

# Utah State Bar

2008-2009

## Program Reviews

- ◆ Law and Justice Center
- ◆ Continuing Legal Education
- ◆ Fee Dispute Resolution
- ◆ Fund for Client Protection
- ◆ Office of Professional Conduct

**UTAH LAW AND JUSTICE  
CENTER BUILDING REVIEW  
2008 – 2009**

Committee Members

Nate Alder

John Baldwin

Steven Burt

Simón Cantarero

Christian Clinger

Richard Dibblee

Rob Jeffs

## History and Background of Building and Ownership

The Utah Law and Justice Center was built in 1988 as the headquarters for the Utah State Bar and Utah Law and Justice Center, Inc. Utah Law and Justice Center, Inc. was incorporated in 1984 as a Utah nonprofit corporation specifically to encourage alternative dispute resolution and to make space available for general community and educational groups at no charge or at reduced rates and to permit law related interests organizations to use the facility at a no cost or low cost so that emerging techniques for arbitration, conciliation, counseling, and mediation could be more readily available. The corporation was also charged to assist in providing greater access to traditional legal services for the poor and disadvantaged.

On October 19, 1994, Utah Law Justice Center Inc. sold its interests in the fixtures and real property known as the Utah Law and Justice Center to the Utah State Bar. The Bar is now responsible for the management and upkeep of the 34,000 square foot Building.

Approximately one half of the 34,000 square foot Law and Justice Center is designated for meeting space rental and office space leasing. As more specifically addressed below and in the following exhibits, the room rental and office leasing rates range from low cost to fair market value. Room rental rates are based on hourly daily and weekly rates. Leasing rates are based on yearly or term rates. The rest of building provides administrative offices for the Utah State Bar and bar sponsored service programs, and continuing legal education.

## Summary of Usage and Meeting Room Rental Income for Fiscal Year 2007-2008

The Committee studied Fiscal Year 2007-2008 and Fiscal Year 2008-2009 for usage and meeting room rental income. For Fiscal Year 2007-2008, the Center held 623 meetings and seminars, of which 412 were bar related and 211 were non-bar related. There were approximately 25,297 attendees to those meetings and seminars.

For Fiscal Year 2008-2009, the Center held 659 meetings and seminars, of which 408 were bar related and 251 were non-bar related. There were approximately 25,702 attendees to those meetings and seminars. Exhibit 1 shows the Center's usage for Fiscal Year 2008-2009. In September 2008, November 2008, and February 2009, the Center experienced its highest usage rate (46% to 48%) based on the hours used and hours available. The overall usage rate for Fiscal Year 2008-2009 was 38%.

## Parking

Because the Center is experiencing high usage rates, there is a serious concern in regard to parking. A number of years ago, the Bar rented parking spaces at the parking garage to the west of the Law and Justice Center. However, the owner of the parking garage across the street from the Law and Justice Center has changed, and the rental option is no longer available. Other alternatives have been considered such as buying a portion of the land from the Senior Center just south of the Law and Justice Center or renting space from the parking lot to the east of the Law and Justice Center; however, neither option is available at this time. The committee did consider whether building a parking structure would be viable; however, it would cost approximately \$10,000 - \$15,000 per parking stall, thus, making it cost prohibitive for the Bar to build a parking garage.

## Staff Assigned to Oversee and Manage Law and Justice Center

John Baldwin and Richard Dibblee are primarily responsible for overseeing the overall maintenance and repairs of the Law and Justice Center. The day-to-day management of the Law and Justice Center requires one full time staff person to coordinate meeting room scheduling, setting up rooms, and catering services. This person is Ronna Leyba. Ronna also supervises some building maintenance. She also supervises one quarter time staff person who does the manual labor for room setups. There is one full-time staff person as the receptionist. This is Edith DeCow.

## Rooms and Rental Rates

Nearly sixty percent of the building is dedicated to provide meeting rooms for continuing legal education, public seminars, mediation, or arbitration. There are seven meeting rooms in the building. The seating capacity for the meeting rooms is determined by the setup style selected. These numbers range for a classroom style setting, luncheon tables, theater seating or hollow square. The capacity ranges from 32 people in one room to 240 in theater style seating using several rooms. (Please see Exhibit 2) The boardroom is also available for meetings. The board room has a large overall table that seats 20 comfortably along with furniture around the perimeter.

As seen in Exhibit 2, the rental rates range from hourly rentals to full-day rentals with the price based on whether the rental is for Bar CLEs, Non Profit Organizations, or Commercial events and organizations. The room rental rates for nonprofit organizations and commercial organizations are in line with current fair market hotel room rental rates. There are additional fees for renting on audio visual equipment, whiteboards, internet hookups and telephone hookups. These rates are also in line with current fair market hotel rental rates.

### Office Space Leasing

The Law and Justice Center currently leases office space to six different entities. They are Attorneys Title Guaranty Fund, Inc., Law Related Education (coalition for civic character and service learning and the Salt Lake Peer court), Utah Association for Justice, Utah Bar Foundation, Utah Dispute Resolution, and Utah Mandatory Continuing Legal Education.

As seen in Exhibit 3, the square footage per office space ranges from 192 square feet to 1166 square feet. Leasing rates which are based on square footage range from \$9.07 per square foot to \$22.75 per square foot depending on office size and entity status (non-profit or commercial). The Bar has kept the leasing square footage prices in line with market rates for a Salt Lake City Class B office building. The current rates are also in line with fair market values. (See Exhibit 2, 2009 Commercial Real Estate Lease Rates Summary)

### Building Maintenance

John Baldwin and Richard Dibblee maintain a building file which outlines in detail the repairs and projected maintenance to be done over the next several years. A copy of the Building Maintenance File is attached as Exhibit 4.

The Bar has paid for repairs and maintenance on a cash flow basis. The Bar does not have a building maintenance sinking fund. This is an issue of concern. The Committee recommends that a maintenance sinking fund be established.

Concerns: The Center has reached or surpassed nearly all of its life expectancy/usage rates; thus, it building is dated. The building has also reached its maximum capacity for usage with its current configuration. A major renovation is not advised because if the Bar sold the building in the future, the Bar would not recoup the costs of renovation in the sale of the building.

Innovision Property Group completed an Opinion of Value of the Building. The current market value of the Law and Justice Center is \$4,087,475.00. Noted positive attributes of the building include: quality construction, transportation access, building well maintained, grounds and parking well maintained, and geographic location. However, noted negative attributes include: insufficient parking, finishes need updating, excessive common areas, reconfiguration costs, and concrete condition. Due to the fact that the building has reached or surpassed many of its life expectancy/usage rates, any major renovations would not be recouped in selling the building because a new owner would have to reconfigure the building for future use. In essence, a purchaser would be buying the land and shell of the building having to completely reconfigure and remodel the interior.

Immediate repairs: Major repairs include the front steps and the bases of the light poles in the parking lot need immediate repair. Bids are being taken for those repairs. Expected costs range from \$20,000.00 to \$30,000.00. The windows and concrete around windows need to be resealed and repaired.

Minor repairs include repairing countertops in bathrooms, refurbishing face and countertops of receptionist desks, stain woodwork, and repairing chipped tiles in bathrooms and lobby. Many of the meeting room tables and chairs need to be replaced because they are 20 years old.

Short-term Repairs (0 to 3 years): Minor: Paint and replace wood slats in fence as needed, seal parking lot (approx. \$4,000), paint parking line (\$400), paint interior of building, replace entrance mats, new carpet, new energy efficient lighting throughout the building

Major Repairs or Replacement (0-3 years): Air conditioning (median life passed in 2008), new tile in lobby (use expectancy end 2012), drinking fountains, and elevator repairs. (note elevator is inadequate for size usage of building.)

Major Long Term Replacement: Boiler (expected usage until 2018) and new Roof (2025)

### Conclusions, Concerns, and Recommendations

The Law and Justice Center has served the Bar and the community well for the past 20 years. Many of the initial goals have been met to make space available for the Bar as well as general community and educational groups at no charge or at reduced rates and to permit law related interests organizations to use the facility at a no cost or low cost so that emerging techniques for arbitration, conciliation, counseling, and mediation could be more readily available.

There are major and minor repairs that need immediate attention. A sinking fund for building repairs and maintenance needs to be established and contributed to on a regular basis.

The Law and Justice Center has reached its capacity in terms of occupancy, parking, and internal power availability. Due to the fact that the building has reached or surpassed many of its life expectancy/usage rates, any major renovations would not be recouped in selling the building because a new owner would have to reconfigure the building for future use.

The Bar Commission should conduct a survey to the general membership of its desires and goals for the current building and potentially a new building. Should the current building be used only as an office space and then go to other places for CLEs and meetings? Or should the Bar sell the Law and Justice Center and purchase or build a new building to suit office space and room rentals?

# Exhibit 1

Utah Law Justice Center Building Usage Report  
 Annual Report Fiscal Year July 01, 2008 - June 30, 2009:

	July:	Aug:	Sept:	Oct:	Nov:	Dec:	Jan:	Feb:	March:	April:	May:	June:	Grand Totals:
<u>Bar Related:</u>	16	24	35	37	32	36	37	42	31	38	42	38	408
<u>Non-Bar:</u>	9	18	27	19	21	18	19	31	20	28	17	24	251
<u>Total Meetings:</u>	25	42	62	56	53	54	56	73	51	66	59	62	659
<u>No. of Persons:</u>	944	1,669	3,212	2,457	2,219	2,495	2,253	2,472	1,373	2,977	1,348	2,283	25,702
<u>Hours Used:</u>	300	483	690	512	616	554	532	662	518	696	569	709	6,841
<u>Hours Available:</u>	1,512	1,512	1,512	1,584	1,296	1,512	1,368	1,368	1,584	1,584	1,440	1,584	17,856
<u>% of Utilization:</u>	20%	32%	46%	32%	48%	37%	39%	48%	33%	44%	40%	45%	38%
<u>Billed Revenue \$:</u>	5,366.62	9,381.25	20,848.33	19,857.99	18,065.36	21,243.73	17,300.17	15,433.02	11,466.79	20,568.43	22,805.51	12,864.84	\$ 195,202.04

\* Utilization is calculated by taking the actual time the room was utilized and add (set-up time = (number of meetings x 2), divided by total rental hours available in the month, which is the number of business days x 72 (8 rooms x 9 hours per day).

Example:  $\frac{\text{time utilized} + \text{set-up time}}{\text{total rental hours available}} = \text{utilization}$

# Exhibit 2

## THE LAW AND JUSTICE CENTER IS DEDICATED TO PUBLIC USE

Sixty percent of the building is dedicated to provide meeting rooms for arbitration, mediation, conciliation, and for seminars and continuing legal education, as well as public use.

A full complement of services is available to support these activities, including audio-visual equipment and food service.

Arrangements to reserve facilities may be made through the Law & Justice Center Coordinator.

### MEETING ROOMS AVAILABLE

The Utah Law & Justice Center houses seven meeting rooms, A - G. The seating capacity for meeting rooms A - G is determined by the set-up style selected. These numbers are approximate.

<i>Classroom:</i> 32 in one room	<i>Luncheon:</i> 30 one room
64 two rooms	50 two rooms
96 three rooms	75 three rooms
128 maximum	100 maximum*

**\*To increase luncheon capacity, round tables are an option.**

<i>Theater:</i> 50 one room	<i>Hollow square:</i> 20 one room
120 two rooms	44 two rooms
180 three rooms	
240 maximum	

Other unique set-ups may be requested, but must be approved one week in advance to accommodate for coordinating with the other spaces and equipment reserved.

Meeting rooms A, B, C and D open to one large room on the main floor(2nd level).

Meeting rooms E, F and G open to one large room on the upper floor(3rd level).

The Board Room is also available for meetings. The Board Room is a room with a large oval mahogany table that seats 20 comfortably, along with plush furniture around the perimeter. This room is not as readily available as the other meeting rooms and bar-sponsored programs and/or meetings have the right of reservation.

The room rates and policies and procedures are stated below. For more information or inquiry of dates available, please call:

Law & Justice Center Coordinator

297-7030 or 531-9077

645 South 200 East Salt Lake City, Utah 84111 FAX (801) 531-0660

Utah Law and Justice Center ~ Meeting Room Rates

Bar Section Luncheons Only:

	<u>1.5 Hrs. Per Room</u>
1 Room	\$ 38.00
2 Rooms	\$ 76.00 etc.

Bar CLE Seminars:

	<u>Partial (1 - 4 hrs)</u>	<u>Full Day (4 - 8 hrs)</u>
	<b>raised rates \$10.00</b>	
1 Room	\$ 105.00	\$ 175.00
2 Rooms	\$ 135.00	\$ 205.00
3 Rooms	\$ 165.00	\$ 235.00
4 Rooms	\$ 195.00	\$ 265.00
5 - 7 Rooms	\$ 220.00	\$ 290.00
Board Room	\$ 105.00	\$ 175.00

Non-Profit ~ Government Organizations:

	<b>raised rates \$15.00</b>	
1 Room	\$ 130.00	\$ 200.00
2 Rooms	\$ 180.00	\$ 250.00
3 Rooms	\$ 275.00	\$ 345.00
4 Rooms	\$ 365.00	\$ 415.00
5 - 7 Rooms	\$ 435.00	\$ 510.00
Board Room	\$ 130.00	\$ 200.00

Plus a 20% set-up fee ~

Commercial:

	<b>raised rates \$15.00</b>	
1 Room	\$ 230.00	\$ 300.00
2 Rooms	\$ 325.00	\$ 395.00
3 Rooms	\$ 420.00	\$ 490.00
4 Rooms	\$ 515.00	\$ 585.00
5 - 7 Rooms	\$ 610.00	\$ 680.00
Board Room	\$ 230.00	\$ 300.00

Plus a 20% set-up fee ~

Lobbies Only:

	<b>raised rates \$15.00</b>	
Main Level Lobby	\$ 200.00	\$ 270.00
Third Level Lobby	\$ 170.00	\$ 240.00

Plus a 20% set-up fee ~

Effective: July 2008

## Utah Law and Justice Center Policies

Affiliated With the Utah State Bar

The following policies are intended to assure you and your guests a superior and well-organized function:

- Group will need to provide meal function guarantees 3 working days prior to function by 9 a.m. The guaranteed count may not be decreased after the above date. If you contact us 24 hours before your function with an *increase* in your count we will *try to accommodate your needs*. The bill will be prepared for the guaranteed number attending or the actual number served whichever is greater.
- Hot menu selections should be submitted to the Coordinator no later than one week prior to the scheduled function.
- All food and beverages must be purchased exclusively through the Utah Law & Justice Center. Food may not be brought in or taken off premises.
- All food and beverages are subject to a 20% service charge.
- The Utah Law & Justice Center's kitchens and their contents are for the use of staff members only.
- The Utah Law & Justice Center does not have storage space for more than 5 boxes. Please make arrangements off site for storage and assemblage of materials or an applicable room rate will be charged for space use.
- If space is required for assemblage of materials, please notify the Coordinator as soon as possible.
- The Utah Law & Justice Center is not responsible for personal property left in meeting rooms.
- Room charges are based on partial days (1 to 4 hrs.) or full days (over 4 hrs.) Plus a 20% service charge for all room set-ups.
- Meeting rooms are for times indicated only. If the group remains past this time, additional room rental may be charged. All equipment and supplies not belonging to the Center must be removed at the end of the meeting unless prior arrangements have been made. Additional space is subject to availability.
- If Group size decreases during the three working days prior to function, full rental will be charged on meeting space reserved.

