aggravating circumstances: prior record of discipline, substantial experience in the practice of law.

Mitigating circumstances: lack of dishonest or selfish motive, extensive personal problems.

## INTERIM SUSPENSION

On January 26, 2023, the Honorable Keith A. Kelly, Third Judicial District Court, entered an Order of Interim Suspension, pursuant to Rule 11-564 of the Rules of Lawyer Discipline, Disability and Sanctions against Aaron Tarin, pending resolution of the disciplinary matter against him.

*In summary:*
Mr. Tarin was placed on interim suspension based upon convictions for the following criminal offenses:

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## SUSPENSION

On December 23, 2022, the Honorable Michael Westfall, Fifth Judicial District, entered an Order of Suspension against Cason M. Leavitt suspending his license to practice law for a period of three years. The court determined that Mr. Leavitt violated Rule 1.1 (Competence), Rule 5.5(a) (Unauthorized Practice of Law; Multijurisdictional Practice of Law), Rule 7.1 (Communications Concerning a Lawyer's Services) and Rule 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

*In summary:*

Mr. Leavitt has never been licensed to practice law in the State of Arizona. Mr. Leavitt's license to practice law in Utah was administratively suspended for failure to comply with Mandatory Continuing Legal Education requirements. Mr. Leavitt maintained an online presence that omitted pertinent information regarding his law license with the intent to mislead clients into assuming that he was licensed to practice law in Arizona.

An Arizona resident hired Mr. Leavitt to prepare a will, powers-of-attorney, a living will, advanced directives and a trust. Mr. Leavitt met with the client in their home to gather information from them in order to prepare the documents. Mr. Leavitt did not inform the client that he was not licensed to practice law in Arizona. The client paid Mr. Leavitt for the estate planning work but the work Mr. Leavitt performed was incomplete and did not satisfy the requirements of what the client needed.

The client later discovered Mr. Leavitt was not licensed to practice law in Arizona and reported his conduct to the State Bar of Arizona. Mr. Leavitt was directed to submit a written response to the State Bar of Arizona Bar Counsel to address the client's allegations. Mr. Leavitt did not respond. A Probable Cause Order was filed before the Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona. Mr. Leavitt did not respond and his default was entered.

The OPC sent a Notice to Mr. Leavitt. Mr. Leavitt did not timely respond to the Notice.

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## PROBATION

On May 15, 2023, the Honorable Don M. Torgerson, Fifth Judicial District Court, entered an order of discipline against Ricky D. Bonewell, placing him on probation for a period of one year based on Mr. Bonewell's violation of Rule 1.3 (Diligence), Rule 1.4(a) (Communication), and Rule 5.3(a) (Responsibilites Regarding Nonlawyer Assistants) of the Rules of Professional Conduct.

*In summary:*
A client retained Mr. Bonewell to file an appeal of the decision in her disability case. The client provided a letter from her doctor that Mr. Bonwell requested to be used in a good cause for late filing hearing request. While the client believed everything in her case had been properly submitted, the letter was never submitted for her appeal. Moreover, a hearing was never requested for the appeal.

Mr. Bonewell did not communicate with the client after the initial consultation he had with her. The client only communicated with Mr. Bonewell's staff after the initial consultation. The client frequently called or sent email messages to Mr. Bonewell's office to obtain a status update on her case but the staff did not provide answers to her questions. The client frequently spoke with a member of Mr. Bonewell's staff who blamed issues on former co-workers, being locked out of the system or who couldn't find her claim because her files were spread over four different systems.

The client terminated Mr. Bonewell's services and hired alternate counsel. The client filed a new claim and was awarded disability.

*Aggravating factors:*
Prior record of discipline; multiple offenses; vulnerability of victim; and substantial experience in the practice of law.

*Mitigating factors:*
Absence of a dishonest or selfish motive; and personal or emotional problems.

**DISCIPLINE PROCESS INFORMATION OFFICE**

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## ADMONITION

On June 2, 2023, the Honorable James D. Gardner, Third Judicial District, entered an Order of Discipline: Admonition against a lawyer for violating Rules 1.15(a) (Safekeeping Property) and 8.4(d) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
A lawyer represented a client in various legal matters. Among other things, the lawyer was retained to establish a trust (Trust) for the benefit of the client's children. The lawyer also served as trustee of the Trust. The lawyer also represented the client in criminal and civil matters. The lawyer deposited funds from the Trust, funds from the lawyer's representation of the client in other matters and funds from other clients into an lawyer trust account (Account). The lawyer used software to track money that went in and out of the Account, but eventually stopped using the software before the lawyer's services were terminated. The lawyer did not print out any of the accounting records from the software, nor did he have any accounting records from the Account during the relevant time frame related to the representation of the client and/or related to the Trust. The court found that the lawyer failed to keep complete records related to their representation of the client and related to the Trust for a period of five years after the termination of the representation.

The lawyer sent the client an email stating that the lawyer would pay the client money in an attempt to settle a dispute between them. Among other things, the email states that the lawyer needs a written assurance that no Bar Complaint would be filed against them as part of the agreement.

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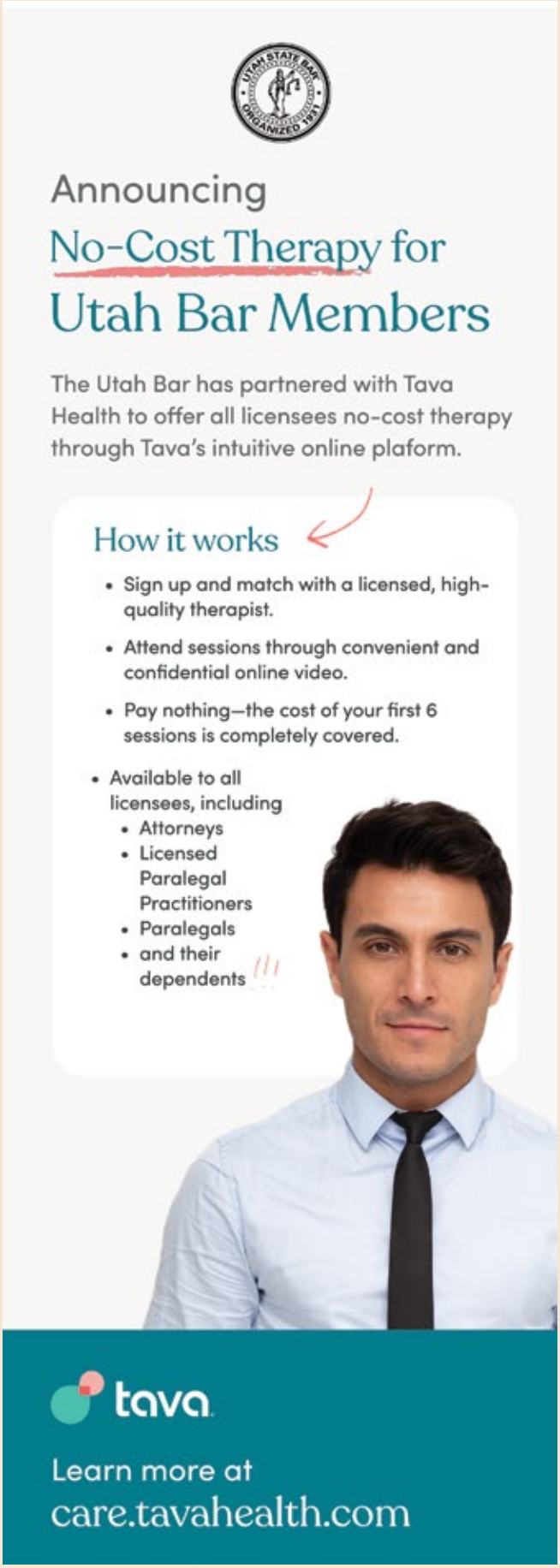


*Aggravating circumstances:*
Prior record of discipline, substantial experience in the practice of law, obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary authority.

*Mitigating circumstances:*
The client's actions toward the lawyer, delay in filing of bar complaint, remoteness of prior offenses.

## DELICENSURE

On June 8, 2023, the Honorable Samuel P. Chiara, Eighth Judicial District, entered an Order of Delicensure against Roland F. Uresk, delicensing him from the practice of law.

*In summary:*
The court signed an order placing Mr. Uresk on a three-year probation for violations of the Rules of Professional Conduct. Thereafter, the court determined that Mr. Uresk violated the terms of the probation order and suspended him from the practice of law for a period of one year. A few months later, the court extended the suspension of his license to practice law for one additional year and imposed a fine for contempt of court for practicing law while on suspension.

Thereafter, Mr. Uresk attempted to file documents in two district court cases on behalf of a client during the period of suspension. Mr. Uresk met with another client during the period of suspension. Mr. Uresk agreed to complete estate planning work on behalf of the client and took several documents, including deeds and other original documents from them. The client set up two appointments with Mr. Uresk, but he failed to appear for the first appointment. During the second appointment, Mr. Uresk informed the client he had lost all their documents. Mr. Uresk did not respond to further attempts made by the client to retrieve the documents.

Mr. Uresk did not respond to the OPC's requests for information related to his representation of the two clients.

The court held a review hearing regarding Mr. Uresk's contempt. Mr. Uresk had not paid the contempt fine and did not appear at the review hearing. The court ordered Mr. Uresk to appear at an evidentiary hearing to explain his conduct regarding the two clients. Mr. Uresk did not appear at the evidentiary hearing.

# Attorney Discipline

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## ADMONITION

On July 10, 2023, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against a lawyer for violating Rule 1.4(a) (Communication) of the Rules of Professional Conduct.

*In summary:*

A lawyer was retained to represent a client in a criminal matter over one year after the client had entered into a plea agreement and was convicted and sentenced. Over the next several years, the lawyer attempted to negotiate with the client's prosecutor to allow the client to withdraw their guilty plea. When such negotiations failed, the lawyer filed a petition for post-conviction relief. The Court ultimately found the client's petition was time-barred. The lawyer filed a Notice of Appeal, but ultimately did not pursue the appeal. Separately, the lawyer also assisted the client with matters before the Utah Board of Pardons and Parole.

Although the lawyer engaged in frequent email communications and periodic telephone calls with the client throughout the lawyer's representation, the communications were insufficiently informative because they failed to provide the client with specific and detailed information regarding the negative outcome of the client's petition for post-conviction relief.

## PUBLIC REPRIMAND

On July 28, 2023, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Brent A. Blanchard for violating Rule 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

*In summary:*

A client filed a complaint with the OPC against Mr. Blanchard regarding communication issues they were having with his representation in a civil lawsuit. Shortly after the complaint was filed, Mr. Blanchard contacted the client and continued his work on the case. The client emailed the OPC, copying Mr. Blanchard on the email, and requested that the matter be closed.

The OPC determined to continue with its investigation, as permitted under the Rules of Discipline, Disability and Sanctions of the Utah Supreme Court Rules of Professional Practice. As part of its investigation, the OPC sent letters to Mr. Blanchard requesting a response to the client's allegations. Mr. Blanchard did not respond to the letters. The OPC issued a Notice to Mr. Blanchard. Mr. Blanchard did not respond to the Notice.


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**January 24, 2024**

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**March 20, 2024 or September 18, 2024**
$100 on or before March 12 or September 10,
$120 thereafter.

**To register, email: CLE@utahbar.org**

*Aggravating factors:*
Prior record of discipline.

*Mitigating factors:*
Absence of a dishonest or selfish motive, personal and emotional problems, good faith effort and timely efforts to correct any consequences of his alleged misconduct, remorse, absence of any harm to a client and lack of underlying misconduct.