- Business hours of 8:00 a.m. to 5:00 p.m. apply at the Utah Law & Justice Center. A service charge of \$50.00 per hour with a minimum of 1 hour will be assessed to groups needing to be in before 8:00 a.m. or remaining in the building after 5:00 p.m.
- The Utah Law & Justice Center is closed on Saturday and Sunday as well as most state and federal holidays. No reservations will be accepted on these dates.
- **Room assignments are tentative.** We reserve the right to substitute rooms of required size or larger if the attendee count varies.
- The Group will be responsible to reimburse the Utah Law & Justice Center for damage to premises or equipment by attendees or other persons associated herewith. Please allow us to assist you with all adjustments to room set-ups, and hanging of materials. No taping, tacking, or pinning is allowed without making prior arrangements with the Coordinator.
- Notice of cancellation must be given TWO WEEKS PRIOR TO RESERVATION DATE or a cancellation fee of one-half the room rate will be assessed.
- Should there be a need after your Group arrives, for any last minute, small volume copying, please ask the receptionist and she will have it arranged. The copy charge is **\$.15 per page.**
- Audiovisual equipment is available on a first-come, first-serve basis at a minimal fee. A/V equipment should be reserved at the time of booking to be sure of its availability. If the item(s) you need has been previously reserved by another group, the Coordinator can arrange for the rental of any A/V equipment needed at the rental cost only.
- The Utah Law & Justice Center is a NON-SMOKING building. Smoking is not permitted anywhere inside of the building.
- The Utah State Bar Law & Justice Center recycles & proudly uses earth -friendly products.

The Utah Law and Justice Center Coordinator will be happy to work with you in answering any questions or concerns you may have.

645 South 200 East      Salt Lake City, Utah 84111      (801) 531-9077      Fax: (801) 531-0660

Updated: July 2008

# Utah State Bar Law and Justice Center

# A/V Equipment List and Cost

Equipment:		Description:	Rental Cost:
27" Colored TV	1	old - TV's - but still workable - on carts	\$ 35.00
32" Colored TV	2	new - TV's on carts	\$ 40.00
VCR'S 1/2" VHS	2	VCR's add price of TV on cart	\$ 15.00
DVD	1	DVD player add price of TV	\$ 15.00
6' Tripod Screen	3	matte white fabric screens	\$ 15.00
8' Tripod Screen	2	matte white fabric screens	\$ 20.00
Overhead Projector	2	overhead projector on table or cart	\$ 30.00
LCD Projector	2	LCD video projector ~ for Bar \$80.00 staff for set-up an additional \$35.00	\$180.00
Easels	6	gold colored easels	\$ 5.00
Flip Chart Easel	1	gray colored flat front for writing	\$ 25.00
Flip Chart Pad	5	usage of white paper pads for flip chart easels	\$ 10.00
White Boards	2	white marker board on easel w/markers	\$ 20.00
Telephone Hook-up		telephone access line (each line)	\$ 90.00
Internet Hook-up		T-1 internet access (each line)	\$ 100.00
Speaker Phone	1	plus charges through ATT for conference set-up	\$ 40.00
Sound System	all rooms	sound system comes with cost of room rental	n/a
Podium w/mics	2	nice oak podium with power & light	\$ 15.00
Microphone Stand	1	audience stand for microphone	\$ 10.00
*** Any Microphones		all microphones & lavalieres come from outside & are subject to the actual rental cost only ~	
Power Cords	12	power strips for computers	each \$ 3.00
Extension Cords	11	100 ft.(1) -- 50 ft. (2) -- 8 ft. (8)	each \$ 3.00

\*\* All A/V equipment must be ordered in advance of meeting.

Effective: July 01, 2008

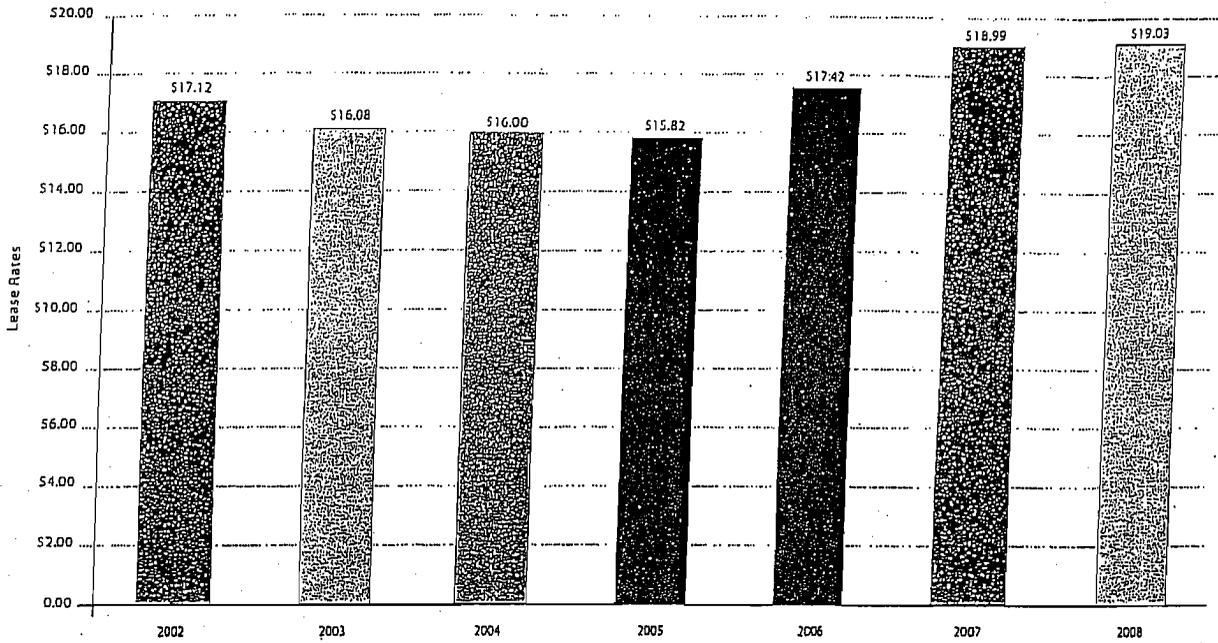
# Exhibit 3

<u>Tenant</u>	<u>Monthly Rent</u>	<u>Annual Rent</u>	<u>SQ FT</u>	<u>Rent Per SQ FT</u>	<u>Total Contract</u>	<u>Expiration Date</u>	<u>Notes</u>
1. LRE	\$296.25	\$3,555	392	\$9.07		By Agreement	
2. ATG (Base 1)	\$244.00	\$2,928	148	\$19.78			
ATG (Base 2)	\$225.40	\$2,704.80	150	\$18.03			
ATG (Main)	\$1,650.60	\$19,807.20	868	\$22.82			Network, Phones \$100/mo
Total	\$2,120	\$25,440	1166	\$21.82	\$74,200	12/31/10	
3. UBF	\$330	\$3,960	192	\$20.63	\$11,550	12/31/10	Network, Phones, \$20/mo
4. UAJ (1)	\$720	\$8,640	473	\$18.27			
UAJ (2)	\$120	\$1,440	128	\$11.25			
Total	\$840	\$10,040	601	\$16.70	\$29,400	12/31/10	
5. UDR	\$0.00	\$0.00	600	\$0.00	\$0.00	By Agreement	Network, Phones, N/C
6. MCLE Board	\$506	\$6,072	267	\$22.75	\$24,288	3/31/2011	Network, Phones, N/C Network, Phones \$50/mo

## Leases

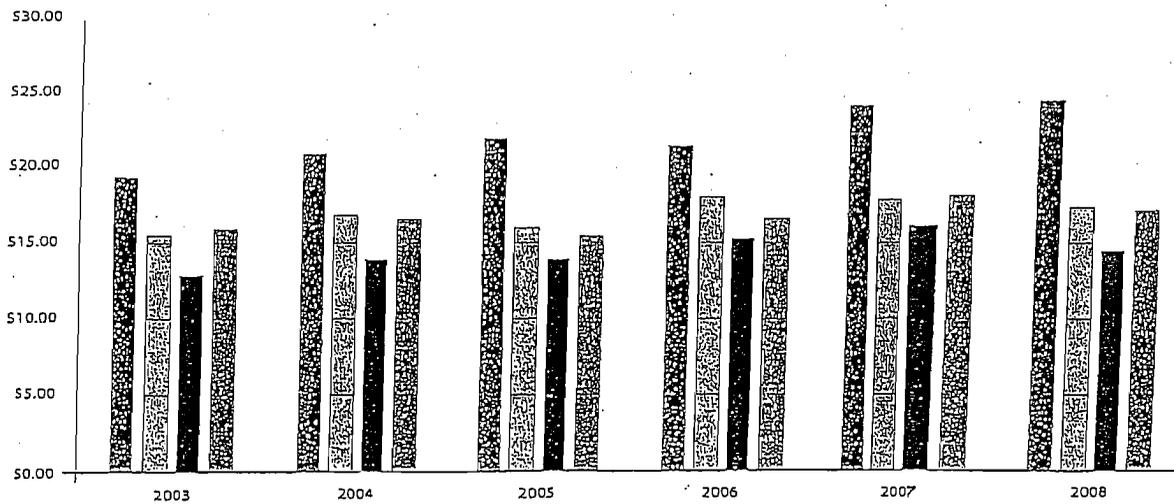
<u>LEASEE</u>	<u>EXPIRES</u>
1. UDR	By Agreement
2. Law Related Education	By Agreement
3. Utah Coalition for Civic, Character and Service Learning	By Agreement
4. Attorneys Title Guarantee	December 31, 2010
5. Utah Association for Justice	December 31, 2010
6. Utah Bar Foundation	December 31, 2010
7. MCLE Board	July 31, 2011

### 5. Overall Historical Lease Rates



Source: Coldwell Banker Commercial

### 6. Historical Downtown Lease Rates by Class



Class A	\$19.56	\$21.21	\$22.07	\$21.51	\$24.18	\$24.73
Class B	\$15.68	\$17.08	\$16.26	\$18.16	\$18.17	\$17.50
Class C	\$13.01	\$13.98	\$14.06	\$15.35	\$16.32	\$14.60
Total	\$16.11	\$16.72	\$15.55	\$16.84	\$18.23	\$17.33

Source: Coldwell Banker Commercial

# Exhibit 4

# M E M O R A N D U M

TO: Utah State Bar ~ Building Maintenance File

FROM: Law & Justice Center Coordinator, Ronna Leyba

DATE: September 30, 2008

RE: USBL&JC Building Maintenance and/or Replacement List

The following is a suggested maintenance and/or replacement timetable for all interiors and exterior property for the Utah State Bar Building, as determined by the Utah State Bar Law & Justice Center Staff.

ITEM	LOCATION	REPLACEMENT	MAINTENANCE
Concrete	Outside	Redo concrete, as needed; sidewalk around building, handicap ramp in back of building front & back steps. (2007).	City replaced sidewalk entrance to parking lot, northeast corner to make handicap accessible. (2003). Repaired front & back steps. (2005). Replaced back steps (2007).
Fence	Lot Perimeter	Replace as needed approx. (\$5,000.)	Repair as needed. Repaired & painted (2005). Replaced wood slats at side of trash & far east corner of fence. Review (2008).
Landscaping	All around building exterior.	Xeriscape east & south sections of parking lot (2004). Xeriscape front of building. (2006)	Have building support keep up with grounds cleaning on a weekly basis. Have landscapers keep grounds neat & healthy. In September (2007) will take out over grown pfitzers and Xeriscape north side of building.

ITEM	LOCATION	REPLACEMENT	MAINTENANCE
Light Poles & Fixtures	Outside	Replace as needed.	Replaced light fixtures around flagpole (2007).
Light Fixtures	Entrances & outside perimeter of building.	20 years (2012)	
Lights Fixtures	Inside & throughout building.	20 years (2012)	Replaced light fixtures above donor wall (2007) Added light fixtures in far east main level hallway (2007).
Skylights	Part of roofing.	As needed.	Replaced windows over east atrium in (2004) ~ replaced skylights in center top (2005). Replaced windows over west atrium (2007).
Windows	Through out building.	Replace as needed.	Atrium windows & inside glass in atrium gets cleaned quarterly. Clean office windows outside annually. Wash inside every other year or as needed.
Stair Railings.	Outside front & back steps, handicaps ramp & around back loading dock steps.	Repair as needed.	Paint as needed. Railing reset in back stairs when cement was replaced (2007).
Light Pole Bases	Four in rear parking lot.	Replace concrete bases in 3 years (2008)	Light bases repaired (2003). Bases of lights are crumbling & need to be replaced. Bids are coming in. (2007)
Parking Lot Surface		Replacement (2010) approx. (\$30,000.)	Sealed -summer (2005). Seal-coat every 4-5 years, Due (2009) Approx. (\$4,000.).
Parking Stall Lines		Paint every 3 yrs. - Spring (2008) approx. (\$400.)	

ITEM	LOCATION	REPLACEMENT	MAINTENANCE
Air Conditioning	Basement & roof.	20 years (Median Life 2008). Replaced main conductors - moved from roof to electrical room. (2006) Replaced frequency drive - split cost with Johnson's Control - so air would not go off with power surges. (2007).	Johnson's Control comes in 2 X's a year to change air filters & do general equipment maintenance. Repair as needed.
Boiler	Basement boiler room.	30 years (Median Life 2018)	Johnson's Control does annual inspection before starting up for the winter. Repair as needed.
Security System.	Interior/exterior.	Update as needed.	Have required annual inspections. Repair as needed.
Elevators	Plus Dumb Waiter locked in loading dock.	Replace as needed. Replaced carpeting in elevator (2005)	Serviced quarterly, repair as needed.
Interior Painting	Public Areas Meeting Rooms	Paint every 5 yrs.	Touch up as needed. Painted hallways and around lobbies (2006).
	Private or Office Areas	Paint every 7 yrs. Beginning in (2008).	Touch up as needed.
Mats	Front & Back Entrance to Bldg.	Replaced in (1999). Replaced back entry mats (2005).	Vacuum regularly & rotate. Repair as needed.
Area Rugs	Main Lobby	10 years (2013).	Shampoo annually & spot clean as needed.

ITEM	LOCATION	REPLACEMENT	MAINTENANCE
Carpet	All Garden Level areas, plus other-High Traffic areas	Replaced in (2000). Review in (2008).	Vacuum daily. Spot clean as needed. Shampoo annually or more often if needed. Just had carpets cleaned in lobbies & meeting rooms (July 2007).
Carpet	Staff Area on 3rd Floor & OPC.	Replaced in (2000). Review in (2008).	Vacuum daily. Shampoo every two years.
Carpet	Meeting rooms & Boardroom.	Replaced in (2001). Review in (2008).	Vacuum daily. Spot clean as needed. Shampoo annually or more often if needed. Just had carpets cleaned (July 2007).
Tile	Main lobby	20 years (2012).	Keep clean daily. Deep clean tile annually (May). Redo grout as needed (2008).
Rubberized covers	For Back stairs in back stairwell.	Review in (2008).	Keep clean on a monthly basis. Repair or replace as needed.
Glass Interior.	In main lobby & around 3 <sup>rd</sup> level lobby.	Replace or repair as needed.	Keep clean & polished monthly.
Woodwork	All areas, around door ways & closet doors, base boards	Stain and refinish as needed.	Keep baseboards clean. Wash around door handles. Woodwork needs to be refinished (2008).
Vertical Blinds	All meeting rooms & Office spaces	Replace as needed.	Vacuum annually. Clean every 3 yrs. Repair as needed. Missing slats in a couple of blinds.

ITEM	LOCATION	REPLACEMENT	MAINTENANCE
Plant Pots & Artificial Plants.	Atriums, front & back entrances; plus lobbies & mtg. rooms.	Replace as needed.	Wash artificial plants annually - summer. Clean & polish pots on regular basis.
Counter Top	Receptionist Desk	Replaced in (1997). Replace mid-(2008) with stone top. If replaced with another wood, the repair is often and may not be as cost effective.	Until replaced, temporary stain and polish to cover blemishes.
Stair Railings.	Inside building. Back stairway & front stairway.		Keep washed, cleaned & polished on a daily basis. Paint & touch up as needed.
Furniture	Third floor, main lobby & garden level 2 lobbies.	Recovered 3 <sup>rd</sup> level chairs (2005). Replaced couches 3 <sup>rd</sup> level (2005).	Clean & Scotch Guard every 2 yrs. & recover every 7 yrs. (2008).
Furniture	Garden level conference room	As needed.	Keep clean. Touch up as needed.
Boardroom Table	Main Board Room	Review in (2008).	Polish table when having the glass top cleaned 4 X's a yr. Replaced 1/3 of glass top (2005).
Chairs	Main Board Room	10-15 years (2005 - 2010).	Keep clean & Scotch Guard ~ every 2 yrs. Repair as needed.
Office Furniture	Inside staff office areas.	Replace as needed.	Keep clean. Repair as needed.

ITEM	LOCATION	REPLACEMENT	MAINTENANCE
Tables	Meeting rooms & closets.	Review table condition & order amount needed oblong - 2' X 5'- or rounds - 6' -.	Stack tables front to front & back to back. Storing properly helps protect tables. Wash daily. Repair as needed.
Chairs	Meeting rooms & closets.	Review conditions of chairs & replace if needed with a style that is compatible with current chairs.	Spot clean, as needed; Professionally clean upholstery & Scotch Guard new chairs every two years. (Done in 2005).
Ceiling Tiles	All offices & meeting rooms.	Replace as needed.	Replace as needed. After new roof was installed, we replaced all damaged ceiling tiles (2007).
Movable walls	All Meeting Rooms	Review in (2010). Original installing company is no longer in business.(\$30,000)	Repair as needed. Have replaced two of the wall locks & keys (2007).
Drinking Fountains	All 3 levels	15 years (2008)	Service and clean annually.
Ice Maker	Kitchen	Replaced with used machine in (1998). Purchased new ice maker (2007)	Clean air-filter monthly. Clean out old ice 3 X's a yr. Installed a water filter behind machine (2006). Repair as needed.
Refrigerator	Kitchen	Purchased used refrigerator (2007)	Throw out old food weekly. Wash interior 2 X's a Yr. Or more often if needed. Repair as needed.
Oven	Kitchen	Does not need to be replaced if maintained.	Keep clean.

ITEM	LOCATION	REPLACEMENT	MAINTENANCE
Garbage Disposal	Kitchen		Keep clean. Replaced in (2006).
Dishwasher	Kitchen	Does not need to be replaced ~ however, currently disconnected.	Because of drain problems in the sink, the dishwasher was disconnected (2004).
Bathroom Tile	All Bathrooms	20 years old (2012)	Keep clean on a daily basis. Redo grout as needed. Replace any broken tiles as needed.
Bathroom Fixtures	All Bathrooms	Replace gaskets, as needed as well as other parts.	Keep cleaned on a daily basis. Have plumber check on regular basis and repair as needed. Replaced all faucets in men's room on main level (2004). Replaced all faucets in ladies restroom 3-rd. level (2007).
Drains	Kitchen sinks, bathroom sinks drinking fountains & floor drains.	Because of age of building - pipes - are corroding. Need to keep close watch for any leakage, odors, backups etc.	Keep area around drains clean on a daily basis. Have plumber clean out all drains to avoid excessive build-up and back flow 2 X's a yr. (June & December).

ITEM	LOCATION	REPLACEMENT	MAINTENANCE
Doorknobs, locks & pneumatic door closers.	Entries & through out building.	Have repaired many, but because of the natural wear & tear we have to replace some as needed. This is changing the "master key list". Keep up to date employee & tenant key list.	With our locksmith we receive excellent service. He has told us not to use WD 40 in the locks or mechanisms. Wipe to keep clean.
Exit Signs	Through out building.	We recently discovered our current Exit signs are powered by tritium, which is a radioactive material. All Exit signs expire by (2008) & must be replaced.	When disposing of our existing Exit signs, Federal Law requires we follow the information, which is attached to this sheet. There is currently, one Exit sign boxed and in the dungeon storage on the Law & Justice Center shelves.
Sump-pump	In basement, corner closet in room across from elevator mechanics room.		City ordinances require an annual inspection (the city sends us a letter when the inspection is due) called "back flow testing". This test must be done & signed off by certified plumber. (Cost approx. \$350.)
Building Exterior.	The grout between the large blocks of masonry.	Replaced (2005).	Repair as needed.
Fire Equipment	Sprinklers & Extinguishers - throughout building.	Replace as needed.	Have required annual inspections. Repair as needed.
Roof		Newly installed roof should last until (2025).	Repairs done in (2004), (2005) & again (2006). New roof installed with protective walking mats around equipment (2007).

ITEM	LOCATION	REPLACEMENT	MAINTENANCE
Sprinkler System	Around landscaping.	Replace as needed.	Plumber turns on system in spring ~ at that time he replaces any broken heads etc. and checks for any problems with the automatic mechanism; he winterizes the system in fall.
Drinking Water Filtration System	Main level kitchen	Installed & owned by Mt. Olympus Water Supply (2008)	Mt. Olympus maintains this machine. We need to keep clean and make sure it is working.
Coffee Brewer	Main level kitchen	Purchased new (2008)	The brewer is hooked-up to our water filtration system. We need to keep clean and lime build-up cleaned out of spout.

# UTAH STATE BAR OPERATIONS REVIEW

## Continuing Legal Education

Committee Members: Evelyn J. Furse—Chair, Julie L. Eriksson, Curtis M. Jensen,  
Stephen W. Owens, Rodney G. Snow

The Utah Supreme Court sets the Continuing Legal Education (CLE) requirements and monitors compliance with these requirements. The Utah State Bar Commission has the responsibility “to promote professionalism, competence and excellence in those practicing law through continuing legal education and by other means.” R. of Prof. Pract. 14-102. The members of the Bar generally do not understand this division of authority and responsibility. In the 2009 Annual Utah State Bar Survey of Membership, many of the commenters expressed frustration with requirements set by the Utah Supreme Court for CLE. The Bar Commission and the Bar would likely benefit from clarifying the Commission’s role to its members in its materials and its presentations.

### I. Mandatory Continuing Legal Education (MCLE):

The Utah Supreme Court sets all of the CLE requirements. These rules are set forth in the Rules of Professional Practice Rule 14-401 et seq. Currently, active attorneys must receive 24 hours of CLE every 2 years.<sup>1</sup> R. 14-404. Two of the 24 hours must be for Ethics/Professional Responsibility; one of the 24 hours must be for Professionalism.

---

<sup>1</sup> MCLE will change the end of the reporting year to June to coordinate with Bar licensure. Ms. Sydnie Kuhre thinks June is an easier time of year for people to do extra CLE as necessary as opposed to December. This adjustment will begin in 2009 and complete in 2011. R. 14-404(b). During the change the Court has reduced the MCLE requirement proportionally. Id.

Id. A lawyer can obtain twelve of the 24 hours through self-study. R. 14-409, 14-413. Self-study credit is given for watching web casts (live or replay), podcasts, videos, and DVDs, listening to tapes, and preparing to speak at a CLE. Id.

These requirements are overseen by Sydnie (Syd) Kuhre at MCLE (mandatory continuing legal education). She is a Court employee housed at that Law and Justice Center. The Court pays rent to the Bar and reimburses the Bar for her salary. Ms. Kuhre determines whether a person has met CLE requirements or not. She is also the person who generally approves whether a program gets CLE credit or not.

The Supreme Court appoints lawyers to the Utah State Board of Mandatory Continuing Legal Education. R. 14-403. This Board reviews offerings from non-approved CLE sponsors to determine whether to grant CLE credit. R. 14-411. The Board can grant CLE credit for the entire program or only for one attorney who attends the program. For example, while a seminar for police officers may not receive general CLE credit, an individual lawyer may get credit for the CLE if s/he practices in the area and her/his law practice will benefit from the training. This Board also may give waivers or extensions of time for individual lawyers to comply with CLE requirements. Mary Corporon is the current Chair of this Board. Committee members serve 3 year terms and can stay on the Committee for 2 terms.

A CLE sponsor who provides CLE for a fee must pay a \$25 accreditation fee. (Web Application, form 3.) This accreditation fee goes to the MCLE Board. (R. 14-417.) In addition the applicant must pay \$1.50 per attendee per credit hour to a maximum of \$15 per attendee. (R. 14-417.) The Supreme Court sets this fee. When a Bar member

fails to comply with the CLE requirements on time, MCLE receives the late fees. (R. 14-417.) MCLE is revenue neutral.

Upcoming, MCLE expects to allow lawyers to view their CLE reports on line to see how many CLE credits they have at any time.<sup>2</sup> MCLE is also considering allowing active CLE credit for live web cast CLE. Currently people who attend such CLE can only receive self study credits.

ANY CHANGES TO MCLE WOULD BE SUGGESTIONS TO THE SUPREME COURT. The Bar cannot change any of these requirements.

## **II. Continuing Legal Education (CLE) at the Bar:**

The Bar is a presumptively approved CLE provider. (See R. 14-412.) It provides the CLE for the Annual Convention, Spring Convention, Fall Forum, and New Lawyer Continuing Legal Education (NLCLE). In addition, throughout the year the Bar co-sponsors luncheons and other CLE with various Bar sections. For the 2007-2008 year the Bar was involved in presenting approximately 326.5 CLE credit hours. (Bar Report-removing double counts).

In addition to live CLE, the Bar maintains an on-line library of CLE.

(<http://www.legalspan.com/utah/catalog.asp>) Attorneys can watch these presentations on computer or download them to an MP3 player. The attorney purchases the CLE for approximately \$31.50/credit hour and is e-mailed a password to access it. The attorney has 90 days to view the CLE. 95% of the way through the program the viewer is given

---

<sup>2</sup> This change will satisfy the concerns expressed by a number of the commenters on the 2009 Annual Utah State Bar Survey of Membership.

the ability to print a compliance certificate. Immediate notification is sent to the Bar of completion. The Bar pays \$1.50 of each credit hour to MCLE. This CLE comes from various Bars around the country and other CLE providers in addition to Bar programs. Some states charge as much as \$120/ credit hour for these programs. The University of Utah has a substantial CLE library it would like to make available to Utah attorneys.

Connie Howard oversees the Bar's CLE offerings with the assistance of Marion Eldredge and Megan Facer. Ms. Howard attends the National Convention for Legal Educators every summer and the ABA Consumer Assistance Program. Ms. Howard would like assistance on ideas for the 2nd year of CLE for new lawyers now that NCLE is being replaced in the first year by the New Lawyer Training Program (NLTP).

#### **A. Substance:**

The Bar has brought in Lawyers Helping Lawyers, Utah Land Use Institute, and Judge Benson and Mr. Mangum to do yearly presentations in their areas of expertise. The Bar generally stays away from offering personal injury seminars since the Utah Association for Justice covers that area well. Ms. Howard would like to have Marsh do a CLE on Malpractice. Another content idea for the future includes: "What to do with your law degree: Exit Strategies for Retirement." A common request is for the Bar to offer more non-litigation CLE. The Bar does not currently offer much "advanced" CLE. Because so many national organizations do this well, some people question whether the Bar should try to offer these too.

## B. Conventions:

The Bar President chooses the spring convention chairs; the President-Elect chooses the summer convention and Fall Forum chairs. These chairs receive no training per se and receive most of their advice from Ms. Howard. The involvement of the President and President-Elect on these committees varies according to the interest of the person in the position. Ms. Howard, while not "responsible" for the conventions, provides significant assistance with CLE presentation planning. The spring and summer conventions and Fall Forum are made up of appointed representatives of bar sections and committees. The Bar also advertises these as committees that people can apply to join like any other Bar committee. Much of the time spent in committee is devoted to finding keynote and luncheon speakers. Committee and section representatives are asked to put on presentations. People are often not enthusiastic about doing this. Many sections perceive themselves as lacking the money necessary to provide such CLE. The Bar provides little direction or oversight on what the presentation should include. Presenters are asked for material ahead of time for printing/posting purposes. No significant pre-monitoring of the presenters, presentation, or materials exists. The effectiveness of these committees varies significantly depending on the committee members. The social/vacation aspects of these conventions are thought by many to serve as the primary reason people attend the conventions. Many people perceive the CLE at conventions to lack substance (some substantive offerings, but not enough to fill one's entire schedule).