## RESIGNATION WITH DISCIPLINE PENDING

On June 20, 2023, the Utah Supreme Court entered an Order Accepting the Resignation with Discipline Pending of Jeffrey B. Brown for violation of Rule 1.2(a) (Scope of Representation), Rule 1.5(a) (Fees), and Rule 7.1(b) (Communications Concerning a Lawyer's Services) of the Rules of Professional Conduct.

*In summary:*
In 2021, Mr. Brown provided legal services for a husband and wife (Couple) from about 2002–2006. The Couple did not consider Mr. Brown their attorney after he completed the legal work in or about 2006. Mr. Brown did not have any contact with Couple from about 2006 until about 2021.

Mr. Brown wrote Couple a letter which stated he was reviewing their file and the law had changed which could affect some of the legal services provided by Mr. Brown. Mr. Brown indicated that he would proceed with providing his legal services to Couple, outlining the steps he would take and providing information regarding his hourly rate. The letter also stated Mr. Brown would assume Couple wished him to proceed with legal services unless Couple let him know in writing.

Couple sent an email to Mr. Brown and stated that they took an active interest in their estate, had kept it up to date through the years, were sufficiently covered and did not need his services. Mr. Brown wrote back to Couple, acknowledging their email and stating that Couple had not completed this planning as he had not counseled them to do so, that he needed to confirm some information from the Couple to complete the first step in the process but he was going to continue with the first step anyway unless he heard from the Couple not to do so. Two weeks later, Mr. Brown wrote Couple a letter and enclosed documents he had prepared for their signatures. Mr. Brown used information from the Couple's 2006 documents to prepare the new documents for the Couple.

The Couple wrote back to Mr. Brown and stated that the information that he had used was outdated and the documents contained incorrect information. The Couple further stated that they did not need anything further and wished to close the correspondence on the matter.

Mr. Brown sent the Couple two billing statements for his legal services. Mr. Brown again wrote the Couple, acknowledging their email and an earlier voicemail that Couple had left for Mr. Brown, both of which asked him not to proceed with any legal services. In the letter, Mr. Brown also stated that he could not represent clients who do not follow his counsel.

The Couple wrote back to Mr. Brown and stated they had received two billings for services for which they did not ask. They further stated that they felt the billings were harassment and asked Mr. Brown to respect their wishes not to correspond with them anymore. Mr. Brown wrote back to Couple and stated that it was his final attempt to contact Couple to get them going in the right direction. Mr. Brown further stated that if the Couple did not proceed with his advice, he intended to send a letter withdrawing as their attorney. Mr. Brown again wrote Couple indicating he was terminating the relationship.

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## INTERIM SUSPENSION

On October 6, 2023, the Honorable Kraig Powell, Fourth Judicial District Court, entered an Order of Interim Suspension, pursuant to Rule 11-564 of the Rules of Lawyer Discipline, Disability and Sanctions against Gary L. Bell, pending resolution of the disciplinary matter against him.

*In summary:*
Mr. Bell was placed on interim suspension based upon convictions for the following criminal offenses:

Sexual Exploitation of a Minor, Voyeurism, Sodomy Upon A Child, Aggravated Sexual Abuse of a Child, and Aggravated Sexual Exploitation of A Minor.

## SUSPENSION

On July 14, 2023, the Honorable Adam T. Mow, Third Judicial District, entered an Order of Suspension against Melodie J. Summers suspending her license to practice law for a period of three years. The court determined that Ms. Summers violated Rule 1.3 (Diligence), Rule 1.4(a) (Communication), and Rule 1.15(d) (Safekeeping Property) of the Rules of Professional Conduct.

*In summary:*
This matter involves two cases. In the first case, a client retained Ms. Summers for a personal injury matter. Because the client was a minor at the time, the client's father (Father) signed the initial fee agreement for the client. Thereafter, the client signed a Release of All Claims in consideration of a settlement amount

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and the insurance company issued a check to Ms. Summers and the client. Ms. Summers was last in direct contact with client and Father a few months later. After that time, their only contact was with Ms. Summers' office staff and they were unable to learn where the settlement money was or the status of the case.

Client retained another attorney (Second Attorney) to represent them in a continuing claim for underinsured motorist benefits from another insurance company (Second Insurance Company). Second Insurance Company issued a check to Ms. Summers and client. Although the cleared check appeared to be endorsed by client, neither client nor Father were aware that a settlement check had been issued by Second Insurance Company. An attorney for Second Insurance Company confirmed the check was negotiated.

Second Attorney notified Ms. Summers that he had been retained by client. Second Attorney requested verification that all the settlement proceeds were currently in Ms. Summers' trust account as client had no record of any distribution of settlement funds, including payment for medical liens. Ms. Summers did not respond to emails and Second Attorney was unable to reach her by telephone.

In the second case, a client retained Ms. Summers for a personal injury matter. The client executed a Release of All Claims with an insurance company in consideration of a settlement amount. The insurance company issued a check. The check was signed by Ms. Summers and client and was presented for payment. A second insurance company sent a letter to Ms. Summers confirming their settlement offer to client. Ms. Summers declined the offer and demanded a higher amount. A few months later, Ms. Summers sent an email to client wherein she stated she would file for arbitration if the insurance adjustor would not agree to an increase in the settlement amount. The client emailed and called Ms. Summers many times in an attempt to discuss their case with Ms. Summers. Ms. Summers' paralegal assured client that they had forwarded all of client's messages to Ms. Summers.

Client informed Ms. Summers' paralegal they were terminating Ms. Summers' representation and requested she enter her withdrawal of counsel in the matter. Later, client contacted the Utah State Bar's Consumer Assistance Program (CAP) because Ms. Summers had not withdrawn her representation as requested. The CAP attorney copied Ms. Summers on a letter to client for the purpose of informing her of client's concerns and requesting that Ms. Summers contact client. Ms. Summers withdrew her representation.

Client retained another attorney (Second Attorney). Second Attorney notified Ms. Summers by mail, email and facsimile that they had been retained by client and requested that arrangements be made to transfer the settlements to Second Attorney's trust account so they would have the funds available in order to negotiate provider liens. When they did not receive a response, Second Attorney's office attempted to follow up with Ms. Summers. Second Attorney emailed Ms. Summers a draft complaint against Ms. Summers he intended to file on client's behalf if the settlement funds were not received by a certain date. When Second Attorney did not receive a response, the complaint was filed in district court. Second Attorney also filed a complaint with the OPC. After the OPC notified Ms. Summers of the complaint, Second Attorney received a call from Ms. Summers. Ms. Summers met a member of Second Attorney's staff at Ms. Summer's bank and provided them with a cashier's check.

The court did find aggravating and mitigating factors.

# Lawyer Discipline and Disability

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## DISABILITY

On February 1, 2024, the Honorable Adam T. Mow, Third Judicial District Court, entered an Order Transferring Joseph C. Poulton's License to Practice to Disability Status, pursuant to Rule 11-568(b)(1) of the Rules of Lawyer Discipline, Disability and Sanctions staying the disciplinary matter in front of Judge Mow against him.

## PUBLIC REPRIMAND

On January 29, 2024, the Honorable Adam T. Mow, Third District Court entered an Order of Discipline: Public Reprimand against Brian C. Hills for violating Rules 1.2(a) (Scope of Representation) and 1.5(a) (Fees) of the Rules of Professional Conduct.

*In summary:*
A client retained Mr. Hills to represent them in regard to injuries they sustained in a vehicle accident. The client and Mr. Hills entered into a contingency agreement. During the representation, the client received treatment from a chiropractor who recommended that they receive an MRI and referred them to a neurosurgeon due to ongoing medical issues. The neurosurgeon informed the client that they had a disc herniation and that surgery was an option. The client objected to surgery and requested an itemized list of costs from Mr. Hills. Mr. Hills' office emailed the client the current case costs.

Mr. Hills sent a policy limits demand letter to the insurance company on behalf of the client that included an estimate for surgery as an item of damages that the client did not authorize and to which his client had previously objected. Mr. Hills did not inform the client about the demand letter, nor did he send them a copy.

The client terminated Mr. Hills' representation. A few days later, Mr. Hills sent a letter to the insurance company asserting an attorney's lien for 1/3 of the policy limit that Mr. Hills believed the

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insurance company would pay under the insurance company policy and for costs incurred. Mr. Hills charged unreasonable fees and costs in the attorney's lien he asserted. As part of the costs, Mr. Hills included a fee to the neurosurgeon. Mr. Hills obtained a refund of the fee after he told the neurosurgeon that the client was not going to have surgery. The attorney's lien also included an amount contrary to the contingency fee agreement he had with the client. In this regard, the contingency agreement provided that in lieu of a trial the reasonable value of his services would be no less than 1/3 of an existing settlement offer. There was no existing settlement offer at the time of Mr. Hills' representation. Mr. Hills' attorney's lien was based on a value Mr. Hills put on his client's case and not on the actual legal work done or the results obtained or any other criteria under the rule.

## INTERIM SUSPENSION

On January 31, 2024, the Honorable Laura S. Scott, Third Judicial District Court, entered an Order of Interim Suspension, pursuant to Rule 11-564 of the Rules of Lawyer Discipline, Disability and Sanctions against Aaron Kinikini, pending resolution of the disciplinary matter against him.

*In summary:*
Mr. Kinikini was placed on interim suspension based upon conviction for the following criminal offense: Felony Discharge of a Firearm.

## SUSPENSION

On January 4, 2024, the Honorable Laura S. Scott, Third Judicial District, entered an Order of Suspension against Rick Daniel Adams suspending his license to practice law for a period of six months and one day. The court determined that Mr. Adams violated Rules 5.4(c) (Professional Independence of a Lawyer) and 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Adams entered into a confidential agreement (Agreement) for joint ownership of a law firm with a non-lawyer (Non-lawyer). Mr. Adams was aware that, at the time of the Agreement, Rule 5.4 of the Rules of Professional Conduct prohibited non-lawyer ownership of a law firm, but he entered into the Agreement which stated that certain assets of the firm and partial control of the law firm were to be retained by Non-lawyer. Mr. Adams made misrepresentations to Non-lawyer about the Agreement.

The law firm formed pursuant to the Agreement engaged in the practice of law in Arizona and Colorado. After a dispute arose, Mr. Adams filed a Complaint in Arizona naming Non-lawyer as a defendant. Mr. Adams made misrepresentations in his Complaint and failed to include any mention of the signed Agreement.

During its investigation of this matter, the OPC requested responses from Mr. Adams. Mr. Adams provided responses to the OPC but made and/or approved misrepresentations in his response letters.

## DELICENSURE

On January 17, 2024, the Honorable Kraig Powell, Fourth Judicial District Court, entered an Order of Delicensure, against Gary L. Bell, delicensing him from the practice of law. The court determined that Mr. Bell violated Rule 8.4(b) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Bell was convicted of the following criminal offenses:

Sexual Exploitation of A Minor, Voyeurism, Sodomy Upon A Child, Aggravated Sexual Abuse of a Child, and Aggravated Sexual Exploitation of A Minor.

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## SUSPENSION

On March 8, 2024, the Honorable Kraig Powell, Fourth Judicial District, entered an Order of Suspension against Gregory V. Stewart suspending his license to practice law for a period of eight months. The court determined that Mr. Stewart violated Rule 1.3 (Diligence), Rule 1.4(a) (Communication), Rule 1.5(a) (Fees), Rule 1.15 (c), Rule 8.1(b) (Bar Admission and Disciplinary Matters), and Rule 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

A client retained Mr. Stewart to represent her in connection with her criminal case. The client and Mr. Stewart signed an Attorney-Client Fee Agreement (Fee Agreement) which states that the client will be charged a fixed fee that is "earned upon receipt." The client paid the fee to Mr. Stewart. Mr. Stewart failed to deposit the fees into a client trust account and put the client's money directly into his personal account prior to earning the money. Mr. Stewart knew he needed to refund fees if he had not earned them, but required clients to sign an agreement which indicates he can keep the money even if not earned.