Ms. Howard organizes the Fall Forum. It focuses on providing substantive CLE for solo and small firm attorneys. It has had great success and continues to grow. Last

year was the first year a social/educational event was offered the night before. This extension of the Fall Forum was well received, and Ms. Howard hopes to do something similar this coming year. Ms. Howard tries to vary the presentations by rotating the sections/committees asked to make presentations.

### C. NLCLE:

Given the transition to NLTP, the New Lawyer CLE (NLCLE) will go through a significant revamp in the coming two years. Because of the impending changes, we have not studied what has happened previously.

### D. Money:

For the last six years, CLE has been a revenue center for the Bar. The May 2009 balance sheet suggests CLE made a net profit of \$13,653 for 2008-2009. The Bar offers a variety of free CLE throughout the year, i.e. Day at the Legislature, Blackberry training, YLD's family law training. The University of Utah offers much free CLE throughout the year. When sections or other entities co-sponsor CLE with the Bar, the co-sponsor assumes all risk of monetary loss.<sup>3</sup> Any profit on the CLE is split 50/50 with the Bar. The Bar charges the co-sponsor for the time spent by Bar employees assisting in the activity. These activities include: taking registrations, payments, sending out postcard and CLE reminders, ordering lunch, copying materials, creating certificates, etc. The Bar can cost-effectively videotape and web stream presentations in Salt Lake City. The Bar has not looked into whether this can also be done cost effectively at the Conventions.

---

<sup>3</sup> This policy appears inconsistent with the Bar Commission Policy on Co-sponsorships with Other Organizations that requires a sharing of expenses and profits. Utah State Bar Commission Policies & Procedures A(3)(a).

### **E. Marketing:**

The CLE calendar on the website posts Bar sponsored or Section sponsored activities only. The Conventions and Fall Forum place pull-out advertising in the Bar Journal. The Bar promotes some CLE through its monthly e-blast. Ms. Howard would like assistance with better marketing CLE.

### **III. SUGGESTIONS FOR IMPROVING CLE:**

1) The Bar should create a standing CLE committee to oversee CLE and conventions for continuity and quality. The existing conventions, Fall Forum, and NCLE committees should become subcommittees of the CLE committee. If the Commission adopts this suggestion, it will need to modify the Utah State Bar Commission Policies and Procedures D(1)(f).

- a) The CLE committee should have two chairs that serve for three years. The terms should be staggered so that the Committee will always have one experienced chair. The Bar President should appoint the initial co-chairs with the approval of the Bar Commission. After the initial appointment, the co-chairs should be elected by the Committee and approved by the Bar Commission.
- b) The Committee should have at least one member from each Bar section. In addition the Committee shall recruit members from the general membership of the Bar Commission. In recruiting members from the general membership, the Bar should attempt to include members from other legal organizations that provide

regular CLE, i.e. Inns of Court, Utah Association for Justice, Utah Attorney General's Office. Committee members shall commit to serve for three years.

- c) At least one member of the committee and each subcommittee should be from outside of the Third District and meetings should be held to allow teleconferences and voting by phone. One of the struggles of rural attorneys is the availability of live CLE. Attending CLE in Salt Lake City is cost prohibitive because of the time and the cost of being away from the office. Representation on the Committee will help keep attention on what the Bar can do to better serve the outlining areas with CLE.
- d) CLE Director, Connie Howard, will facilitate the administration of the Committee and its subcommittees. In addition, Ms. Howard will ensure compliance of CLE with MCLE requirements and Bar policy and procedure.
- e) The Committee will act as gatekeeper. It will require people putting on Bar sponsored CLE to provide outlines of their presentations with handouts 2 months before the presentation. The Co-chairs of the Committee will assign committee members (based on area of expertise) to review those materials and provide comments/requests/suggestions for additional information, presenters, or handouts. This kind of assistance, monitoring, and preplanning will improve the quality of CLE offered. Should developments occur in the interim, speakers should be encouraged to address those in their presentations as well.
- f) After reviewing the materials, the Committee will assign all CLE a number to reflect its level of complexity. Introductory level CLE should receive numbers from 100 to 199; intermediate CLE should receive number 200 through 299; and

advanced CLE should receive a 300 through 399. For example, Introduction to Bankruptcy Law could be 101; Supreme Court Decisions Affecting Employment Law could be 205; Tax Implications of Aircraft Transactions 330. This numbering will provide quick reference to consumers about the level of complexity. In addition, at the end of the year the Committee and the Bar Commission will have an easy way to determine if they are providing a good mix of educational levels.

- g) The Bar should create a visible link on the Bar's web-page soliciting CLE ideas/requests that the Committee would receive. The Committee would then find presenters to make the valid suggestions reality.
- h) Part of the Committee's assignment would be to make sure the Bar offers an adequate number of upper level CLE, non-litigation CLE, professionalism CLE, other special requirement CLE if adopted, and CLE in areas outside of the Salt Lake valley.
- i) The Committee should also investigate more passive, self-study CLE options, such as tests after reading Bar articles or reading new cases that are mailed in for credit.
- j) The Committee would oversee the CLE presented in coordination with KCPW.
- k) The Committee would assist in developing new marketing opportunities.

2) To increase the variety of CLE offered the Bar should require each section to offer one CLE a year minimum and one CLE at a Bar convention every 3 years. The Committee understands that some sections will have difficulty providing CLE relevant to a broad audience and some will have difficulty attracting speakers given their lack of

financial resources. The Committee should pair such sections with other sections that might have broader appeal and greater financial resources. In addition, the Committee should assist in encouraging speakers to attend and developing resources to assist with attendance when and where appropriate. The Committee may grant exceptions to the Bar convention requirement for these sections if other efforts fail. To accommodate concerns about the expense of CLE, each section should offer at least one hour of free CLE, and the Bar should encourage sections to discount CLE for section members.

3) The Bar should raise prices of CLE given the prices charged by national and private CLE providers. Other private CLE providers charge significantly more money for CLE presentations. If the Bar provides high quality CLE, it should be able to charge more than it currently charges. If the Commission adopts this suggestion, it will need to modify the Utah State Bar Commission Policies and Procedures B(1)(b)(3).

4) The Bar should begin encouraging sections and other CLE providers to offer CLE on the elimination of bias in the profession. Given Utah's unique demographics, culture, and the results of the WLU Survey on the Retention and Advancement of Women in the Profession, education about bias is one of the few ways to combat discrimination in Utah. During the first year of offering such CLE, the Bar should publicize its intent to ask the Supreme Court to require attorneys to get an hour of CLE on elimination of bias in the profession every 2 years. Following that first year of such offerings, the Bar should petition the Supreme Court for such a requirement. If the Court makes such a change, the change should be well-publicized prior to implementation and should be put in place at the beginning of the compliance year.

5) The Bar should ask the Supreme Court to require attorneys to get an hour of CLE on substance abuse/mental illness that impairs performance as an attorney every two years. Lawyers Helping Lawyers and Blomquist Hale could use this opportunity to make money allowing the Bar could reduce/eliminate its contribution to these entities while increasing awareness of the problems. Given that Lawyers Helping Lawyers and Blomquist Hale have been offering such programs consistently over the last few years, the Bar does not need to wait to make this petition to the Supreme Court. If the Court makes such a change to CLE requirements, the change should be well-publicized prior to implementation and should be put in place at the beginning of the compliance year. [The Committee split 3 to 2 on this recommendation.]

6) The Bar should support Ms. Howard's networking/investigation of CLE opportunities whether through memberships in national organizations or subscriptions to listserves, publications, etc. The Committee should advise on how to support Connie Howard in this way.

7) On-line CLE should receive a more prominent display on the Bar's home page, and an article should run in the Bar Journal explaining the availability of on-line CLE and how it works. The Bar should coordinate with the University of Utah to make its CLE library available to Bar members. Likewise, the Bar should investigate whether Brigham Young University has a similar resource from which Bar members could benefit.

8) The Bar president should provide CLE on professionalism and civility every year to increase the number of available CLE credits on the topic and make clear the Bar's commitment to professionalism and civility.

## Memorandum

To: Nate Alder, Bar President

From: Rusty Vetter, Chair of Commission Sub-Committee

Date: June 30, 2009

Subject: Fee Dispute Resolution Program Review

cc: Su Chon, Yvette Donosso, Karthik Nadesan, John Baldwin

---

Please accept this as the Commission Sub-Committee's report of its review of the Bar's Fee Dispute Resolution Program. The Sub-Committee members consisted of Rusty Vetter, Su Chon, Yvette Donosso, and Karthik Nadesan.

We all met with Bar Staff member, Christine Critchley and the FDR Committee Chair, Steve Johnson to begin our review of the Program. At the meeting, Christine and Steve provided helpful background for the Program and described how the Program functions. They generally seem to be satisfied that the Program is functioning well and meeting its designed purpose. Subsequent to the meeting, written questions were submitted to the Bar to provide additional details concerning the Program and how it might be improved. Attached is the Bar's response to the questions. One concern identified is that because the Program is administered by the Bar, some potential participants would not participate. There is a perception that the Program would not be fair to the client and that the Bar would favor the attorneys who are on the other side of the dispute.

The majority of referrals for the Program come from the Bar's Office of Professional Conduct. An interview was conducted with Billy Walker, Senior Counsel for OPC concerning the Program. Billy seems satisfied with the Program, but does not view it as critical to the success of OPC. Other input was sought from members of the FDR Committee. Attorney volunteers on the Committee seem to be very satisfied with the work of the Program and had few suggestions for improvement. Attempts were made to receive input from judges who volunteer for the program. No judge responded to our request for input. Attempts were also made to receive comments for party-participants in the Program. Only three individuals responded and all seem to be satisfied with the Program.

Our conclusion is that the Program is operating reasonably well within a very limited scope. There seems to be little active support for the Program and we speculate that most Bar members do not know the Program exists. Information about the Program

is difficult to find on the Bar's website. If the Program were discontinued, there seems to be only minimal impact since the Program handles approximately 25 cases each year. On the positive side, the Program costs the Bar very little and is supported by a Bar Staff member who has free time to devote to the program. The attorney volunteers seem to be very supportive of the Program and would likely feel that it would be a loss for the Bar to discontinue the Program. If the Bar were to discontinue support for the Program, law firms should be alerted, since some require that any fee disputes be sent to Program.

Areas for improvement identified by the Bar staff include promoting the Program better and considering making it mandatory. We recommend the Bar continue to support the Program, but make better efforts to promote it. Consideration could also be given to providing a grant to a mediation/arbitration firm to provide the staff support for the Program, which may result in more participation.

## Bar Responses to Questions Raised by Sub-Committee

We'd like to include a summary of the Bar staff's views concerning the FDR program in our report to the Commission. Could you provide the following:

1. a summary of the background and benefits of the program;

Formed in September 1, 1986, the Fee Dispute Resolution Program's objective is to facilitate resolution of fee disputes between Utah attorneys and their clients. Approximately 60 volunteers serve as Fee Dispute Resolution Committee members who have had training and donate their time to act as arbitrators/mediators.

Fee Arbitration: A three-member panel, needed for cases that exceed \$3,000 in disputed fees, includes an attorney (Chairman), a judge, and a lay person. In cases that are below \$3,000 in disputed fees are heard by a single arbitrator who is an attorney. The panel determines if the fee charged to the client is appropriate for the work that the attorney had performed on the case.

The steps involved in the Fee Arbitration process are:

1. The petitioner (usually the client) requests information about the Fee Arbitration program. A Verified Petition to Arbitrate Fee Dispute form as well as a copy of the rules is sent to them for completion.
2. Once the form has been completed and sent back to the program director a case file is set up and a copy of the Verified petition, the Fee Arbitration Rules, and the Verified answer form is sent to the Respondent.
3. The Respondent is asked to complete and return the Verified Answer within 10 days; however extensions are frequently given at the request of the respondent due to time constraints.
4. The respondent may decline to participate or may agree to binding arbitration. A copy of the Verified answer is sent to the petitioner and if the respondent has agreed to arbitration then a \$10.00 filing fee will be due before the arbitration will be scheduled.
5. Upon receipt of the filing fee, a copy of the Verified Petition and the Verified Answer will be sent to the chairman of panel that has been assigned. It is up to the chairman to send a copy of the documents to other panel members if a three-member panel is needed. The chairman will also send a Notice of Hearing to all parties involved

including The Fee Dispute Resolution Committee Chairman, Steven G. Johnson.

6. The parties will attend the hearing either in person or by telephone. The panel will conduct the hearing according to the Rules of the Fee Dispute Resolution Committee.
7. A binding decision will be sent to the director from the panel. A copy of the decision, the certified mailing certificate and a letter describing the right to appeal the decision under narrow and specific circumstances will be sent to the petitioner and respondent by certified mail.
8. The case is documented by the program director on a tracking file, and the actual case file is kept in storage.

Fee Mediation: is another option that is offered to the parties of a fee dispute. If the parties agree to mediation, an attorney volunteer from the Fee Dispute Resolution Committee is assigned to mediate the dispute. The mediator is to follow the standard mediation rules provided in the Utah Mediation Act.

The program attempts to provide a service to the public and the profession by resolving disputes over fees. It is well accepted by the community and profession.

Steven G. Johnson is the Chair of the Fee Dispute Resolution Committee that consists of 60 members and one staff member assigned as liaison. The committee consists of attorneys, judges and lay people.

The Fee Dispute Resolution program is an alternative to going through the court to resolve fee disputes between attorneys and clients. It is a valuable service to attorney and client, as well as the court. The Supreme Court has approved the rules and process of the program.

The rules of the Utah State Bar Fee Arbitration/Mediation programs are listed on the Court web site as well as the Utah State Bar web site. The rules are also sent to those who request a petition form and/or information about the program. The rules, forms, and other information are attached.

The Utah State Bar Fee Dispute Resolution Committee meets together as needed to discuss any problems that members would like to address as a committee. The committee will have the next meeting in May of 2009. If any rules or procedures need changing, the committee will vote on each matter

presented. The rule changes need to be approved by the Utah Supreme Court before they are implemented.

2. describe the case intake process and if you consider it to be user friendly, particularly for those without legal representation;

Most of the petitioners find out about the FDR program through the OPC, the Bar's website, or by calling the main Bar phone line. Petitioners may download the form from our site or receive it by mail. The form is very user friendly - especially since we take petitions that range from a couple of lines explaining that they feel cheated to thick files of evidence. We can discuss the program with Spanish speaking petitioners (bilingual bar staff) and that is an immense help to those who have disputes, but have problems understanding English.

3. describe any complaints you have received about the process;

We are in cahoots or collusion with the crooked attorneys because we can't force the attorney to participate, takes too much time etc.

4. provide statistics of volunteer time and general utilization over the past three years;

Most of the panel members (attorneys and lay persons) will receive a case at least every other year. Judges receive a case about once a year. Because numbers are up this year, just about all of the panel members have each received a case this past year.

Specific statistics of attorney, judge and non-attorney panel member time required by these cases have not been maintained. We have not felt a need to add an additional burden on the panel members to keep these kinds of statistics. Following is an approximation of the time required in these cases, based on several years of experience.

For a case under \$3000.00 handled by one attorney as arbitrator, he or she can schedule the case, prepare an appropriate Notice of Hearing, and read through the provided documents in preparation for the hearing in less than 2 hours. Sometimes only an hour is more than sufficient for the case. In these kinds of hearings, the hearing itself takes about an hour. The arbitrator must then prepare a decision, usually supported by reasons for the decision which are similar to findings of fact and conclusions of law. This sometimes takes an additional hour or so to prepare. It is not unusual for attorney panel members to spend 3 to 6 hours even on a small case.

For larger cases (over \$3000.00 in amount), the scheduling takes a lot more time because the attorneys must schedule judges' time. It is not unusual to spend up to an hour just getting a judge lined up. As a recent example, I was required to contact 5 or 6 different judges before I could find one willing to serve

who was also available in the time frame needed by the case. Each judge required a couple of calls to the respective judge's clerk(s), and required a wait (sometimes for a couple of days) for a response from the clerks. I have had a few hearings that took longer than two hours each to hear (one took 4 hours), but one case with a claim in excess of \$500,000 took only about half an hour.

If extensive documents are provided by the parties in advance of the hearing, the attorney-arbitrator must have them copied and sent out to the other panel members. Sometimes the arbitrators can spend over an hour reviewing those documents in advance of the hearing.

It is not unusual for attorney-arbitrators to take at least an hour preparing the decisions. Then he or she must obtain the signatures of the other panel members on the decision document. That can take additional time. In a large case, it is not uncommon for the attorney-arbitrator to spend up to 20 hours on the case. Fortunately, the smaller cases can sometimes be handled with two or three hours of work by the attorney.

**5. describe modifications to the program that will involve more mediation and if this will result in more cases;**

Currently new mediation rules have been proposed to the Supreme Court, and the rules have been published for comment. They will likely be approved by the Court very soon. These rules set forth the procedures to be followed for mediations of fee disputes. Upon adoption of the mediation rules by the Court, I will prepare a Bar Journal article introducing the new rules to the members of the Bar, and also encouraging use of the fee dispute program for all attorney-client fee disputes. We anticipate that because it appears that some attorneys do not want to participate in the program because arbitration takes away their control of the situation, once they become aware of the mediation option, more attorneys may be willing to participate. We have already had a few attorneys request mediation.

**6. The cost of the program to the Bar;**

\$13,400 (This includes the portion of salary and benefits (9,850) that is allocated to FDR; Overhead (2,800) (building, copying); and annual lunch committee meeting (1,000). The program is offset slightly by \$10 filing fee paid by those who are scheduled for Mediation or arbitration. (\$200) estimation.

**7. how you think the program could be improved (if at all);**

There are several things we could do to possibly improve the program.

1. We need more judges signed up to participate as arbitrators, particularly in Salt Lake County. Recently the Chief Justice offered to encourage judges to participate in the program in last September's Judicial Forum. Now, the panel plans to write letters to the judges

soon to invite them to participate. We anticipate that this will help a little in this regard.

2. We also need more non-attorneys in the Salt Lake area. We are considering contacting out current non-attorney panel members and asking them to recommend friends or acquaintances whom we could then contact and ask them to participate. We are also considering putting a notice in a local newspaper and in the *Bar Journal*, inviting non-attorneys to participate or asking attorneys to identify potential panel members for us.

3. We recently have been considering using an attorney who would be the first point of contact after a complaint has been received by the Bar. This attorney panel member would contact the attorney involved in the claim and seek to resolve the matter before it even goes to arbitration or formal mediation. Perhaps a third party trying informally to resolve the matter might actually help resolve more cases at an earlier time. This may also speed up the resolution of matters for some clients.

We will likely discuss this option at our next panel meeting in early May of 2009. Training of panel members in the issues and procedures that may arise in these situations will be necessary.

8. how we could significantly increase participation (such as by 50%);

We believe that our new efforts to use mediation, an upcoming *Bar Journal* article explaining the work of the Fee Dispute Resolution Committee, and perhaps a seminar as part of next year's Fall Forum will increase to some degree the use by Utah lawyers of the Fee Dispute Resolution Committee to help solve their outstanding fee issues. However, it is believed that the only way to increase participation by 50% (we are currently at about 50% participation) is to make the program mandatory. We have discussed this possibility with the Supreme Court, which appeared to be warm to the idea. We decided at that time to first try the mediation option to see if it has any effect on the usage of the program by Utah attorneys. If we do not see a marked increase in the number of attorneys who are willing to participate in the program, we will then revisit the "mandatory" matter. We do not expect that making the program mandatory will be popular with many members of the Bar, so hope to increase our numbers with less controversial measures.

9. What would be the consequences (e.g. financial effect) of a significant increase in participation?

Most of the work is done on ALL cases, a few more steps are needed in those cases that actually have a hearing scheduled.

10. What would be the consequences of not offering the program at all?

It would be a loss to the public and the attorneys. Many clients are too intimidated or lack knowledge in taking a lawyer to court. This is basically the only alternative. I believe most Bars have a Fee Dispute program in place. We frequently participate in surveys etc. with other Bars and the ABA.

Could you also update us on your efforts to get permission from the participants to question them about the program? I think we are leaning toward a very broad survey question that would ask something like "Please tell us about your participation in the Utah State Bar's Fee Dispute Resolution Program. What was your role in the program, did the program work, and how could the Program be improved?"

We need to work on this, I think we (Steve and I) need to send out the questions that you would like to ask so that we can keep the confidentiality rules of the program.

# KING & KING

Attorneys at Law  
330 North Main Street  
Kaysville, Utah 84037  
(801) 543-2288  
Fax (801) 543-2272

January 26, 2009

Nathan D. Alder, Esq.  
President, Utah State Bar  
15 West South Temple  
Suite 800  
Salt Lake City, Utah 84101

RE: Client Security Fund

Dear President Alder:

Herm Olsen, Esq., Mary Kay Griffin, C.P.A. and I were appointed as a committee to review the functioning of the Client Security Fund.

To carry out this assignment John Baldwin prepared for us a copy of all of the rules and regulations of the Bar pertaining to the Client Security Fund. As a committee we reviewed those documents and furnished a copy to David R. Hamilton, Esq., Chairman of the committee administering the Fund.

David reviewed these documents with his committee and has reported back to us that the committee does not have any suggested changes. A copy of his letter is enclosed. Likewise, we as the committee which you appointed have no suggested changes.

After this review it is the unanimous opinion of our committee that the Client Security Fund is operating properly and that there are no needed or suggested changes. We compliment Mr. Hamilton and his committee for the fine manner in which they have administered this program on behalf of the Utah State Bar.

Please let us know if you have any questions concerning our review.

Very truly yours,

KING & KING



Felshaw King

FK:fh

cc: Mary Kay Griffin, C.P.A.

William H. King  
(1906 - 1983)

Herm Olsen, Esq. • Felshaw King • Scott B. Dopp • Joshua F. King

JAN 27 2009



LAW OFFICE OF  
DAVID R. HAMILTON  
A PROFESSIONAL CORPORATION  
LINDQUIST OFFICE BUILDING  
3434 WASHINGTON BOULEVARD, SUITE 202  
OGDEN, UTAH 84401  
PHONE (801) 436-0001  
FAX (801) 436-0003

COPY

December 31, 2008

Felshaw King  
Utah State Bar Commissioner  
330 North Main Street  
Kaysville, UT 84037

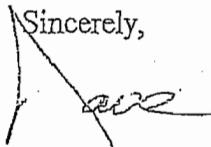
RE: Client Security Fund

Dear Felshaw:

The Client Security Fund aka Fund for Client Protection is fortunate to have had stability in its Committee membership, combined with terrific assistance from Christine Critchley and Billy Walker. It should also be noted that the Committee has functioned well in carrying out its responsibilities.

No Committee member has suggested changes in any respect with the methods of operation that have been employed. In fact, it is the firm belief of the Committee that the axiom "if it ain't broke, don't fix it" applies directly. With that, please accept my thanks for the reception and appreciation our Committee always receives when dealing with the Commission. Please advise whether I can assist further.

Sincerely,



David R. Hamilton  
Chairman, Fund for Client Protection

DRH/erc

OCTOBER 8, 2009

UTAH STATE BAR OPERATIONS REVIEW

REPORT OF THE BAR COMMISSION COMMITTEE REVIEWING THE  
OFFICE OF PROFESSIONAL CONDUCT AND THE  
CONSUMER ASSISTANCE PROGRAM

I. Background

As part of its review of Bar operations and programs, the 2008-09 Utah State Bar Board of Bar Commissioners, led by Bar President Nathan D. Alder, appointed the following "Review Committee" to review the Bar's Office of Professional Conduct ("OPC") and the Bar's Consumer Assistance Program ("CAP"):

Laurie Gilliland  
James D. Gilson (Chair)  
Lori W. Nelson  
V. Lowry Snow  
Kim R. Wilson

1995 was the last time that a committee had been appointed to review OPC (then called the Office of Attorney Discipline) and to make a written report to the Bar Commission.

The tasks of the current Review Committee were to review the performance and effectiveness of OPC and CAP, and to offer suggestions for possible improvement.

The Review Committee did the following in the course of accomplishing its tasks:

- A. Reviewed written materials pertaining to OPC, including the following:
1. Summary descriptions of OPC and the Utah Supreme Court Ethics and Discipline Committee
  2. Discipline Program History
  3. Mission Statement
  4. Statement of Program Resources
  5. 2004 - 2008 Financial Statements
  6. 2006 - 2009 Budgets
  7. 2004 - 2008 Annual Reports
  8. Utah Rules of Professional Conduct
  9. Utah Rules of Lawyer Discipline and Disability
  10. Outline of OPC Processes and Procedures (updated October 2008)
  11. Description Statement of OPC's Ethics Hotline for Attorneys

12. OPC internal policy statements concerning e-mail responses
13. 2008-2009 Ethics and Discipline Committee Roster
14. Screening Panel Chair Opening Statement
15. Screening Panel Informal Decision Sheet
16. Flow chart of OPC Disciplinary Process (copy at Exhibit "A" hereto).
17. OPC Complaint Form (copy at Exhibit "B" hereto).

B. Reviewed written materials pertaining to CAP, including the following:

1. Statement of History of the Consumer Assistance Program
2. Mission Statement
3. Statement of CAP Program Purpose and Goals
4. Statement of CAP Policies and Procedures
5. CAP File Log for 2007
6. CAP Report for 2007
7. CAP Summary of Program Results for 1997 through 2007
8. Request for Consumer Assistance Form (copy at Exhibit "C" hereto).

C. Conducted interviews and received written information from the following:

1. John C. Baldwin, Executive Director of the Utah State Bar
2. Jeannine Timothy, Director of CAP
3. Katherine A. Fox, General Counsel of the Utah State Bar
4. Billy L. Walker, Senior Counsel of the Utah State Bar (two interviews).
5. Robert A. Burton, Chair of the Utah Supreme Court Rules Committee
6. Panel of private practice attorneys who regularly represent attorneys who have had disciplinary proceedings brought by OPC. (Richard D. Burbidge, Francis J. Carney, James H. Deans, Peter W. Guyon, Charles Gruber, Jr., Greg Skordas).
7. Panel of private practice attorneys who are currently serving as screening panel chairs or co-chairs of the Utah Supreme Court Ethics and Discipline Committee ("Screening Panel" members). (Lois Baar, Catherine Brabson, Evelyn Furse, Christine Greenwood, Geoffrey Haslam, Bruce Maak, Terrie McIntosh, Clark Nielson, Laura Scott, and Peter Summerill. Nathan D. Alder, 2008-09 Utah Bar President, also attended).
8. All OPC Staff members (both professional and support staff) (Assistant Counsel: Diane Akiyama, Adam Bevis, Sheradee Fleming, Barbara L. Townsend, Margaret R. Wakeham; Paralegals: Ingrid Westphal Kelson, Alisa Webb; Support Staff: Jonathan Laguna, Mimi Brown). (A copy of the Questionnaire that was sent to each staff member is attached hereto as Exhibit "D"; a summary of the staff interviews is attached hereto as Exhibit "E").

- D. The Review Committee as a whole met eight times on the following dates: 11/3/08, 11/20/08, 12/10/08, 1/13/09, 2/10/09, 3/13/09, 4/16/09, 6/2/09.
- E. The Review Committee drafted and mailed a written survey to all attorneys who were respondents in discipline cases concluded by the OPC during the last two years, and in which the case went at least to the screening panel stage. 102 surveys were sent out, and 30 completed the survey. (A copy of the survey letter and form is attached hereto as Exhibit "F"; a summary of the responses to the survey is attached hereto as Exhibit "G").
- F. The Review Committee drafted and sent an e-mail survey to all active and inactive members of the Utah State Bar (excluding lawyers who work for OPC) as of March 2, 2009. A total of 8033 surveys were e-mailed to Bar members. 958 members participated in the survey (944 doing so to completion), for a participation rate of about 11.8 percent. (A copy of the survey letter and form is attached hereto as Exhibit "H"; a summary of the responses to the survey is attached hereto as Exhibit "I").