Shortly after representation began, Mr. Stewart told the client that he would write the police department to make a preservation demand for the client's property that was in their possession. Although Mr. Stewart did contact the client several times during the course of her case, he at times did not respond to the client's emails and phone calls, did not confirm with her a court date and did not apprise her fully of the status of her case.

Mr. Stewart failed to promptly enter an appearance in the criminal matter. At one point, the client contacted Mr. Stewart because she had reached out to him via voicemail, text, and email and had not received a reply. The client explained that the police department had not received notice of counsel, so she forwarded to the police department a copy of the Fee Agreement to prove she had counsel. A few weeks later, Mr. Stewart emailed the client and promised to contact the prosecutor assigned to her case to see about getting the warrant which had been issued recalled and to schedule a court date. A few days later, Mr. Stewart contacted the client notifying her that the judge's clerk had set a court date but did not confirm the date.

At the hearing, the client did not appear and Mr. Stewart incorrectly stated that the reason the client was not at the hearing was because she was engaged in substance abuse treatment. Mr. Stewart failed to get her property returned from the prosecuting city as he had promised and failed to get her arrest warrant recalled.


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A few months later, the client contacted Mr. Stewart and said she had been unable to reach him or get an update on her case. The client sent a package via certified mail to Mr. Stewart. The package was returned unclaimed. The client emailed Mr. Stewart after discovering the court hearing had taken place without her in attendance. In the correspondence, she indicated that she did not understand why documents were returned to her and why the police department still had not received any confirmation of counsel.

The client requested a refund believing that no work had been done on her case. Although Mr. Stewart performed considerable work on the client's case, he did not make satisfactory or timely progress on the matter. Mr. Stewart misrepresented the amount of work he had done on the case and charged an unreasonable fee considering the amount of work performed for the client. Mr. Stewart failed to respond to OPC's multiple requests for information and failed to provide documents to OPC that would have assisted in the investigation of the case.

*Aggravating circumstances:*
Prior record of discipline; multiple offenses; and substantial experience in the practice of law.

*Mitigating circumstances:*
Good character or reputation; remorse.

## RECIPROCAL DISCIPLINE

On February 22, 2024, the Honorable Eric Gentry, Fifth Judicial District Court, entered an Order of Reciprocal Discipline: Suspension against Brent Blanchard, suspending Mr. Blanchard for a period of eighteen months for his violation of Rule 1.3 (Diligence), Rule 1.4(a) (Communication), Rule 3.4(c) (Fairness to Opposing Party and Counsel), Rule 3.4(d) (Fairness to Opposing Party and Counsel), and Rule 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

*In summary:*
On April 18, 2022, the Nevada Supreme Court entered an Order of Suspension, suspending Mr. Blanchard from the practice of law for eighteen months. The Nevada Order was predicated on the following facts in relevant part:

Mr. Blanchard failed to comply with the conditions placed on his reinstatement to the practice of law in Nevada. The reinstatement order required Mr. Blanchard to obtain a legal mentor for three years, who would provide quarterly reports to the Nevada State Bar, and to continue treating with a medical provider for three years who would similarly provide quarterly reports. Even after reminders from the Nevada State Bar, Mr. Blanchard failed to comply with these conditions.

Furthermore, Mr. Blanchard committed violations during the representation of a client. After asking a client to waive a conflict with a realtor, the realtor and the client became adverse parties, and Mr. Blanchard stopped doing any work on the client's case but did not move to withdraw his representation. Mr. Blanchard did not appear at court hearings, even after the Nevada State Bar contacted him regarding the client, and the district court granted summary judgment against the client. Opposing counsel in the client's case testified that Mr. Blanchard failed to respond to discovery, filed procedurally improper motions, and failed to appear at hearings even after they were rescheduled so that Mr. Blanchard could appear.

The Nevada Court found the following aggravating and mitigating circumstances to apply:

*Aggravating circumstances:*
Prior disciplinary offenses, pattern of misconduct, multiple offenses, bad faith obstruction of the disciplinary proceeding, vulnerability of the victim, and substantial experience in the practice of law.

*Mitigating circumstances:*
Absence of a dishonest or selfish motive, personal or emotional problems, cooperative attitude towards the proceeding, remorse, and remoteness of prior offenses.

## SUSPENSION

On March 7, 2024, the Honorable Richard D. McKelvie, Third Judicial District, entered an Order of Suspension against Jacque M. Ramos suspending her license to practice law for a period of two years. The court determined that Ms. Ramos violated Rule 1.1 (Competence), Rule 1.3 (Diligence), Rule 1.4(a) (Communication), Rule 1.16(d) (Declining or Terminating Representation), Rule 8.1(b) (Bar Admission and Disciplinary Matters), and Rule 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
After suffering a slip and fall at a restaurant, the injured woman (Client) hired Ms. Ramos to represent her regarding the incident. The daughter (Daughter) of Client provided Ms. Ramos with information about the incident and Client's contact information.

During the following years, both Daughter and Client tried to communicate with Ms. Ramos to obtain information about the case. Ms. Ramos often did not timely respond, would not provide the information requested or would not accurately inform Daughter and Client of what was happening in the case.

At one point, Ms. Ramos informed Daughter that a complaint had been finalized and would be filed and served within a week. Almost two years later, Ms. Ramos filed a complaint on behalf of Client. Ms. Ramos did not serve initial disclosures and did not

respond to discovery requests served by opposing counsel, despite receiving an extension of time to respond. Opposing counsel filed a motion for summary judgment. Ms. Ramos did not file a response to the motion, and the court entered an order granting summary judgment to the opposing party. Ms. Ramos did not inform Daughter and Client about the fact that she did not respond to the discovery requests or that a motion for summary judgment had been filed and decided.

Client terminated Ms. Ramos's representation and Daughter requested Client's file. Ms. Ramos did not send Client's file. The OPC sent a Notice to Ms. Ramos. Ms. Ramos did not timely respond to the Notice.

*Aggravating circumstances:*
Dishonest or selfish motive, pattern of misconduct, multiple offenses, refusal to acknowledge the wrongful nature of the misconduct, substantial experience in the practice of law, and lack of good faith effort to make restitution or rectify the consequences.

*Mitigating circumstances:*
Absence of prior record of discipline, personal, or emotional problems and physical disability.

## RESIGNATION WITH DISCIPLINE PENDING

On February 16, 2024, the Utah Supreme Court entered an Order Accepting the Resignation with Discipline Pending of Joseph E. Wrona for violation of Rule 8.4(b) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
Mr. Wrona plead guilty (or no contest) to Forcible Sexual Abuse, a second degree felony, and to Incest, a third degree felony.

## RESIGNATION WITH DISCIPLINE PENDING

On January 24, 2024, the Utah Supreme Court entered an Order Accepting the Resignation with Discipline Pending of Dale H. Boam for violation of Rule 1.1 (Competence), Rule 1.2(a) (Scope of Representation), Rule 1.3 (Diligence), Rule 1.4(a) (Communication), Rule 1.5(a) (Fees), Rule 1.5(b) (Fees), Rule 1.5(c) (Fees), Rule 1.15(a) (Safekeeping Property), Rule 1.15(c) (Safekeeping Property), Rule 1.15(d) (Safekeeping Property), Rule 1.16(a) (Declining or Terminating Representation), Rule 1.16(d) (Declining or Terminating Representation), Rule 3.2 (Expediting Litigation), Rule 8.1(b) (Bar Admission and Disciplinary Matters), and Rule 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
This case involves fourteen matters. In one matter, Mr. Boam violated Rule 1.1 (Diligence) by accepting a medical malpractice case without having the legal knowledge or skill necessary to represent a client in such a case. In one matter, Mr. Boam violated Rule 1.2(a) (Scope of Representation) by joining a client's case with claims of others in a class action lawsuit without the client's consent.

In thirteen matters, Mr. Boam violated Rule 1.3 (Diligence) by failing to appear at several hearings without providing notice to the court or to his clients, missed deadlines, failing to file documents pertinent to the client's cases and not taking timely action with respect to the client's cases after he was retained.

In eight matters, Mr. Boam violated Rule 1.4(a) (Communication) by failing to keep his clients reasonably informed about the status of their cases, failing to promptly comply with their reasonable requests for information, and stopping responding to them altogether. Many of these clients required American Sign Language communication and relied on Mr. Boam to communicate in that language. In multiple cases, he failed to explain what was being communicated verbally when there was a 3rd party involved.

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In twelve matters, Mr. Boam violated Rule 1.5(a) (Fees) by charging and/or collecting fees without doing sufficient work to justify the charges. Additionally, in multiple cases, Mr. Boam did some work, but the work was not meaningful and did not assist in the resolution of the case. In one matter, Mr. Boam violated Rule 1.5(b) (Fees) by failing to communicate with his client the basis or rate of his fees and expenses prior to or within a reasonable time after he began representing them. In three matters, Mr. Boam violated Rule 1.5(c) (Fees) by taking a contingency fee case and failed to provide written retainer agreements and/or failed to clearly notify the client of any expenses and/or failed to provide a written statement stating the outcome and showing remittance to the clients.

In eleven matters, Mr. Boam violated Rule 1.15(a) (Safekeeping Property) by failing to keep client funds separate from his own. Mr. Boam failed to deposit fees paid to him in his client trust account and deposited funds directly into his operating account, commingling funds with his own. In eleven matters, Mr. Boam violated Rule 1.15(c) (Safekeeping Property) by failing to deposit client's retainer funds into his trust account and failing to keep funds in this trust account until they were earned. Mr. Boam deposited funds into his operating account and spent the funds. In three matters, Mr. Boam violated Rule 1.15(d) (Safekeeping Property) by failing to provide an accounting of the fees paid by his clients after they requested Mr. Boam provide one.

In one matter, Mr. Boam violated Rule 1.16(d) (Declining or Terminating Representation) by failing to withdraw from representing his client after they discharged Mr. Boam. In four matters, Mr. Boam violated Rule 1.16(d) (Declining or Terminating Representation) by failing to refund any portion of his client's retainer fees that he did not earn. Mr. Boam also failed to provide client files after they terminated his representation.

In one matter, Mr. Boam violated Rule 3.2 (Expediting Litigation) by failing to make reasonable efforts to expedite litigation when he repeatedly failed to make court appearances without providing any notice to the court or to his client, which resulted in a waste of time and judicial resources as well as a delay in the client's case.

In four matters, Mr. Boam violated Rule 8.4(c) (Misconduct) by being dishonest with his clients, making false statements and representations, such as repeatedly telling them he had prepared documents, filed documents, transferred cases from other states, reached out to 3rd parties, co-counsels or opposing counsel when none of this was true.

The OPC also sent a Notice in each matter requesting Mr. Boam's responses. Mr. Boam did not timely respond to the notices, violating Rule 8.1(b) (Bar Admission and Disciplinary Matters).

# Lawyer Discipline and Disability

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## PROBATION

On June 11, 2024, the Honorable Stephen Nelson, Third Judicial District, entered an Order of Discipline against John C. Heath, placing him on probation for a period of two years based on Mr. Heath's violation of Rule 7.1 (Communications Concerning Lawyer's Services) and Rule 8.4(d) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
On May 2, 2019, the Plaintiff Bureau of Consumer Financial Protection commenced a civil action in the United States District Court for the District of Utah against a number of defendants, including John C. Heath Attorney at Law PC, doing business as Lexington Law and Lexington Law Firm (Lexington Law), a firm that offered credit repair services. Clients were led to believe that these services would be provided by a lawyer. However, clients who called were transferred to an agent who was not a lawyer, letters sent for credit repair were not signed by lawyers, and clients would only speak to a lawyer if they specifically requested it. The firm's advertising led clients to believe that all services would be provided by lawyers, which was not the case. The advertising was misleading and in violation of Rule 7.1.