## II. Findings

1. OPC is generally performing well and is generally positively regarded by Bar members. The current OPC system of attorney discipline is preferred over a DOPL system.
2. OPC staff reported good morale, clearly defined roles, and excellent supervision. They were remarkably unified in their attitudes toward their office environment and their work. To the person, they were enthusiastic about their work, which was described as challenging, and their work relationships, which were described as collegial. They came across as a cohesive and conscientious group.
3. There appears to be the appropriate ratio of attorneys to support staff at OPC. The Review Committee asked specifically about whether using more paralegals would be helpful to OPC attorneys--e.g., whether some of the work done by attorneys could be done by paralegals. The answer was generally no; the attorneys reported that their current ratio of six attorneys to two paralegals was appropriate.
4. While generally agreeing that more funding and better salaries would be helpful, OPC staff members each submitted a different recommendation to the Review Committee for improvement of OPC or the ethics-complaint process: (1) The staff should be absorbed by the Utah Supreme Court as employees of the State. (2) The ethics hotline should be discontinued because it can be viewed as a conflict of interest for the OPC to give a preliminary opinion, then later investigate and pursue a complaint against an attorney who may have believed he or she was relying on the preliminary opinion. (3) OPC

counsel should not serve as secretaries to screening panels because respondent-attorneys may assert counsel performing those duties in a self-serving manner. (4) Better training should be provided for screening panels. (5) Better uniformity between screening panels should be fostered--e.g., chairs could meet periodically to discuss and "establish" precedents. (6) OPC should be able to provide services in other languages so that non-English speakers are not shut out of the process. And, (7), OPC's image should be improved, through a public-relations campaign regarding the OPC's mission.

5. The vast majority of lawyers surveyed, including those who were respondent attorneys in matters brought against them by OPC, believe that OPC lawyers and staff act professionally and with civility. OPC's Senior Counsel, Billy Walker, is highly regarded and respected, and has succeeded in this difficult job, which he has done for over twelve years.
6. There is cooperation and overlap in the intake processes of OPC and CAP. By rule and practice, OPC, not CAP, reviews all notarized written complaints received by the Bar, which is usually done using the OPC's "Initial Complaint Form." OPC also reviews virtually all of the written "Request for Assistance" forms, which is the form submitted by consumers about attorneys to CAP, and forwards those matters to CAP for handling unless they appear to involve ethical violations that should be addressed by OPC. OPC reviews only those complaints or concerns that are submitted in written form, except that it can consider a case that comes to its attention through other means, including the media. OPC's intake process (and subsequent prosecution) is governed by the Utah Code of Judicial Administration, Chapter 14, Articles 5 and 6 (Rules 14-501 through 14-607, Rules of Lawyer Discipline and Disability, and Standards for Imposing Lawyer Sanctions). All six OPC attorneys review all of the written complaints during their weekly screening meeting.

CAP does not have rules governing its disposition of cases. CAP uses a different intake form, called "Request for Assistance," and also occasionally receives cases orally. All OPC matters that it determines do not rise to the level of an ethical violation that warrant prosecution by OPC are forwarded to CAP. If CAP later discovers that serious ethical violations appear to have occurred regarding the attorney, then CAP refers those cases back to OPC, and provides that consumer an OPC Initial Complaint Form to complete and submit to OPC. Additionally, if a consumer wants the matter reviewed by OPC, even if CAP does not believe the attorney has violated any of the rules of ethics, then CAP sends an OPC Initial Complaint Form to the consumer. CAP does not initially screen or review any notarized statements or other complaints using the OPC Initial Complaint Form.

CAP handles urgent complaints that are initiated without the Request for Assistance form, such as via phone or e-mail requests, or even in-person meetings at the Utah State Bar. Those matters are not initially screened or reviewed by OPC. If someone calls CAP

with a concern that requires immediate attention, such as a statute of limitations running, an imminent property foreclosure, a coming court date, or a wrongful garnishment that happened the day before, CAP does not refuse to assist the consumer because they have not filled out a Request for Assistance Form and wait for OPC to review it. Thus, some consumers get immediate assistance while others must wait for the OPC review.

When someone calls the Bar offices regarding a problem about an attorney, the Bar's telephone operator usually invites the caller to submit a CAP Request for Assistance Form instead of an OPC Initial Complaint Form.

7. CAP is currently a one-person operation (Jeannine Timothy), who has been in this part-time position for the entire eleven years that CAP has been in existence. Like Billy Walker, Jeannine Timothy is highly regarded and respected. She helps to quickly resolve a lot of problems before they become bigger ones, and interfaces well with OPC, the Bar, and consumers. Although she is a lawyer she does not come across as a lawyer to the consumers. For all intents and purposes, Jeannine Timothy is CAP. She is the reason why CAP is operating so well.
8. OPC screens out many cases without even asking for a response from the subject attorney. It also screens out many cases after receiving the attorney's response.
9. Although OPC only prosecutes about ten percent of the complaints that it receives, there is a perception by many attorneys, including Screening Panel members of the Utah Supreme Court Ethics and Discipline Committee, that OPC tends to not screen out all of the cases that are not serious or in which the complainant's allegations lack any credibility, or that otherwise do not warrant prosecution. A common criticism is that OPC should exercise more discretion to dismiss or resolve more cases earlier and informally, and that it can be overzealous and overreaching in its prosecution of claims. There is also a perception that OPC tends to accept at face value the allegations of the complainant, that it is not very flexible in settlement negotiations, that too many minor cases are brought to the Screening Panel to make the decision whether the case warrants prosecution or has merit, and that a lot of time and resources are spent on cases that should not have ever been pursued.
10. Many of the OPC attorneys lack prior significant experience in private practice prior to going to work for OPC, which likely affects their ability to make important judgments and recommendations about how a case should be handled. This factor is ameliorated, at least in part, by their years of experience with OPC, by the input of the two senior OPC attorneys, and by the fact that all of the OPC attorneys review all of the written complaints during their weekly screening meeting. Budget constraints also make it difficult for OPC to hire experienced attorneys.

When the OPC lawyers were interviewed by the Review Committee about whether lack of real-world experience hampers the effectiveness and competency of some of the assistant counsel who have no legal experience outside the OPC, none of the attorneys believed that it did. They pointed out that OPC attorneys may supplement their lack of practice experience with CLE, reliance on outside attorneys practicing in a variety of fields, and mentoring of more-experienced attorneys within OPC.

11. OPC does not seem to have prosecution priorities in the types of cases it chooses to allocate its resources. As a result, factually simpler cases, that involve less serious ethical violations, may be more likely to be prosecuted than more complex cases.
12. Members of the Screening Panel need more and better training as to their role in the disciplinary process, and the burden of proof that must be met. OPC's role before the Screening Panel is blurred since it is both the prosecutor and it acts as secretary to the panel by providing the case materials and arranging the scheduling.
13. The OPC diversion program is not being utilized very much at all.
14. The Ethics Hotline, which is operated by OPC, is a worthwhile program that provides a service to Bar members and should be continued even though it is time consuming to operate. It is not as widely known and could be better utilized.
15. The materials that OPC provides to the Screening Panels are voluminous and could be streamlined, such as taking out multiple copies and perhaps indexing the documents.
16. The attorney discipline rules should be amended to clarify the burden of proof required to be established at the Screening Panel stage (preponderance of evidence instead of mere probable cause) before any disciplinary action can be taken, and to provide for cross examination of witnesses by submission of questions to the Screening Panel by the subject attorney or his/her counsel. These rule changes are already in process through the Utah Supreme Court Rules Committee.
17. Screening Panel members are predominately attorneys from larger Salt Lake City firms. There are not many Screening Panel members who are solo or small-firm practice lawyers, or who practice family law or criminal law.

### III. Recommendations

1. Clarify the intake procedure between OPC and CAP to help ensure that a non-written complaint about an attorney is ultimately treated the same as if it had been submitted in writing. We are not recommending that all matters handled by CAP must be in writing.
2. Clarify the role and provide guidance to the Bar's telephone operator about the OPC/CAP intake process.
3. Develop rules or protocols for CAP in order to provide guidance and direction to whoever will eventually succeed Jeannine Timothy, including the intake process.
4. Work on earlier screening out of frivolous or non-meritorious cases. Consider having a senior volunteer lawyer participate in OPC's weekly screening meetings to help bridge the experience gap of OPC's staff attorneys, and to help with the screening and prosecutorial decisions. The severity of an ethics violation should be as much of a factor in the charging decision as whether there is credible evidence that a violation occurred.
5. Provide mechanisms for greater utilization of the OPC diversion program.
6. The Bar Commission and the Utah Supreme Court should provide guidance to OPC as to prosecution priorities, such as emphasizing increased prosecution of particular ethics violations (e.g. lawyer advertising).
7. Promote awareness and increased use by Bar members of the Ethics Hotline.
8. Provide better training to Screening Panel members about their role in the disciplinary process, clarification of their relationship with OPC, the burden of proof that must be met by OPC, cross examination of witnesses, and that there is no presumption in favor of accepting the recommendations of OPC.
9. Get more solo and small firm practice lawyers, or lawyers who practice family law or criminal law, to be appointed to serve as Screening Panel members.
10. OPC should streamline and index the case document packets that it provides to members of the Screening Panel for use at the screening hearings.
11. OPC and CAP should be involved in the full development and execution of these recommendations.

## Table of Exhibits

- A. Flow chart of OPC Disciplinary Process
- B. OPC Complaint Form
- C. Request for Consumer Assistance Form
- D. Questionnaire sent to each OPC staff member prior to interview
- E. Summary of OPC staff interviews
- F. Survey letter and form sent to former attorney-respondents in OPC discipline cases
- G. Summary of the responses to attorney-respondent survey
- H. E-mail survey sent to Utah Bar members
- I. Summary of the responses to the e-mail survey

# Attachment "A"

**NOTARIZED AND VERIFIED INFORMAL COMPLAINT RECEIVED AND PRELIMINARY INVESTIGATION**  
 After receipt of notarized and verified informal complaint, OPC conducts preliminary investigation which usually includes seeking additional facts from the complainant.  
 [RLDD 14-510(a)(1),(2),(3)]

**ABEYANCE**  
 Proceeding may be held in abeyance if allegations contain matters of substantial similarity to allegations of pending criminal or civil litigation.  
 [RLDD 14-517(d)]

**RESIGNATION WITH DISCIPLINE PENDING**  
 Proposal filed before adjudication on merits. Supreme Court must approve resignation.  
 [RLDD 14-521]

**DIVERSION**  
 OPC may resolve case by stipulating with Respondent to a diversion program in lieu of discipline.  
 [RLDD 14-533]

**DISCIPLINE BY CONSENT**  
 Proposal filed before adjudication on merits. The Chair of the Ethics & Discipline Committee must approve proposals for:  
 • Admonition  
 • Public Reprimand  
 [RLDD 14-520]

**INTERIM SUSPENSION**  
 Imposed by District Court for threat of harm or upon conviction of crime involving dishonesty. Court may appoint trustee to protect client interests.  
 [RLDD 14-518;  
 RLDD 14-519]

**NOTICE OF INFORMAL COMPLAINT ("NOIC")**  
 OPC sends attorney NOIC. Attorney must respond in writing and sign response.  
 [RLDD 14-510(a)(4), (5)]  
 OPC sends copy of attorney response to complainant and, where necessary, conducts additional investigation, which may include seeking additional responses.  
 [RLDD 14-510(a)(5); RLDD 14-504(b)(2)]  
 If warranted, case referred to Screening Panel of Ethics and Discipline Committee.  
 [RLDD 14-510(b)(6)]

**DISMISSALS**  
 Response from attorney not necessarily needed:  
 • Failure to state facts that would support finding of misconduct  
 • Complaint unintelligible  
 • Statute of limitations  
 • Allegations more adequately address in other forum  
 OR  
 OPC contacts attorney with NOIC for response prior to dismissal:  
 • Allegations do not constitute rule violation  
 • Evidence insufficient to establish rule violation by probable cause  
 • OPC may caution attorney.  
 [RLDD 14-510(a)(6)  
 RLDD 14-504(a)(3)(A)]

**DECLINATIONS TO PROSECUTE**  
 • Matter should first be address in another forum  
 • Lack of nexus to attorney's practice of law  
 • Attorney had taken immediate action to remedy non-substantial conduct  
 [RLDD 14-510(a)(6)  
 RLDD 14-504(b)(3)(B)]

**COMPLAINANT'S RIGHT TO APPEAL DISMISSALS INCLUDING DECLINATIONS TO PROSECUTE**  
 Complainant has 15 days to appeal. OPC sends Appeal to Chair of Ethics and Discipline Committee, who affirms or returns case for presentation to Screening Panel.  
 [RLDD 14-510(a)(6)]

**UTAH STATE BAR OFFICE OF PROFESSIONAL CONDUCT  
 DISCIPLINARY PROCESS**  
 RLDD - Rules of Lawyer Discipline and Disability  
 SANCTIONS - Standards for Imposing Lawyer Sanctions  
 OPC - Office of Professional Conduct  
 NOTE: This graphic representation is intended to give the reader, in summary form, an introduction to the flow of the disciplinary process for notarized and verified complaints. Individual cases differ in their details and there are processed accordingly.