Mr. Heath/Lexington Law also engaged in abusive telemarketing practices in violation of the Telemarketing Sales Rule (TSR) and violated the advance fee provision of the TSR. Lexington Law made no attempt to comply with the TSR's express payment preconditions, resulting in clients being billed before receiving any services. This conduct was prejudicial to the clients and the administration of justice in violation of Rule 8.4(d).

## PROBATION

On July 2, 2024, the Honorable Laura Scott, Third Judicial District, entered an Order of Discipline against Aaron Kinikini, placing him on probation for a period of one year based on Mr. Kinikini's violation of Rule 8.4(b) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
On March 26, 2021, Mr. Kinikini pleaded guilty to one count of

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Felony Discharge of a Firearm, a Third-Degree Felony. Mr. Kinikini's conviction was based on the following facts: Defendant did knowingly or having reason to believe any person may be endangered by the discharge of a firearm, discharge a firearm in the direction of another person (a cohabitant). Mr. Kinikini had been placed on interim suspension on January 31, 2024.

Mr. Kinikini and the OPC stipulated that no aggravating or mitigating circumstances applied for purposes of the discipline imposed.

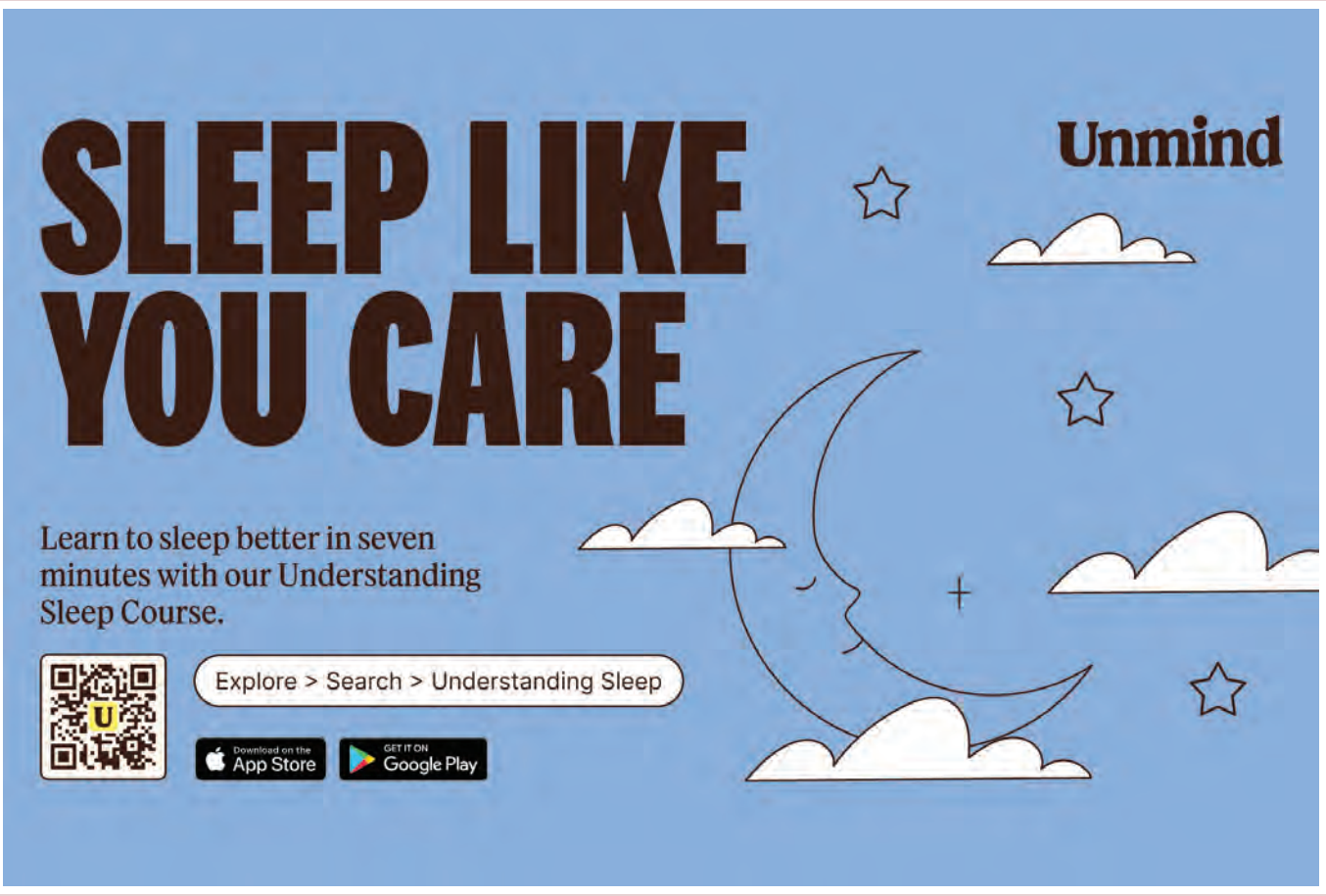
## RECIPROCAL DISCIPLINE

On June 4, 2024, the Honorable Richard Pehrson, Third Judicial District Court, entered an Order of Reciprocal Discipline: Delicensure/Disbarment against Robert L. Booker for his violation of Rule 1.5(b) (Fees), Rule 1.6(a) (Confidentiality), Rule 1.15(a) (Safekeeping Property), Rule 1.16(b)(5) (Declining or Terminating Representation), Rule 8.1(b) (Bar Admission and Disciplinary Matters), and Rule 8.4(d) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
On May 11, 2023, the Tennessee Supreme Court entered an Order of Enforcement, disbarring Mr. Booker from the practice of law. The Order was predicated on the following facts in relevant part:

Mr. Booker represented a client in a contested divorce case. He charged non-refundable fees without a written agreement, failed to explain the scope of his representation and the basis of his fees, failed to deposit client funds into an IOLTA account, and disclosed confidential client information without consent. Also, due to Mr. Booker's failure to explain to his client the basis or rate of fees to be paid, his effort to withdraw as counsel for non-payment of fees as agreed upon was not supported. Furthermore, Mr. Booker did not respond to Tennessee Disciplinary Counsel's letters and attempted to avoid formal service of the Petition in Tennessee.

*Aggravating circumstances:*
Prior disciplinary offenses, pattern of misconduct, multiple offenses, bad faith obstruction of the disciplinary proceeding, and substantial experience in the practice of law.



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## PRIVATE ADMONITION

On August 26, 2024, the chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Private Admonition against a lawyer for violating Rules 1.4(a)(2) (Communication) and 1.5(a) (Fees) of the Rules of Professional Conduct.

*In summary:*
A client was injured in an automobile accident. The client retained a law firm to represent them. The firm obtained a settlement offer for less than the policy limits. The client rejected the offer and hired a new lawyer – the respondent in this matter – to assist her. The client communicated with the staff of the respondent's firm for approximately nine months, during which time they provided the firm with medical records and bills as well as updates on their medical condition and treatment. The client had very little contact with the respondent during that time and ultimately decided to terminate the respondent's representation. Suspecting that the client would be hiring new counsel, the respondent sent a settlement demand letter to the insurance company seeking the policy limits without the client's knowledge or authorization. The insurance company responded, stated that more information was required, and reiterated the offer it had made to the client's prior counsel.

The client then hired a third law firm to represent them. The new firm advised the respondent that they would be taking over the client's personal injury matter. The new firm settled with the insurance company for the policy limits. When the respondent found out about the settlement, the respondent sent an email to the insurance company asserting an attorney's lien for an amount that was based on the settlement obtained by the third firm as opposed to the reasonable value of the respondent's services.

*Aggravating circumstances:*
Self-interest.

*Mitigating circumstances:*
No prior discipline.

## PUBLIC REPRIMAND

On May 22, 2024, the chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Lloyd D. Rickenbach for violating Rules 1.3 (Diligence), 1.4(a) (Communication), 1.16(d) (Declining or Terminating Representation), and 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

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*In summary:*
Mr. Rickenbach was retained by three clients to represent them in a civil rights matter. The opposing lawyer served Mr. Rickenbach's clients the first set of interrogatories and request for production of documents. Three months later, the opposing lawyer emailed Mr. Rickenbach regarding a telephone conference wherein Mr. Rickenbach said that he would comply with Rule 26 of the Utah Rules of Civil Procedure and provide initial disclosures and respond to the first set of interrogatories and requests for production of documents in two days' time.

Three days later, Mr. Rickenbach emailed the opposing lawyer regarding receipt of the Rule 26 disclosures. The opposing lawyer informed Mr. Rickenbach that he had not received the Rule 26 disclosures. He also informed Mr. Rickenbach that, unless he sent the disclosures within twenty-four hours, he would file a motion to compel. Eight days later, the opposing lawyer filed a motion to compel. The Court entered an order requiring the defendants to respond to the opposing party's discovery requests. Mr. Rickenbach failed to do so.

Mr. Rickenbach's client was asked in a deposition whether the plaintiffs had met with Mr. Rickenbach regarding discovery requests. The client said that they had left that up to Mr. Rickenbach. Months later, Mr. Rickenbach failed to attend a status conference, at which his client said that he had not spoken to him in a month, and that Mr. Rickenbach had not returned his calls or texts.

In advance of the status conference hearing, Mr. Rickenbach filed a statement with the court admitting that he had "failed to zealously advocate for the defendants in the last year" due to long Covid. He also admitted to leaving his clients in a lurch without communication and representation. Mr. Rickenbach failed to provide documentation to support his statement.

Mr. Rickenbach failed to respond to multiple requests for information from the OPC. When the OPC called Mr. Rickenbach, he confirmed that the address and email on record were correct. Mr. Rickenbach submitted a response on the day prior to the screening panel hearing.

*Mitigating circumstances:*
Absence of prior record of discipline, personal or emotional problems, acknowledgement of his conduct, expression of remorse, and efforts to minimize the consequences of his conduct.

## RECIPROCAL DISCIPLINE

On September 16, 2024, the Honorable Adam T. Mow, Third Judicial District Court, entered an Order of Reciprocal Discipline: Suspension and Probation against Kamille R. Dean, suspending Ms. Dean for a period of sixty days and placing her on probation for a period of one year upon reinstatement. Ms. Dean was found to have violated Rules 1.6 (Confidentiality), 1.8(b) (Conflict of Interest), 3.1 (Meritorious Claims and Contentions), and 8.4(d) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
On June 6, 2024, the Arizona Supreme Court entered an Order of Suspension, suspending Ms. Dean from the practice of law for sixty days and placing her on Probation for one year upon reinstatement. The Order was predicated on the following facts:

While representing a client in a family court matter, Ms. Dean sent numerous "demeaning and unprofessional" text messages to the client and disclosed the client's personal information to the opposing party.

*Aggravating circumstances:*
Multiple offenses, vulnerability of victim, and substantial experience in the practice of law.

*Mitigating circumstances*
Absence of prior discipline, personal and emotional problems, full and free disclosure to disciplinary board or cooperative attitude toward proceedings, character or reputation, and remorse.

## SUSPENSION

On July 9, 2024, the Honorable Judge Eric Gentry, Fifth Judicial District Court, entered an Order of Suspension against Nicholas Chamberlain suspending his license to practice law for a period of one year. The court determined that Mr. Chamberlain violated Rules 1.3 (Diligence), 1.4(a) (Communication), 8.4(c) (Misconduct), and 8.4(d) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
A client retained Mr. Chamberlain for a family law matter. Mr. Chamberlain failed to fulfill the objective for which he was hired. His failure to file documents, including a petition to modify custody, caused injury to his client by delaying her case for two and a half years and requiring her to hire another attorney to start and finish the work that Mr. Chamberlain was retained to carry out. He engaged in a pattern of misconduct in this case and deceived his client repeatedly. Mr. Chamberlain also conditioned the return of money he did not earn on his client's agreement not to report his misconduct to the OPC.