**SCREENING PANEL HEARING**  
 Screening Panel reviews informal complaints referred by OPC. Including all facts developed by informal complaint, attorney's answer, investigation and hearing, and the OPC's recommendation.  
 [RLDD 14-510(b)(1)]

**PRIVATE ADMONITION, PUBLIC REPRIMAND, DISMISSAL**  
 Screening Panel may dismiss case (either outright, or with a caution or upon condition) or recommend that Chair issue Private Admonition or Public Reprimand.  
 [RLDD 14-510(b)(5)]

**FORMAL ACTION RECOMMENDED**  
 Screening Panel directs OPC to file Complaint in District Court. Chair of Ethics and Discipline Committee signs Complaint.  
 [RLDD 14-511(a)]

**APPEAL OF PRIVATE ADMONITION OR PUBLIC REPRIMAND**  
 Attorney has 10 days to file exception to Screening Panel recommendation of private Admonition or Public Reprimand. OPC submits exception to Chair of Ethics and Discipline Committee. Chair may hold hearing.  
 [RLDD.14-510(c)]

**DISTRICT COURT**  
 Bench trial in two phases: adjudication of merits and sanctions hearing.  
 [RLDD 14-511]  
 Court may impose discipline (except Resignation with Discipline Pending) or Dismiss Case.  
 • Disbarment  
 • Suspension  
 • Probation  
 • Reprimand  
 [SANCTIONS RULE 14-603]

**STAYED PROCEEDING**  
 Upon showing of good cause District Court Proceeding may be stayed because of substantive similarity of the material allegations of pending criminal, civil or disciplinary action.  
 [RLDD 14-517(d)]

**DISCIPLINE BY CONSENT**  
 Proposal filed before adjudication on merits. District Court must approve proposals for:  
 • Disbarment  
 • Suspension  
 • Probation  
 • Reprimand  
 [Chair of Ethics and Discipline Committee May approve Public Reprimand]  
 [RLDD 14-520]

**APPEAL FROM DISTRICT COURT**  
 To Utah Supreme Court by OPC or attorney.  
 [RLDD 14-511(g)]

# Attachment "B"

OFFICE OF PROFESSIONAL CONDUCT  
INITIAL COMPLAINT FORM  
(Return to: 645 S. 200 E.  
Salt Lake City, Utah 84111)

*(please type, or print legibly)*

Attorney's Full Name: \_\_\_\_\_

Your Name: \_\_\_\_\_

Address: \_\_\_\_\_

(City) \_\_\_\_\_ (State) \_\_\_\_\_ (Zip) \_\_\_\_\_

Phone No.: (Day) \_\_\_\_\_ (Evening) \_\_\_\_\_

Date Attorney Was Hired & Terminated (if terminated): \_\_\_\_\_

What He/She Was Hired To Do: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Total Fees Billed: \_\_\_\_\_

Total Fees Actually Paid: \_\_\_\_\_

Briefly describe what the attorney did or failed to do that you believe is unethical. A chronological explanation of the facts supporting your charge of misconduct is appreciated.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_





# Attachment "C"

Utah State Bar Consumer Assistance Program Request Form

Request for Consumer Assistance Form

Instructions:

The Utah State Bar is advised you need assistance addressing a problem with your attorney. Please complete and return the enclosed Request for Assistance Form to:

Utah State Bar  
Consumer Assistance Program  
645 South 200 East  
Salt Lake City, Utah 84111

As the Attorney for the Consumer Assistance Program, I will review all Requests for Assistance on an informal basis. After your completed form is received, I will contact you to discuss the issues that you describe. I am not able to give legal advice, nor will I draw conclusions as to whether or not your attorney's actions are ethical. I will, however try to facilitate resolution of the issues you have concerning your attorney.

Sincerely,  
J. Timothy  
Attorney, Consumer Assistance Program

Since this form requires a signature it must be either mailed to the address listed above or faxed to: (801)-531-9912 Attn: Consumer Assistance.

1. Your Name: \_\_\_\_\_

2a. Your Address

\_\_\_\_\_  
\_\_\_\_\_

2b. Your City, State & Zip

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2c. Your Daytime Telephone Number: \_\_\_\_\_

2d. Your e-mail address: \_\_\_\_\_

3a. Your Lawyer's Name: \_\_\_\_\_

Utah State Bar Consumer Assistance Program Request Form

3b. Your Lawyer's Firm & Address:

---

---

3c. Your Lawyer's City, State, & Zip Code:

---

---

---

3d. Your Lawyer's Telephone Number: \_\_\_\_\_

4. Does this Lawyer represent you? (Circle one)

YES      NO

4a. If not, please explain: (You may provide additional paper if required)

---

---

---

---

---

---

---

---

---

---

5. Have you talked with the lawyer named about the subject of this request? (Circle one)

YES      NO

6. Please give a detailed statement of facts, including dates and places, explaining why you are requesting assistance with regard to this lawyer: (You may provide additional paper if required)

---

---

---

---

---

---

---

---

---

---

Utah State Bar Consumer Assistance Program Request Form

7. Please explain the specific assistance you are requesting of the Consumer Assistance Program: (You may provide additional paper if required)

---

---

---

---

---

---

---

---

---

---

8. Have you contacted the Utah State Bar about this lawyer before?(Circle one)

YES      NO

8a. If 'YES' please explain: (You may provide additional paper if required)

---

---

---

---

---

---

---

---

---

---

9. I understand that by requesting assistance, the attorney in question and the Consumer Assistance lawyer may disclose confidential and privileged information; I hereby authorize release of all claims I may have against my attorney and the Consumer Assistance lawyer relating to disclosure.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

NOTICE: I understand that it may be necessary to act promptly to protect my rights and that commencement of a civil action may be required to preserve my rights. I acknowledge and understand that the completion of this form does not constitute commencement of a civil action, such as a malpractice action, and that the Utah State Bar will not commence any such action. I acknowledge it is my responsibility to seek and obtain any necessary legal advice with respect to this matter.

# Attachment "D"

Office of Professional Conduct Review Committee  
Employee Questionnaire

---

Employee: \_\_\_\_\_

Supervisor: \_\_\_\_\_

Position: \_\_\_\_\_

We have set the date of \_\_\_\_\_, 2009 at \_\_\_\_\_ am/pm for your meeting with the representatives of the Office of Professional Conduct Review Committee.

Employment Date: \_\_\_\_\_

Education: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Employment History:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please complete this form and bring it with you to your interview. Please respond to all the following inquiries with as much detail as is necessary.

Responsibilities

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_
7. \_\_\_\_\_
8. \_\_\_\_\_
9. \_\_\_\_\_
10. \_\_\_\_\_

Time Allocation: Assess the percentage of time each you spend accomplishing each of the foregoing responsibilities (may be allocated on a monthly/weekly/daily basis).

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_
7. \_\_\_\_\_
8. \_\_\_\_\_
9. \_\_\_\_\_
10. \_\_\_\_\_

# Attachment "E"

### OPC Employee Interview Summary

On April 24, 2009, members of the OPC review committee interviewed each employee on OPC's staff: Barbra Townsend, Assistant Counsel; Diane Akiyama, Assistant Counsel; Adam Bevis, Assistant Counsel; Sharadee Fleming, Assistant Counsel; Margaret Wakeham, Assistant Counsel; Ingrid Kelson, Paralegal; Alisa Webb, Paralegal; Jonathan LaGuna, Assistant to Counsel; and Mimi Brown, Intake Clerk. Each staff member brought a completed short questionnaire in which they described their duties.

The interviewees were remarkably unified in their attitudes toward their office environment and their work. To the person, they were enthusiastic about their work, which was described as challenging, and their work relationships, which were described as collegial. They reported good morale, clearly defined roles, and excellent supervision. They came across as a cohesive and conscientious group.

The interviewers specifically asked about whether lack of real-world experience hampers the effectiveness and competency of some of the assistant counsel who have no legal experience outside the OPC. None of the attorneys believed that it did. They pointed out that OPC attorneys may supplement their lack of practice experience with CLE, reliance on outside attorneys practicing in a variety of fields, and mentoring of more-experienced attorneys within OPC.

The interviewers also asked specifically about whether using more paralegals would be helpful to OPC attorneys--e.g., whether some of the work done by attorneys could be done by paralegals. The answer was generally no; the attorneys reported that their current ratio of six attorneys to two paralegals was appropriate.

Finally, after generally agreeing that more funding and better salaries would be helpful, staff members each submitted a different recommendation for improvement of OPC or the ethics-complaint process: (1) The staff should be absorbed by the Utah Supreme Court as employees of the State. (2) The ethics hotline should be discontinued because it can be viewed as a conflict of interest for the OPC to give a preliminary opinion, then later investigate and pursue a complaint against an attorney who may have believed he or she was relying on the preliminary opinion. (3) OPC counsel should not serve as secretaries to screening panels because respondent-attorneys may assert counsel performing those duties in a self-serving manner. (4) Better training should be provided for screening panels. (5) Better uniformity between screening panels should be fostered--e.g., chairs could meet periodically to discuss and "establish" precedents. (6) OPC should be able to provide services in other languages so that non-English speakers are not shut out of the process. And, (7), OPC's image should be improved, through a public-relations campaign regarding the OPC's mission.

# Attachment "F"

February 27, 2009

[Addressee]

Dear [Addressee]:

The Utah Supreme Court has asked the Utah Bar Commission to conduct a periodic performance review of the Bar's Office of Professional Conduct. The Bar Commission has established an OPC Review Committee for this purpose. The Committee is examining all phases of OPC operations and is in the process of interviewing and collecting information from and about: (1) Bar and OPC administration and staff members, (2) attorneys who have represented attorney-respondents in ethics complaints with the OPC, (3) screening panel members of the Utah Supreme Court Ethics and Discipline Committee who review OPC cases; (4) former attorney-respondents before the OPC; and (5) Bar membership in general.

As a former attorney-respondent, you have been selected at random to participate in this review and are invited to comment on your experiences by responding to the enclosed survey. Do not return the survey to me, but to Bar Commissioner James D. Gilson, who is the Chair of the OPC Review Committee, in the enclosed self-addressed envelope. Although you have no obligation to participate in this survey, the OPC Review Committee hopes you will and looks forward to receiving your candid responses. Your responses will be kept strictly confidential and will neither be shared with OPC nor mentioned with any identifying information in the Committee's report.

Please return the completed survey in the enclosed envelope before March 17, 2009. Thank you for your time and consideration.

Very truly yours,

Billy Walker, Senior Counsel  
Office of Professional Conduct  
Utah State Bar

UTAH STATE BAR COMMISSION  
OFFICE OF PROFESSIONAL CONDUCT REVIEW COMMITTEE  
ATTORNEY-RESPONDENT SURVEY

1. During your involvement with OPC, do you believe you were treated with professionalism and civility? Please explain.
2. Were you represented by counsel and do you believe his/her participation was helpful to the process?
3. What was the final outcome of your case? (dismissal, letter of caution, admonition, public reprimand, suspension, disbarment, other).
4. Please comment on your experience with OPC attorneys and staff.
5. Please comment about your experience with the screening panel hearing.
6. Please comment on the following:
  - (A) How much time passed between when you were first notified by the OPC of the Complaint against you and when your case was heard by the screening panel.
  - (B) If your case continued to District Court, please identify how much time that passed between the screening panel hearing and the filing of the District Court proceedings.
  - (C) Whether you feel that the time schedule in which your case was processed was appropriate.
7. Do you have any suggestions to improve the attorney discipline process and the role of the OPC?

If you are willing to do so, please provide your name and contact information so that the OPC Review Committee may contact you to follow up on your comments:

# Attachment "G"

Results of OPC Mail Survey

	Non-Dismissal	Dismissal
#1 Treated Prof. & Civil	Yes 11	Yes 7
	No 3	No. 2
	Other <ul style="list-style-type: none"> <li>• 4 yes/no - civil but not professional.</li> <li>• Non-attorney members appeared hostile and did not grasp issues</li> <li>• No direct answer</li> </ul>	Other <ul style="list-style-type: none"> <li>• Yes, however went too far in litigating matter</li> <li>• civil yes, prof. no.</li> <li>• OPC attorney wrote conclusory memo -- if he had been objective would have led to no cause.</li> </ul>
#2 Represented	Yes 7	Yes 2
	No 13	No. 9
#3 Outcome	Other yes and no. Represented by another member of firm until he felt it was unnecessary then stepped back	Other Only for final hearing before screening panel
	Admonition 10	Dismissal 12
	Pending 3	
	Disbarment 1	
	Public Repr 3	
Letter 2		
Other	1- Admonition and Dismissal 1- Dismissal and public reprimand	

	Non-Dismissal	Dismissal
<p>#4 Comment on Experience with OPC</p>	<p>Negative Comments: 10</p> <ul style="list-style-type: none"> <li>Several mentioned they thought they were unyielding, stiff-necked and once formed opinion they tried to influence screening panel</li> <li>Two attorneys felt they needed to be better informed of process so they could respond appropriately/timely</li> <li>Other comments ranged from one case took advantage of situation to make a test case, another felt they did not have a good grasp of case, one felt they were too arrogant</li> </ul>	<p>Negative Comments: 2 - with comments below</p> <ul style="list-style-type: none"> <li>Felt once complaint filed, the bar turned against him/her, even though complaint had no basis</li> <li>Could have been resolved sooner</li> <li>Because some never practice law in real world didn't understand</li> <li>OPC attorney lacked prof. judgment but main complaint is with screening panel.</li> <li>Attorney seemed biased. Also did not get materials until day of hearing</li> <li>This should not have gone to screening panel.</li> </ul>
	<p>Positive Comments: 10 with comments below</p> <ul style="list-style-type: none"> <li>Professional and civil</li> <li>Took time to listen and understand</li> <li>Well prepared and wanted to know how they can help.</li> <li>Excellent relationship with attorneys and staff</li> </ul>	<p>Positive Comments: 8 - with comments below</p> <ul style="list-style-type: none"> <li>Responsive and attentive</li> <li>appreciated their respectful approach</li> <li>Fair</li> </ul>

	Non-Dismissal	Dismissal
#5 Comment on Experience with Screening Panel	<p>Negative Comments:</p> <ul style="list-style-type: none"> <li>7 with comments below</li> <li>Attorney had been in bonnet about issues not part of case</li> <li>Chair exhibited bias - did not have knowledge of probate issues</li> <li>The mention of bias came up a couple of times</li> <li>One said letter he received said no response needed, then was informed later that they needed a response in 2 weeks - could inform attorney of process to follow</li> </ul>	<p>Negative Comments:</p> <ul style="list-style-type: none"> <li>1 with comments below</li> <li>Two people expressed concern about whether the complaint should have gone to panel</li> <li>One felt that the chair handled it like a hostile inquisition and the recommendation was not consistent with panel findings.</li> </ul>
#6	<p>Positive Comments:</p> <ul style="list-style-type: none"> <li>12 with comments below</li> <li>Positive but did not consider his written response</li> <li>Several felt they were fair and open minded, positive experience</li> <li>reasonable, professional, articulate and considerate</li> </ul>	<p>Positive Comments:</p> <ul style="list-style-type: none"> <li>8 with comments below</li> <li>panel asked probing questions to get the facts</li> </ul>
	<p>A) Time</p> <p>time ranged from 1 year to 3 months</p>	<p>A) Time</p> <p>Longest time approx. 1-1/2 years to few months</p>
	<p>B) Continued to Dist. Ct.</p> <p>Only one pending rest said N/A</p>	<p>B) Continued to Dist. Ct.</p> <p>those that commented said N/A</p>
	<p>C) Time</p> <p>Appropriate</p> <p>10 said it was appropriate other comments: ..No, should be prompt ..Should be resolved sooner ...Excessive time</p>	<p>C) Time</p> <p>Appropriate</p> <p>4 said time appropriate. Other comments - Inordinately long, could have moved faster but part of delay due to Complainant filing appeal:</p>

	Non-Dismissal	Dismissal
<p>#7 Suggestions for Improvement</p>	<ul style="list-style-type: none"> <li>• People with little private practice experience are judging</li> <li>• Should be familiar with type of law that is relevant in the case</li> <li>• Should screen USP Prisoner complaints more carefully, make careful fact finding</li> <li>• OPC attorney should not use this as advancement in government or private business</li> <li>• Get rid of process, leave it to DOPL like doctors</li> <li>• OPC should improve information to bar on process, i.e. speaking with attorney assigned to prosecute</li> <li>• Send certified mail</li> <li>• Require Complainants to place bond and allow attorney to receive attorney's fees if case is dismissed</li> <li>• Give OPC attorney some latitude in resolving matters</li> <li>• Not be made to feel alien in own town</li> </ul>	<ul style="list-style-type: none"> <li>• More intermediate steps to get baseless case thrown out, better screening</li> <li>• Expedite process - e-mail rather than mail</li> <li>• In criminal matters, consider that most complaints come from someone who gets an unfavorable results</li> <li>• Doing good job, professional approach, works fine.</li> <li>• Should not be agenda driven not push weak chair</li> <li>• Make it less adversarial</li> <li>• Know case law, cooperate with attorney in scheduling hearing.</li> </ul>

# Attachment "H"

---

From: announcements-bounces@postmaster.utahbar.org on behalf of USBListserv [listserv@utahbar.org]  
Sent: Tuesday, March 31, 2009 7:35 AM  
To: announcements@postmaster.utahbar.org  
Subject: [Announcements] Reminder: Online Survey of Utah Bar's Office of Professional Conduct

To members of the Utah State Bar:

The e-mail below was sent to you on March 24. We would like to thank those members of the Bar that have already completed this online survey of the Utah Bar Office of Professional Conduct. If you have not yet taken the opportunity to complete this brief survey, please do so using the Internet link provided below. This survey will be closing on Monday, April 6, 2009. Your participation will help the Bar Commission evaluate the OPC.