*Aggravating circumstances*
Dishonest and selfish motive, pattern of misconduct, and multiple offenses.

*Mitigating circumstances:*
No prior disciplinary history, personal or emotional problems, effort to make restitution, cooperation with the OPC and the Court, remorse, and offenses being remote as they occurred some time ago.

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## ADMONITION

On May 15, 2024, the chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rule 1.4(a)(1) (Communication) and Rule 1.2(a) (Scope of Representation and Allocation of Authority Between Client and Lawyer) of the Rules of Professional Conduct.

*In summary:*
A client retained a law firm to represent them in a workplace injury claim, and an attorney began working on their case. The attorney entered an appearance of counsel for the client and requested a hearing with the Utah Labor Commission. The following year, the attorney changed employment, but he remained as the client's counsel of record. The attorney did not notify the client of the change of employment.

The court issued Findings of Fact, Conclusions of Law, and an Order in the Client's case. These materials were sent to the attorney via email at their new workplace's email address. Included in the decision was a notice that any Motion for Review must be submitted within thirty days of the decision being signed. The attorney did not notify the client of the decision or their right to appeal, as they believed that the decision was a "win." There is no evidence that the attorney made the client aware of their strategy, that the client understood the strategy, or that the client consented to it. The client in the meantime had been trying to contact the attorney at their previous place of employment until they were told that the attorney no longer worked there. When the client finally located the attorney, the client learned it was too late to appeal the Labor Commission's decision.

*Aggravating circumstances:*
Refusal to acknowledge the wrongful nature of misconduct involved and vulnerability of victim.

*Mitigating circumstances:*
Absence of prior discipline, absence of dishonest or selfish motive, and full cooperation in investigation.

## RECIPROCAL DISCIPLINE

On October 31, 2024, the Honorable Linda Jones, Third Judicial District Court, entered an Order of Reciprocal Discipline: Public Reprimand and One-Year Probation against Davis P. Bauer. He was found to have violated Rule 1.3 (Diligence), Rule 4.4(a) (Respect for Rights of Third Persons), and Rule 8.4(d) (Misconduct) of the Rules of Professional Conduct.

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**Save the Date! January 22, 2025**
**5 hrs. CLE Credit, with 3 hrs. Ethics**
To register, email: CLE@utahbar.org.

*In summary:*
On June 20, 2024, the Arizona Supreme Court entered an Order of Public Admonition with Probation, (CLE), and Costs, publicly reprimanding Mr. Bauer and placing him on Probation for one-year. The order was predicated on the following facts:

Mr. Bauer sent letters on behalf of a client in a family matter to the court-appointed advisor's attorney, the Department of Child Safety, the opposing counsel in the family law case, a therapeutic interventionist, and a court appointed psychologist without adequately verifying the accuracy of the claims prior to sending the letters. In those letters, Mr. Bauer requested that the recipients of the letters change their recommendations or opinions to the family court in exchange for the Respondent or his client not proceeding with a lawsuit against them. He also included in those letters unsubstantiated allegations of terrorism, among other false claims. The court-appointed advisor and opposing counsel reported the letters to the family court, prompting a status conference about the letters' contents.

## RECIPROCAL DISCIPLINE

On November 1, 2024, the Honorable Mark S. Kouris, Third Judicial District Court, entered an Order of Public Reprimand against Randal R. Leonard. He was found to have violated Rule 1.3 (Diligence) and Rule 3.2 (Expediting Litigation) of the Rules of Professional Conduct.

*In summary:*
On April 18, 2024, the Nevada Supreme Court entered an Order Approving Conditional Guilty Plea Agreement, publicly reprimanding and suspending Mr. Leonard from the practice of law for one day. The Order was predicated on the following facts:

Mr. Leonard represented a client in a bankruptcy case. He neglected his client's case until the client lodged a formal complaint against him. Mr. Leonard failed to file a certificate of service with the bankruptcy court, which resulted in nearly a year-long delay before his client's case could be closed with an order of discharge. Mr. Leonard also breached the terms of his prior probation by violating the rules of professional conduct resulting in a one-day suspension in Nevada.

*Aggravating Circumstances:*
Multiple prior disciplinary offenses, a pattern of misconduct, and substantial experience in the practice of law.

*Mitigating Circumstances:*
Absence of a dishonest or selfish motive and full and free disclosure to disciplinary authority or cooperative attitude toward the proceeding.

## PUBLIC REPRIMAND

On August 14, 2024, the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Rex L. Bray for violating Rules 1.3 (Diligence), 1.4(a) (Communication), 1.6(a) (Confidentiality of Information), and 1.16(d) (Declining or Terminating Representation) of the Rules of Professional Conduct.

*In summary:*
A client retained Mr. Bray to pursue an order to show cause in a family law matter. At the order to show cause hearing, the opposing party failed to appear, and the court found the opposing party in contempt for failing to pay child-related expenses. The court entered judgment in favor of Mr. Bray's client and awarded Mr. Bray's client attorney fees and costs. After the hearing, Mr. Bray filed a proposed order. The court rejected Mr. Bray's proposed order and requested that Mr. Bray resubmit the appropriate document type for judgments. One month later, the client asked Mr. Bray about the status of the judgment. Mr. Bray stated that he received the judgment back from the court and needed to make a revision. He explained once it was signed, the opposing party would be garnished. Many months later, Mr. Bray mailed an invoice to the client's partner, who was also a client of Mr. Bray's. Mr. Bray included in the envelope addressed to the partner a billing statement for the client. The client did not live with their partner and never received the billing statement. The client also never provided Mr. Bray with consent to disclose the client's confidential information to the partner.

Approximately two years later, the client emailed Mr. Bray and told him she had learned from ORS that the judgment had not been resubmitted or signed by the judge. As a result, ORS had not collected the judgment from the opposing party. The client asked Mr. Bray to resubmit the judgment. After following up with Mr. Bray over the next few months, the client filed a complaint with the OPC. Mr. Bray subsequently filed a revised proposed order, which was entered by the court.

*Aggravating circumstance:*
Prior discipline.

*Mitigating circumstances:*
Personal or emotional problems.

## SUSPENSION

On October 9, 2024, the Honorable Judge Dianna M. Gibson, Third Judicial District Court, entered an Order of Suspension against James M. Rock, suspending him for a period of two years from the practice of law. The court found that Mr. Rock violated Rules 1.1 (Competence), 1.3 (Diligence), 1.4(a)

(Communication), 1.5(a) (Fees), 1.15(d) (Safekeeping Property), 1.16(d) (Declining or Terminating Representation), 8.1(b) (Bar Admission and Disciplinary Matters), 8.4(d) (Misconduct), and two counts of 8.4(b) (Misconduct) of the Rules of Professional Conduct.

*In summary:*
This case was comprised of two disciplinary matters. The first matter involved multiple criminal proceedings. In one criminal proceeding, Mr. Rock pleaded guilty to Driving Under the Influence of Alcohol and/or Drugs, a Class B Misdemeanor, and entered a plea in abeyance to Failure to Stop at Command of Police, a Third-Degree Felony. Due to Mr. Rock's violation of the terms of his plea-in-abeyance agreement, the court later entered a guilty plea on the latter charge. In three separate criminal proceedings, Mr. Rock pleaded guilty to three counts of Stalking a Current or Former Cohabitant, all Third-Degree Felonies. In two separate criminal proceedings, Mr. Rock pleaded guilty to a single count of Stalking, a Second-Degree Felony. Mr. Rock violated his duties to the public by committing criminal acts that reflected adversely on his trustworthiness and/or fitness to practice law.

In the second disciplinary matter, an elderly client on a fixed income retained Mr. Rock to address federal and state tax issues. The client began receiving collection calls and notices from a collection agency regarding taxes owed to the Utah State Tax Commission. The client repeatedly asked Mr. Rock for guidance and/or updates on the status of the matters without result. Over time, Mr. Rock became less communicative and after the client paid a second retainer fee, Mr. Rock stopped communicating with the client altogether. Mr. Rock never submitted any documents to the IRS or Utah State Tax Commission to help resolve the client's tax issues. The client had to obtain new counsel to assist them. After the client filed a complaint with the OPC, Mr. Rock told the client to withdraw their complaint. During the OPC's investigation, Mr. Rock did not respond to the OPC's requests for information.

*Aggravating circumstances:*
Substantial experience, pattern of misconduct, multiple offenses, and client was a vulnerable victim.

*Mitigating circumstances:*
Lack of prior discipline.

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## ADMONITION

On November 20, 2024, the Honorable Adam T. Mow, Third Judicial District Court, entered an Order of Discipline: Admonition against a lawyer for violating Rule 8.4(c) (Misconduct) of the Rules of Professional Conduct. The order was based upon a consent to discipline agreement.

*In summary:*
A lawyer (Lawyer) represented a defendant in a criminal matter and negotiated a plea agreement with the prosecutor. The prosecutor emailed the plea agreement to the Lawyer on the day of the change of plea hearing. Twenty minutes later, the Lawyer or their staff emailed the fully signed plea agreement back to the prosecutor. The Lawyer and their client attended the hearing remotely from separate locations. During the hearing, questions arose about whether the defendant had signed the plea agreement and was willing to enter into the plea agreement. The court did not accept the plea.

After the hearing, the prosecutor contacted the Lawyer asking whether the defendant had signed the plea agreement because they were concerned they may have been involved in submitting a plea agreement to the court that the client had not signed. During a phone call with the prosecutor, the Lawyer made contradictory statements, which misled the prosecutor about who had signed the plea agreement on behalf of the defendant.

*Mitigating circumstances:*
Personal or emotional problems and memory issues due to the COVID-19 pandemic.

## ADMONITION

On December 12, 2024, the chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Private Admonition against a lawyer for violating Rules 1.1 (Competence) and 1.6(a) (Confidentiality of Information) of the Rules of Professional Conduct.

*In summary:*
A lawyer (Lawyer) represented a client in a divorce proceeding and a criminal matter. After the divorce proceeding had been resolved, and after the Lawyer had already withdrawn from the matter, the Lawyer re-entered an appearance in the divorce case without the client's permission. When confronted by the client, the Lawyer stated that it was to retrieve the docket. However, the Lawyer then filed an affidavit of reasonable attorney's fees and motion for reasonable attorney's fees from their own client. The motion referred to personal information about the client, including their mental and physical health, disclosed the extent and value of the Lawyer's legal services in the Divorce matter, and identified the amount of attorney's fees the Lawyer would accept to settle the fee dispute with the client. The motion was inconsistent with custom and practice and legal process in divorce proceedings.

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*Aggravating circumstances:*
Substantial experience in the practice of law, prior discipline.

*Mitigating circumstances:*
Personal health issues, absence of selfish or dishonest motives, cooperative attitude towards the proceedings, and remorse.

## PUBLIC REPRIMAND

On November 26, 2024, the Honorable Linda M. Jones, Third Judicial District Court, entered an Order of Discipline: Public Reprimand against Russell S. Walker for violating Rule 3.3(a) (Candor Toward the Tribunal) and Rule 8.4(c) (Misconduct) of the Rules of Professional Conduct. The order was based upon a consent to discipline agreement.

*In summary:*
Mr. Walker became involved in a dispute with one of his neighbors when he learned that the neighbor and his company wanted to subdivide their lot. Mr. Walker filed a lawsuit against his neighbor on behalf of himself, his wife, and neighbors in the subdivision. He named twelve neighbors as plaintiffs in the lawsuit without having obtained their permission. The court entered judgment and an order in favor of the defendants. Mr. Walker filed a notice of appeal on behalf of himself, his wife, and the other plaintiffs. The Utah Court of Appeals affirmed the district court's orders and judgment in favor of the defendants. Mr. Walker filed a Petition for Writ of Certiorari with the Utah Supreme Court on behalf of himself, his wife, and the other Plaintiffs. The Utah Supreme Court denied the petition.

The defendant filed a complaint against Mr. Walker, Mr. Walker's wife, and the other plaintiffs. When the plaintiffs in the first lawsuit were served, they learned for the first time that they had been included as plaintiffs in Mr. Walker's lawsuit, and that Mr. Walker had represented to the District Court, the Court of Appeals, and the Utah Supreme Court that he was representing them in those actions. The neighbors retained another attorney to help them secure dismissals.

Mr. Walker reimbursed legal fees incurred by the neighbors. This was considered a mitigating factor.

## CLARIFICATION

The OPC would like to clarify that there are two lawyers named Christopher J. Rogers licensed in Utah. As reported in the last edition, Christopher J. Rogers, Bar #15248, was recently delicensed/disbarred for violating the Rules of Professional Conduct. Christopher J. Rogers, Bar #10104, has NOT been delicensed and remains licensed to practice in Utah.

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## RECIPROCAL DISCIPLINE

On December 20, 2024, Third Judicial District Court Judge Laura S. Scott entered an Order of Reciprocal Discipline: One-Year Probation against Christopher L. Christiansen, placing him on probation for one year for violating Rule 1.3 (Diligence), Rule 1.4 (Communication), Rule 1.15(a) (Safekeeping Property), and Rule 1.8(a) (Conflict of Interest: Current Clients) of the Rules of Professional Conduct.

*In summary:*
On August 13, 2024, the Supreme Court of Arizona entered an Order of Admonition with Probation placing Mr. Christiansen on probation for a period of one year. Admonitions are public discipline in Arizona. The order was predicated on the following facts:

Mr. Christiansen entered a business transaction with his client without complying with the requirements of Rule 1.8(a). Mr. Christiansen took possession of his client's jeep, telling the client he would sell the jeep to pay his fees. Instead, he transferred ownership of the jeep to his wife. Mr. Christiansen was also admonished for lack of diligence, failure to safekeep client property, and failure to reasonably communicate with the client by, inter alia, failing to timely forward royalty checks and failing to explain that he personally paid his client for the royalty checks when his failure caused the checks to become stale.

## PROBATION

On December 6, 2024, Third Judicial District Court Judge Amber M. Mettler entered an Order of Discipline: Probation placing Craig R. Chlarson on a two-year probation for violating Rule 1.4(a) (Communication), Rule 1.15(c) (Safekeeping Property), Rule 3.3(a) (Candor Toward the Tribunal), Rule 5.1(a) (Responsibilities of Partners, Managers, and Supervisory Lawyers), Rule 5.3(a) (Responsibilities Regarding Nonlawyer Assistants) on two counts, Rule 5.3(c) (Responsibilities Regarding Nonlawyer Assistants), Rule 5.5(a) (Unauthorized Practice of Law: Multijurisdictional Practice of Law) on two counts, and Rule 7.1 (Communications Concerning a Lawyer's Services) of the Rules of Professional Conduct.

*In summary:*
This case involved three matters. Mr. Chlarson owned and operated his own law firm(s) since at least 2016. Mr. Chlarson hired various non-lawyers to work at his firm. He also hired

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contract lawyers to appear at hearings or otherwise cover cases when firm lawyers were unavailable.

In the first matter, an attorney who had been disbarred in 2007 was working at Mr. Chlarson's firm as a paralegal. One of the contract lawyers working for Mr. Chlarson reported that multiple clients told him they thought the paralegal was an attorney. The contract lawyer also discovered that the paralegal had given a client incorrect legal advice about expungement. The paralegal directed initial client meetings and communicated directly with clients via email, text and telephone. The paralegal's business cards did not specify that he was not a lawyer, and one version of his business card falsely indicated that he had a Ph.D. The contract lawyer also reported that lawyers from Mr. Chlarson's firm failed to attend hearings. In addition, without informing the contract lawyer ahead of time, Mr. Chlarson entered appearances in the lawyer's name in two cases. The contract lawyer did not discover that he was on one of the cases until the prosecutor emailed him with a plea offer.

In the second matter, a client requested Mr. Chlarson's help with filing motions to reduce the degree of their criminal convictions under Utah Code Section 76-3-402 (402 Motions). Mr. Chlarson delegated this task to a legal assistant but did not properly review the work. When the assistant called the prosecutors' offices to schedule meetings to discuss the 402 Motions, the assistant discovered that one of the prosecutors no longer worked for the prosecutor's office. Despite this, Mr. Chlarson filed a 402 Motion indicating that the prosecutor had stipulated to the motion and included the prosecutor's e-signature. The new prosecutor filed a response indicating that the prosecutor had not agreed to any 402 reduction. Mr. Chlarson apologized, attributing the mistake to a clerical error by his assistant. Concerned about Mr. Chlarson's conduct, the prosecutor then reached out to other prosecutors' offices involved in 402 motions with Mr. Chlarson's office. The prosecutor discovered that Mr. Chlarson had filed a 402 Motion in another county representing that the prosecutor had stipulated to the motion and including the prosecutor's e-signature. However, the prosecutor had not worked in the county for approximately five years, and no other prosecutor in the office recalled discussing the matter with Mr. Chlarson. Mr. Chlarson's firm later corrected the record in the case involving the other county.

In the third matter, a client contacted Mr. Chlarson's firm to assist in a criminal matter. The client met with the delicensed attorney (referenced above) who was working as Mr. Chlarson's paralegal. The paralegal presented himself as an attorney and discussed the case and costs with the client, who agreed to pay a certain fee for representation. Mr. Chlarson's firm did not properly manage the fee collected, failed to properly manage the case, and did not keep the client properly informed. The paralegal assured the client that the situation was under control. He also agreed that he and the client would attend a meeting requested by the police department, but he failed to attend the meeting or inform the client about the meeting. The police continued their investigation and later issued an arrest warrant for the client.

Mitigating circumstances: health issues that negatively impacted Mr. Chlarson's ability to supervise and manage his firm, timely and good faith efforts to rectify the misconduct, cooperation with OPC's proceedings, and remorse.

## SUSPENSION

On February 26, 2025, Third Judicial District Court Honorable Judge Keith Kelly entered an Order of Discipline against Darren K. Nelson, suspending him for a period of two years for violating Rule 8.4(c) (Misconduct) of the Rules of Professional Conduct. The suspension is stayed pending Mr. Nelson's successful completion of the terms of a two-year probation.

*In summary:*
A client retained Mr. Nelson to aid in an employment matter. During the representation, the client asked Mr. Nelson to initiate civil proceedings. Mr. Nelson began to draft a complaint but did not complete or file it. Despite not completing the complaint, Mr. Nelson told his client he had filed the complaint. He also misled the client and others about the status of the case and the work being performed. Mr. Nelson fabricated a responsive pleading (Answer) and emailed it to his client. The fabricated Answer indicated that it was filed by opposing counsel and included falsified case information, including a case number and the name of a judge. The client had to retain new counsel to perform the work.

*Mitigating circumstances:*
Cooperative attitude towards discipline proceedings, remorse, personal or emotional problems, and physical or mental disability or impairment, which were greatly exacerbated by the COVID-19 Pandemic.

## RESIGNATION WITH DISCIPLINE PENDING

On January 9, 2025, the Utah Supreme Court entered an Order Accepting Resignation with Discipline Pending regarding David L. Fisher. In his Petition for Resignation with Discipline Pending, Mr. Fisher admitted to violating Rule 1.3 (Diligence), Rule 1.4(a) (Communication), Rule 1.5(a) (Fees), Rule 1.15(a) (Safekeeping Property) on two counts, Rule 1.15(c) (Safekeeping Property) on three counts, Rule 1.15(d) (Safekeeping Property), Rule 5.4(c) (Professional Independence of a Lawyer), Rule 8.1(b) (Bar Admission and Disciplinary Matters) on four counts, and Rule 8.4(c) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

This case involved four matters. In two matters, the OPC received notices of insufficient funds concerning Mr. Fisher's IOLTA trust accounts. The OPC requested an explanation for the insufficient funds and requested that Mr. Fisher provide supporting documents. Mr. Fisher failed to provide an explanation or documents in response to the OPC's request.

In the third matter, a client retained Mr. Fisher to assist them in a breach of lease case. Mr. Fisher filed a complaint and, approximately seven months later, a motion for judgment on the pleadings. The court entered an order granting the motion for judgment on the pleadings, awarding over $35,000 to Mr. Fisher's client. Approximately four months after that, the court issued a notice to show cause why the case should not be dismissed for lack of activity. Mr. Fisher did not respond to the notice and had not taken any steps to collect on his client's judgment. The court then dismissed the case with prejudice. Mr. Fisher later contacted his client affirming he was trying to collect on the judgment, but Mr. Fisher took no steps to do so. The client tried to contact Mr. Fisher but he did not respond.

In the fourth matter, Mr. Fisher was retained by the Utah Division of Child and Family Services (DCFS) to conduct the legal work for an adoption of two children by a client. Mr. Fisher invoiced DCFS for an upfront adoption fees, and DCFS paid the invoice. Mr. Fisher did not deposit the funds into any of his IOLTA trust accounts. Four months later, Mr. Fisher still had not completed work on the case. DCFS requested Mr. Fisher to return the upfront adoption fees paid so the client could hire another attorney to finalize the adoption. Mr. Fisher did not return the fees. Mr. Fisher did not respond to any requests for further information from the OPC.

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## PUBLIC REPRIMAND

On April 8, 2025, the chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Public Reprimand against Travis R. Christiansen for violations of Rule 1.1 (Competence), Rule 1.4(a) (Communication), Rule 5.3(c) (Responsibilities regarding nonlawyers), and Rule 5.5(a) (Unauthorized practice of law; Multijurisdictional practice of law) of the Utah Rules of Professional Conduct. The order was based upon a Discipline by Consent and Settlement Agreement between Mr. Christiansen and the Office of Professional Conduct.

*In summary:*

Mr. Christiansen filed a complaint for damages on behalf of his client in a breach of contract matter. Mr. Christiansen recommended that his client involve an attorney not licensed in Utah as an "expert" in real estate law to advise on the matter. The attorney/expert was supposed to be a title and real estate expert consultant concerning title and related issues. The attorney/expert had previously been disciplined in North Dakota for the unlicensed practice of law in Utah.

Mr. Christiansen's client contacted the other attorney/expert. He was asked to sign a retainer agreement and instructed to wire payments directly to the attorney/expert. The attorney/expert, who was to be acting only as an expert, had the client sign a retainer agreement for legal services. The attorney/expert also sent an invoice indicating that he was charging for legal services. The attorney/expert sent a closing letter in which he indicated that he was co-counsel on the case. While it was Mr. Christiansen's intent that the attorney/expert assist in the case only as an expert consultant on title issues, Mr. Christiansen did not review or sufficiently oversee the attorney/expert's communications with his client and did not sufficiently communicate to his client the limited role of an expert witness.

The client emailed Mr. Christiansen regarding the timeline of the case and requested that he file the *Lis Pendens* with the new parcel numbers. Mr. Christiansen filed a *Lis Pendens* on two of the parcels of property at issue. When the client noticed a discrepancy in parcel numbers, he pointed it out to Mr. Christiansen's paralegal, who assured him it was correct according to Mr. Christiansen. The opposing attorney then filed

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a Motion to Release *Lis Pendens*, asserting that the *Lis Pendens* was improper because the claims asserted by Mr. Christiansen's client would not entitle him to a remedy that conveyed an interest in the property or affected title. Mr. Christiansen emailed his client and told him that his paralegal had incorrectly identified the parcels. He offered to credit the client's bill because of the error. The court granted the defendants' motion to release the *Lis Pendens*, as well as their request for attorney's fees. When the client asked the paralegal what had happened, she stated that the error on the *Lis Pendens* was not hers alone.

*Mitigating circumstances:*
Mr. Christiansen was cooperative with the investigation and disciplinary proceedings.

## PROBATION

On May 7, 2025, the Honorable Mark Kouris, Third Judicial District Court, entered an Order of Discipline against Benjamin B. Grindstaff, placing him on probation for two years for violations of Rule 1.1 (Competence), Rule 1.3 (Diligence), Rule 1.4(a) (Communication), Rule 1.4(b) (Communication), Rule 1.16(d) (Declining or terminating Representation), Rule 3.3(a) (Candor toward the tribunal), and Rule 8.4(c) (Misconduct) of the Utah Rules of Professional Conduct. The order was based upon a Discipline by Consent and Settlement Agreement between Mr. Grindstaff and the Office of Professional Conduct.

*In summary:*
A former client filed a complaint against Mr. Grindstaff with the Office of Professional Conduct alleging various problems with Mr. Grindstaff's representation in her child custody case. In 2019, the court had entered an order awarding the client joint legal and physical custody of the parties' minor child. In July 2020, the opposing attorney filed a Petition to Modify Custody and Child Support. The client had twenty days to file an answer. The client retained Mr. Grindstaff to file the answer to the petition to modify as well as a notice of relocation because she was preparing to move out of state. Mr. Grindstaff failed to file an answer by the due date as required. He also did not file a notice of relocation.

Shortly thereafter, the opposing party filed a verified Rule 106 motion requesting sole physical and legal custody of the minor child. Mr. Grindstaff failed to inform his client that the motion had been filed. The court set a hearing to hear arguments for the Rule 106 motion. Mr. Grindstaff did not inform his client of this hearing or that the motion had been filed.

In September 2020, Mr. Grindstaff's client moved to Wyoming. She informed Mr. Grindstaff of her move and notified him that she had a new email address. On October 2, 2020, the court sent Mr. Grindstaff an email with a WebEx link for the hearing on the Rule 106 motion which was scheduled for October 5, 2020. On October 2, 2020, Mr. Grindstaff forwarded the court's email to his client using an email address she was no longer using. On October 4, 2020, Mr. Grindstaff forwarded the email to his client at her correct email address and, although he informed his client that the hearing was scheduled, he did not tell her the purpose of the hearing. The client appeared at the hearing believing that the subject of the hearing was her notice of relocation, which had not been filed; she did not know that the hearing was on the motion to modify, about which Mr. Grindstaff had not informed her. The court admonished Mr. Grindstaff's client for her failure to file the required documents for the hearing and awarded temporary physical custody to the opposing party. In addition to failing to inform his client about the purpose of the hearing, Mr. Grindstaff failed to notify his client of the notice of due dates sent by the court and the date for serving Initial Disclosures, which resulted in further litigation. Mr. Grindstaff also failed to inform his client that the opposing attorney had requested the parties attend mediation and had requested a date to take his client's deposition.

On December 2, 2020, four months after the answer to the petition to modify was due, and after the opposing attorney had filed a motion for a default certificate, Mr. Grindstaff filed an untimely answer. A hearing was scheduled for January 11, 2021. Mr. Grindstaff informed his client of the hearing on January 10, 2021, just one day before the hearing. Mr. Grindstaff forwarded the email from the court which included the WebEx link for the hearing the next day. On the morning of January 11, Mr. Grindstaff sent another email to his client falsely stating that he received notice from WebEx that the hearing was cancelled. The court had not cancelled the hearing.

The opposing attorney appeared for the hearing, but Mr. Grindstaff and his client were not there. The court entered an order directing Mr. Grindstaff to appear and state why he should not be held in contempt for failing to appear for the hearing. The order to show cause hearing was held on January 25, 2021. Mr. Grindstaff appeared, but his client did not appear because Mr. Grindstaff had not told her about the hearing. The opposing attorney filed a motion for sanctions against the client/party for her failure to appear and for her failure to appear for her deposition. Mr. Grindstaff had not informed his client of the potential sanctions regarding the missed hearing and deposition.

Ultimately, the opposing attorney filed a Motion for Sanctions regarding dilatory conduct on behalf of Mr. Grindstaff and his

client. Mr. Grindstaff failed to file a response or inform his client that the motion had been filed. Instead, Mr. Grindstaff filed a Notice of Withdrawal of Counsel stating that no motions were pending when, in fact, two motions were pending at the time.

On August 23, 2021, the court held a hearing and granted the motion for sanctions that had been filed, in part because no opposition had been filed by Mr. Grindstaff. Mr. Grindstaff's client was not present at the hearing. The court entered an order for sanctions against the client/party and granted the motion to modify the divorce decree as requested by the opposing party.

Thereafter, the client retained a new attorney who asked Mr. Grindstaff for the client's file. Mr. Grindstaff produced the file only after multiple requests had been made. The new attorney filed a motion to set aside the order entered against the client/party. The court granted the motion and set aside the previous order due to Mr. Grindstaff's "gross neglect." The court stated that Mr. Grindstaff

> failed to respond to her questions, failed to file certain pleadings, misled her about filing certain pleadings, failed to provide required discovery, failed to meet deadlines, misled the Court and opposing counsel on the reasons certain items were not filed or delivered, misled the Court and opposing counsel about the reasons for continuing hearings, depositions, among other things.

## PROBATION

On March 4, 2025, the Honorable Richard Pehrson, Third Judicial District Court, entered an Order of Discipline placing Jared Pearson on probation for six months for violations of Rule 1.4(a) (Communication), Rule 1.15(a) (Safekeeping Property), Rule 1.15(c) (Safekeeping Property), and Rule 1.16(d) (Declining or Terminating Representation) of the Utah Rules of Professional Conduct. The order was based on a Consent to Discipline and Settlement Agreement between Mr. Pearson and the Office of Professional Conduct.

*In summary:*
This disciplinary case involved two matters investigated by the Office of Professional Conduct (OPC). The OPC opened and investigated the first matter after it received a Notice of

Insufficient Funds from the financial institution that maintains Mr. Pearson's trust account. Rule 1.15(a) of the Utah Rules of Professional Conduct requires that trust accounts "may only be maintained in a financial institution that agrees to report to the OPC in the event and instrument in properly payable form is presented against the attorney trust account containing insufficient funds, irrespective of whether or not the instrument is honored." The second matter was opened for investigation after Mr. Pearson's former client filed a complaint against him.

In the first matter, Mr. Pearson was holding personal funds as well as client funds in his trust account. He had been paying personal debts directly from his trust account, including his malpractice insurance premium, his Utah State Bar licensing fees, and his American Express credit card bill. Mr. Pearson wrote a check from his trust account to a third party in the amount of $36,000 for a "pool." There were also various Venmo transactions in and out of the trust account. Additionally, Mr. Pearson had given permission to his wife to use the trust account, which she did.

On May 13, 2022, Mr. Pearson attempted to make a payment to American Express in the amount of $14,404.30, but the transaction was returned because there were insufficient funds in the trust account. After this payment was rejected, Mr. Pearson made an additional payment to American Express from his trust account. On May 17, 2024, the OPC received a second notice of insufficient funds from Mr. Pearson's bank concerning Mr. Pearson's trust account. The transaction that caused the overdraft was a withdrawal in the amount of $600.00. At the time, the trust account balance was $140.56, leaving a negative balance in the account.

In the second matter, Mr. Pearson's former client filed a complaint with the OPC concerning a refund that he believed he was owed. The client paid a $1,000 retainer to Mr. Pearson by check to be deposited into his trust account. During the time of the representation, Mr. Pearson's trust account should have contained all unearned funds. However, during the time of the representation, the OPC received a notice of insufficient funds concerning Mr. Pearson's trust account. The trust account balance was $4,599.11 when a check for $14,404.30 was presented for payment. The check was returned due to insufficient funds in the account.

The former client emailed Mr. Pearson to say that he no longer required representation and asked for a refund of the unused portion of the retainer. The client sent numerous emails to Mr. Pearson inquiring about a refund of the unearned portion of the $1,000 retainer. During the time of the representation Mr. Pearson's trust account balance fell below $450, the amount that he eventually refunded to his client as unearned.

In summary, Mr. Pearson failed to adequately respond for approximately nine months to his client's emails requesting a refund of unearned fees; commingled funds and did not keep earned and personal funds separate from client funds; failed to have reasonable accounting practices in place to maintain separation between earned and unearned funds; utilized unearned client funds for his own personal expenses; and failed to provide a refund to his client upon request and in a timely way.

## PROBATION

On May 7, 2025, the Honorable Linda Jones, Third Judicial District Court, entered an Order of Discipline: Probation against Margarita Claribel Tejada for violating Rule 1.5(a) (Fees) and Rule 1.15(a) (Safekeeping Property) of the Utah Rules of Professional Conduct. The order was based upon a Discipline by Consent and Settlement Agreement between Ms. Tejada and the Office of Professional Conduct.

*In summary:*
A client retained Ms. Tejada to represent her in an immigration proceeding. The client signed an engagement agreement and paid a retainer fee of $5,000. Ms. Tejada deposited the retainer fee into her operating account instead of her IOLTA account, thereby commingling the client's unearned funds with Ms. Tejada's earned funds. Approximately three weeks later, the client and Ms. Tejada terminated the client-attorney relationship. Ms. Tejada sent the client a final invoice with a balance owing of $4,418.98, which included expenses that Ms. Tejada had not incurred. Ms. Tejada billed the client $400 per hour not only for her own work on the client's case, but also for the work of her non-lawyer staff. Ms. Tejada sent to the client the forms and documents she had prepared during the representation, but Ms. Tejada did not file any documents with immigration on behalf of the client.

*Mitigating circumstances:*
Absence of prior record of discipline

## SUSPENSION

On March 17, 2025, the Honorable Dianna M. Gibson, Third Judicial District Court, entered an Order Sanctioning Terry R. Spencer – two Year Suspension and Order of Restitution for violating Rule 8.4(d) (Misconduct) of the Utah Rules of Professional Conduct.

*In summary:*
A client retained and paid Mr. Spencer $2,000.00 to assist him in seeking appointment as the personal representative of his mother's estate. Mr. Spencer filed a petition on behalf of his client but took no further action. The case was dismissed two years later for failure to prosecute. During the two years, Mr. Spencer did not communicate with his client. Mr. Spencer lied to his client and the title company working with his client, telling them that the client had been appointed as personal representative when that was not the case. Two years later, the client contacted Mr. Spencer again to request the documents showing that he was the personal representative so that he could refinance property in the estate. Mr. Spencer claimed to have provided the documents to his client, although the client did not have them and there were no such documents in the case docket. Mr. Spencer then advised his client that he owed an additional $1,853.00. Mr. Spencer withdrew from the representation and subsequently filed a Notice of Attorney's Lien against his client's property, identifying the amount owed as $1,853.00.

Mr. Spencer failed to provide the services that his client retained him to provide and that he paid for. The client was never appointed as personal representative. Because of this, the client had no choice but to contact Mr. Spencer for assistance. Mr. Spencer charged for additional time, which was unnecessary. Had Mr. Spencer done the work in the first place and ensured that the client was appointed as personal representative, no further assistance from Mr. Spencer would have been necessary.

The client eventually learned that he had never been appointed as a personal representative and had to hire a new attorney. The client incurred an additional $2,000.00 in attorney fees so that he could be appointed as the personal representative of his mother's estate. The client was preparing to sell the property from the estate when he learned that Mr. Spencer had placed an attorney's lien on his property. The client filed a complaint with OPC. He was also compelled to negotiate with Mr. Spencer for the removal of the lien. Mr. Spencer and the client agreed that the client would pay Mr. Spencer $2,500.00 to release the lien, an amount that was greater than the lien amount. When the client dropped off the payment, Mr. Spencer unilaterally modified the agreement stating that he would not release the lien until the client withdrew the OPC complaint. The client reluctantly agreed and withdrew his complaint but advised the OPC that he would still testify if the case went forward.

The court found the following aggravating circumstances: prior discipline, dishonest and selfish motive to prevent any investigation into his misconduct, a pattern of misconduct towards his client,


# Volunteers Needed

## for Utah State Bar Committees

The Utah Bar Commission seeks volunteers willing to commit their time and talent to one or more Bar committees. Please consider sharing your time in the service of your profession and the public through meaningful involvement with a committee that fits your interests. Utah State Bar Committees include:

**Admissions:** Recommends standards and procedures for admission to the Bar and the administration of the Bar Exam.

**Bar Examiner:** Grades examinee answers from the Bar Examination.

**Character & Fitness:** Reviews applicants for the Bar Exam and makes recommendations on their character and fitness for admission.

**CLE Advisory:** Reviews the educational programs provided by the Bar for new lawyers to assure variety, quality, and conformance.

**Fee Dispute Resolution:** Holds mediation and arbitration hearings to voluntarily resolve fee disputes between members of the Bar and clients regarding fees.

**Fund for Client Protection:** Considers claims made against the Client Security Fund and recommends payouts by the Bar Commission.

**For more information or to volunteer for a Utah State Bar Committee, please visit:**

**utahbar.org/about/committees/**

Mr. Spencer's testimony at trial was not credible, refusal to acknowledge that he was wrong, and failure to take any steps to rectify the consequences of his actions or reimburse the client for any legal fees paid.

## SUSPENSION

On April 9, 2025, the Honorable Thomas Low, Fourth Judicial District Court, entered an Order of Suspension against Levi S. Adams, suspending him from the practice of law for three years. The court ruled that Mr. Adams violated four counts of Rule 8.4(b) (Misconduct), two counts of Rule 1.3 (Diligence), two counts of Rule 1.4(a) (Communication), one count of Rule 1.16(a) (Declining or terminating representation), and one count of Rule 3.3(a) (Candor toward the tribunal) of the Utah Rules of Professional Conduct. The order was based upon a Discipline by Consent and Settlement Agreement between Mr. Adams and the Office of Professional Conduct.

*In summary:*
The disciplinary case was comprised of three matters. The first disciplinary matter involved five criminal cases brought against Mr. Adams, each of which involved multiple charges. In two of the cases, Mr. Adams entered into plea in abeyance agreements regarding charges of criminal mischief and commission of domestic violence in the presence of a child. In two cases, Mr. Adams entered no contest pleas to charges of disorderly conduct and three counts of violating a protective order. In the last case, Mr. Adams pleaded guilty to an assault charge.

In the second disciplinary matter, Mr. Adams was representing a plaintiff in a personal injury case. Mr. Adams failed to respond to several motions, which resulted in the entry of orders that seriously harmed his client's case. Mr. Adams also failed to communicate with his client and failed to appear at several hearings. When Mr. Adams later filed a motion to withdraw as counsel, he stated that he had been working with the Utah State Bar to voluntarily surrender his license, which was not true.

In the third disciplinary matter, a client retained Mr. Adams to assist her in an immigration matter and removal proceedings. Mr. Adams failed to timely file an application and motion to continue, which resulted in the denial of the client's application. Mr. Adams then failed to timely file an appeal on the client's behalf. Mr. Adams thereafter stopped communicating with the client.


## Utah Law & Justice Center: Exclusive Facilities for Legal Professionals

The Utah State Bar is pleased to announce a new benefit for active Utah Bar licensees in good standing: **complimentary use of facilities at the Utah Law and Justice Center** for quick, law, practice-related meetings of up to two hours (for example, notarization, client meetings, signings). Licensees can enjoy free parking, Wi-Fi, and basic room setup. However, please note that any additional requirements, such as a notary or witnesses, will need to be arranged independently.

Additionally, the center is a great place to host your law-related events or meetings with a variety of rooms to choose from, including a boardroom, suitable for an array of configurations to accommodate your specific needs. We regularly host Continuing Legal Education (CLE) sessions and can also set up law-related banquets, board meetings, one-on-one consultations, legal signings, mediations, and other legal activities. Check out our updated and simplified room rates – starting at $125 for half a day and $200 for the full day – on our website: utahbar.org/uljc-rental-info/ or by scanning this code.

With your guidance, we handle all the details to ensure the space meets your requirements. Room rates include setup, tables, chairs, AV equipment, free parking, and Wi-Fi. We can also assist with catering orders and delivery, adding the food cost to your invoice with no extra surcharge.

**For information contact: travis@utahbar.org or visit: utahbar.org/uljc-rental-info/**

# Lawyer Discipline and Disability

Visit **opcutah.org** for information about the OPC, the disciplinary system, and links to court rules governing attorneys and licensed paralegal practitioners in Utah. You will also find information about how to file a complaint with the OPC, the forms necessary to obtain your discipline history records, or to request an OPC attorney presenter at your next CLE event. **Contact us – Phone: 801-531-9110 | Fax: 801-531-9912 | Email:** opc@opcutah.org

Please note, the disciplinary report summaries are provided to fulfill the OPC's obligation to disseminate disciplinary outcomes pursuant to Rule 11-521(a)(11) of the Rules of Discipline Disability and Sanctions. Information contained herein is not intended to be a complete recitation of the facts or procedure in each case. Furthermore, the information is not intended to be used in other proceedings.

## PRIVATE ADMONITION

On May 14, 2025, the Honorable Laura Scott, Third Judicial District Court, entered an Order of Discipline: Private Admonition against a lawyer for violating Rule 4.2(a) (Communication with Persons Represented by Legal Professionals) of the Utah Rules of Professional Conduct. The order was based upon a Discipline by Consent and Settlement Agreement between the lawyer and the Office of Professional Conduct.

*In summary:*
The lawyer received notice that a former client retained counsel to represent the former client in a claim against the lawyer's firm and certain individual attorneys at the firm. Roughly a month later, on a Friday, the lawyer sent an email to the former client's new counsel indicating that the lawyer would like to speak and hoped to find a way to resolve the case. After the weekend, the lawyer called the former client directly and left a voicemail message indicating that the lawyer would like to resolve the matter. The lawyer followed up with a text message sent directly to the former client. The lawyer did not have consent from the former client's lawyer to communicate directly with the former client. The former client informed their attorney of the communications and did not directly contact the lawyer.

*Mitigating circumstances:*
Absence of a prior record of discipline, cooperative attitude towards proceedings, and remorse.

## PRIVATE ADMONITION

On June 13, 2025, the chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Admonition against a lawyer for violations of Rule 4.2(a) (Communication with Persons Represented by Legal Professionals) of the Utah Rules of Professional Conduct.

*In summary:*
The complainant and the lawyer represented opposing parties in a divorce proceeding. After the parties entered into an agreement to resolve the issues in the divorce, the lawyer attempted to negotiate with the complainant to modify the agreement. The lawyer sent two emails to both the complainant and his client, even though the respondent knew the complainant continued to represent the client in the matter. The complainant responded to the emails but omitted both his own client and the lawyer's client from the emails. The complainant concluded the email by stating "[o]n another note, please do not ever directly email one of my clients." Despite the complainant's warning, the lawyer sent additional settlement communications to the complainant with both clients copied on the emails.

The respondent violated Rule 4.2(a) by communicating about the subject of the representation with a person the respondent knew was represented by counsel, even after opposing counsel instructed the lawyer to remove the client from the communications.

*Mitigating circumstance:*
Absence of prior record of discipline.

## PUBLIC REPRIMAND

On June 30, 2025, the chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Public Reprimand against Bradley A. Schmidt for violations of Rule 1.3 (Diligence) and Rule 1.4(a) (Communication) of the Utah Rules of Professional Conduct.

*In summary:*
Mr. Schmidt failed to file initial disclosures in his clients' case, both in support of his clients' claims and in defense of the counterclaim filed against them. He also failed to file a response to the counterclaim. In addition, Mr. Schmidt did not keep his client reasonably informed about the status of the case, failed to timely respond to the client's requests for information, and failed to reasonably inform his client about the means by which he intended to accomplish the

**DISCIPLINE PROCESS INFORMATION OFFICE**

The Disciplinary Process Information Office is available to all attorneys who find themselves the subject of a Bar complaint. Catherine James will answer your questions about the disciplinary process, reinstatement, and relicensure.

**801-257-5518 | DisciplineInfo@UtahBar.org**

**Adam C. Bevis Memorial Ethics School**

**6 hrs. CLE Credit, including at least 5 hrs. Ethics**
(The remaining hour will be either Prof/Civ or Lawyer Wellness.)
**September 17, 2025 or March 18, 2026**
**To register, email: CLE@utahbar.org**

**Trust Accounting/Practice Management School**

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To register, email: CLE@utahbar.org.

clients' objectives. Mr. Schmidt exhibited a pattern in which large gaps of time elapsed, sometimes months at a time, before he would respond to communications from his client.

*Mitigating circumstances:*
Absence of prior record of discipline and remorse.

## SUSPENSION

On April 30, 2025, the Honorable Samuel Chiara, Eighth Judicial District Court, entered Findings of Fact, Conclusions of Law and Order of Discipline: Suspension against Marsha M. Lang suspending her from the practice of law for two years for violations of Rule 8.1(b) (Bar Admission and Disciplinary matters) and Rule 8.2(a) (Judicial Officials) of the Utah Rules of Professional Conduct.

*In summary:*
The opposing counsel in a domestic matter filed a complaint with OPC regarding Ms. Lang's conduct in representing the opposing party. Ms. Lang filed Verified Objections to the Findings of Fact and Conclusions of Law and Order on Motions to Enforce and Contempt. In the filing, Ms. Lang made various derogatory assertions about the court. She stated that the court based its order of contempt against her client on "faulty facts and conclusions of law." She also asserted that the court "misrepresented" her client's testimony, invented things in its order, and intentionally did not correctly read the pleadings she had submitted or misrepresented the truth about the pleadings. Ms. Lang claimed that the court ignored her client's requests, incorrectly failed to find the opposing party in contempt, and made several errors. She stated that her client objected to "all the factual misrepresentation in the Court's version of the facts." Ms. Lang filed a Verified Motion to Finalize the (previous) Order. In the motion, Ms. Lang asserted that the opposing party's attempt to reach a stipulation was based upon the "temper of the Court," which gave the opposing party reason to believe she had power over the situation.

The Court entered a Ruling and Order on the objection that Ms. Lang had filed. The court stated in part, "[t]he Court is concerned with the Respondent's Objection. Counsel for the Respondent, Mrs. Marsha Lang, accuses the Court of lying, ignoring facts, fabricating facts, and treating the parties unequally. Mrs. Lang's accusations assign the Court with a biased motive while making the May 27, 2022, decision. The accusations disparage the integrity of the Court." The court concluded that zealous advocacy did not include attacking the integrity and motives of the court and that Ms. Lang's approach distracted from the issues at hand, prolonged the resolution of the matter, and caused added costs to all involved.

During administrative proceedings, the Office of Professional Conduct served Ms. Lang with a Notice of potential rule violations. Although a response was required, Ms. Lang failed to respond. She also failed to cooperate in the administrative investigation by failing to reply to letters sent by the Office of Professional Conduct.

*Aggravating circumstances:*
Substantial experience in the practice of law, prior record or discipline, refusal to acknowledge the wrongful nature of the misconduct involved, and failure to acknowledge any fault or remorse in the present case.