Thank you for your time and consideration.

Sincerely,

UTAH STATE BAR COMMISSION

SURVEY LINK>>

[https://www.surveymonkey.com/s.aspx?sm=y\\_2fOveRaKWZZhdzfgGepPEEQ\\_3d\\_3d](https://www.surveymonkey.com/s.aspx?sm=y_2fOveRaKWZZhdzfgGepPEEQ_3d_3d)

-----Original Message-----

To members of the Utah State Bar:

The Utah Supreme Court has asked the Utah State Bar Commission to conduct a periodic performance review of the Bar's Office of Professional Conduct. The Bar Commission has established an OPC Review Committee for this purpose. The Committee is examining all phases of OPC operations and is in the process of interviewing and collecting information from and about: (1) Bar and OPC administration and staff members, (2) attorneys who have represented attorney-respondents in ethics complaints with the OPC, (3) members of the Utah Supreme Court Ethics and Discipline Committee who screen OPC cases; (4) former attorney-respondents before the OPC; and (5) Bar membership in general.

The Bar Commission would appreciate your input in its review of OPC.

Please complete the survey, using the Internet link provided below, before April 6, 2009. There are 21 questions. It should take approximately 10 minutes to complete. If you leave the survey prior to completion you will have to begin the survey again.

Please keep your responses anonymous. Do not disclose your name or the names of any outside party involved. Your responses will be kept strictly confidential and will not be shared with any identifying information to the OPC or in the OPC Review Committee's report.

Thank you for your time and consideration.

Sincerely,

UTAH STATE BAR COMMISSION

**1. Online Survey of Utah Bar's Office of Professional Conduct**Exit this  
survey

The Utah Supreme Court has asked the Utah State Bar Commission to conduct a periodic performance review of the Bar's Office of Professional Conduct. The Bar Commission has established an OPC Review Committee for this purpose. The Committee is examining all phases of OPC operations and is in the process of interviewing and collecting information from and about: (1) Bar and OPC administration and staff members, (2) attorneys who have represented attorney-respondents in ethics complaints with the OPC, (3) members of the Utah Supreme Court Ethics and Discipline Committee who screen OPC cases; (4) former attorney-respondents before the OPC; and (5) Bar membership in general.

The Bar Commission would appreciate your input in its review of OPC.

Please complete the survey before April 6, 2009. There are 21 questions. It should take approximately 10 minutes to complete. If you leave the survey prior to completion you will have to begin the survey again.

Please keep your responses anonymous. Do not disclose your name or the names of any outside party involved. Your responses will be kept strictly confidential and will not be shared with any identifying information to the OPC or in the OPC Review Committee's report.

Thank you for your time and consideration.

[Next](#)

## 2. Survey Questions

Exit this survey

1. Please list the current status of your Utah Bar license?

- Active Status
- Inactive Status

2. How many years have you been practicing law?

- 1 - 3 years
- 4 - 10 years
- 11 - 15 years
- 16+ years

3. What size is your law firm or organization?

- Solo practitioner
- 2 - 5 attorneys
- 6 - 10 attorneys
- 11 - 30 attorneys
- 31 or more attorneys

4. Have you had any involvement with the Utah State Bar Office of Professional Conduct ("OPC")?

- YES
- NO

5. If the answer to the above question is "Yes," please indicate the number of times in which you had dealings with OPC in each of the categories listed below:

	1 time	2-3 times	4 or more times
I was referred to OPC because of a complaint that was made against me.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I filed a complaint with OPC because of the conduct of	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

another lawyer.  
I represented a party in making a complaint to OPC concerning the conduct of

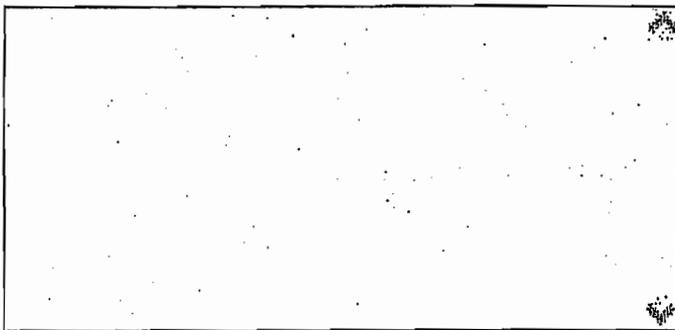
another lawyer.  
I represented another lawyer who had been referred to OPC as a result of a complaint filed against them.

I was a witness at a screening panel or district court proceeding involving OPC.

I served as a screening panel member.

I am a judge who has presided over formal disciplinary cases filed by OPC.

Other. (Please explain).



**6. Based on your personal knowledge or experience, please comment about whether you believe there are types of violations of the Rules of Professional Conduct that are being overlooked or neglected by OPC.**

An empty rectangular box with a thin black border, intended for a handwritten response to question 7. There are small, dark, irregular marks in the top-right and bottom-right corners of the box.

**7. Based on your personal knowledge or experience, please comment about whether you believe there are types of violations of the Rules of Professional Conduct that should not be pursued, or that are being overzealously pursued, by OPC.**

An empty rectangular box with a thin black border, intended for a handwritten response to question 8. There are small, dark, irregular marks in the top-right and bottom-right corners of the box.

**8. Based on your personal knowledge or experience, please comment about what changes, if any, should be made to the process in which complaints are referred to OPC.**

An empty rectangular box with a thin black border, intended for a handwritten response to question 9. There are small, dark, irregular marks in the top-right and bottom-right corners of the box.

**9. Based on your personal knowledge or experience, please comment about whether you believe that OPC appropriately determines which complaints to pursue, and provide examples.**

An empty rectangular box with a black border, intended for a handwritten response to question 10. It has small decorative icons in the top-right and bottom-right corners.

**10. Based on your personal knowledge or experience, do you believe that OPC cases are initiated and completed in a timely manner?**

- YES
- NO (please explain)
- Other (please explain).

Explanation for 'No' or 'Other' responses

An empty rectangular box with a black border, intended for a handwritten explanation for 'No' or 'Other' responses to question 10. It has small decorative icons in the top-right and bottom-right corners.

**11. Based upon your involvement with OPC, do you believe its lawyers and staff act professionally and with civility?**

- YES
- NO (please explain)
- Other (please explain).

Explanation for 'No' or 'Other' responses

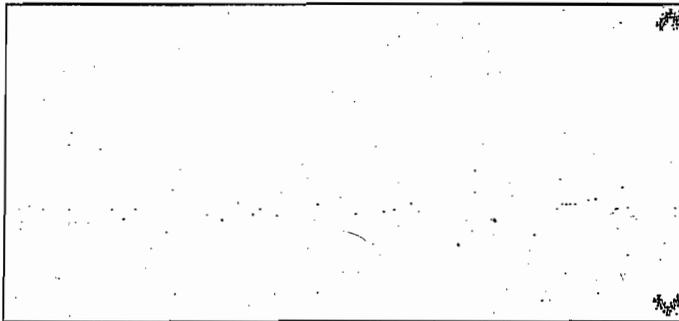
An empty rectangular box with a black border, intended for a handwritten explanation for 'No' or 'Other' responses to question 11. It has small decorative icons in the top-right and bottom-right corners.



YES

NO

**17. If your answer to the last question was "Yes," please comment on the helpfulness or effective of the Ethics Hotline, and provide any recommendations for improvement.**



**18. Are you aware of the Bar's Consumer Assistance Program ([http://www.utahbar.org/public/consumer\\_assistance\\_program.html](http://www.utahbar.org/public/consumer_assistance_program.html)), which is a service offered to members of the public and to lawyers to help resolve conflicts between clients and lawyers that do not necessarily rise to the level of an ethics violation?**

YES

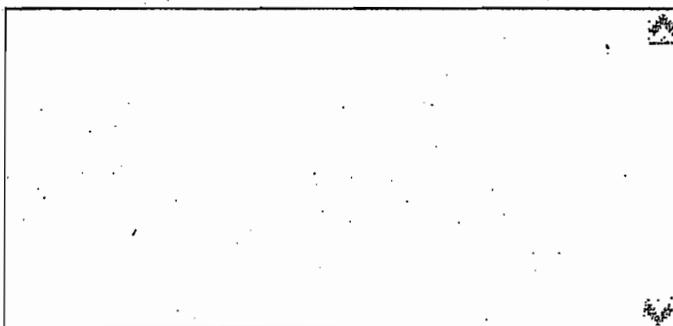
NO

**19. Have you ever been contacted by a representative of the Consumer Assistance Program to assist you in resolving an issue with one of your clients?**

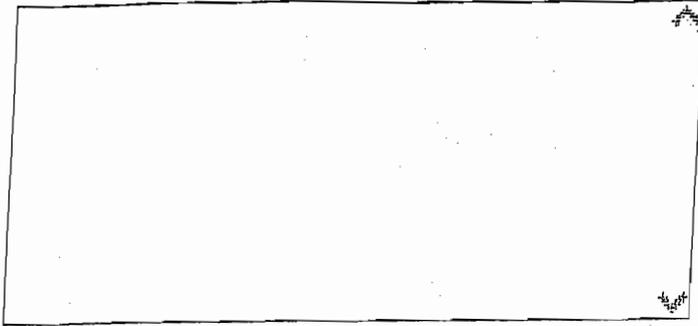
YES

NO

**20. If you answered "Yes" to the last question, please comment on how helpful or effective you felt the Consumer Assistance Program was in resolving the problem, and provide any recommendations on how this service might be improved to better serve the needs of clients and lawyers.**



21. Do you have any additional comments about the Office of Professional Conduct, the Ethics Hotline, or the Consumer Assistance Program that you believe should be considered by the Bar Commission in its evaluation of these programs?



Prev

Next

# Attachment 'I'

# 2009 Office of Professional Conduct Survey of Attorneys

1. Please list the current status of your Utah Bar license?

	Response Percent	Response Count
Active Status	92.1%	870
Inactive Status	7.9%	75
answered question		945
skipped question		4

2. How many years have you been practicing law?

	Response Percent	Response Count
1 - 3 years	8.7%	83
4 - 10 years	19.3%	183
11 - 15 years	14.1%	134
16+ years	57.9%	550
answered question		950
skipped question		8

3. What size is your law firm or organization?

	Response Percent	Response Count
Solo practitioner	27.5%	257
2 - 5 attorneys	22.3%	209
6 - 10 attorneys	11.2%	105
11 - 30 attorneys	13.4%	125
31 or more attorneys	25.6%	240
answered question		936
skipped question		22

4. Have you had any involvement with the Utah State Bar Office of Professional Conduct (OPC)?		Response (Percent)	Response (Count)
YES	51.7%	486	
NO	48.9%	466	
answered question			952
skipped question			0

5. If the answer to the above question is "Yes," please indicate the number of times in which you had dealings with OPC in each of the categories listed below.				
	1 time	2-3 times	4 or more times	Response (Count)
I was referred to OPC because of a complaint that was made against me.	58.4% (195)	33.5% (112)	8.1% (27)	334
I filed a complaint with OPC because of the conduct of another lawyer.	56.1% (68)	13.9% (17)	0.0% (0)	79
I represented a party in making a complaint to OPC concerning the conduct of another lawyer.	84.6% (44)	11.5% (6)	3.8% (2)	52
I represented another lawyer who had been referred to OPC as a result of a complaint filed against them.	66.2% (43)	26.2% (17)	7.7% (5)	65
I was a witness at a screening panel or district court proceeding involving OPC.	87.5% (49)	12.5% (7)	0.0% (0)	56
I served as a screening panel member.	21.1% (8)	13.2% (5)	65.8% (25)	38
I am a judge who has presided over formal disciplinary cases filed by OPC.	37.5% (3)	37.5% (3)	25.0% (2)	8
Other (Please explain):				115
answered question				432
skipped question				626

6. Based on your personal knowledge or experience, please comment about whether you believe there are types of violations of the Rules of Professional Conduct that are being overlooked or neglected by OPC.

[SEE ATTACHED SUMMARY OF COMMENTS.]

Response  
Count

493

answered question

493

skipped question

465

7. Based on your personal knowledge or experience, please comment about whether you believe there are types of violations of the Rules of Professional Conduct that should not be pursued or that are being overzealously pursued by OPC.

[SEE ATTACHED SUMMARY OF COMMENTS.]

Response  
Count

466

answered question

466

skipped question

492

8. Based on your personal knowledge or experience, please comment about what changes, if any, should be made to the process in which complaints are referred to OPC.

[SEE ATTACHED SUMMARY OF COMMENTS.]

Response  
Count

436

answered question

436

skipped question

522

9. Based on your personal knowledge or experience, please comment about whether you believe that OPC appropriately determines which complaints to pursue and provide examples.

[SEE ATTACHED SUMMARY OF COMMENTS.]

Response  
Count

442

answered question

442

skipped question

516

10. Based on your personal knowledge or experience, do you believe that OPC cases are initiated and completed in a timely manner?

	Response Percent	Response Count
YES	57.3%	494
NO (please explain)	10.7%	77
Other (please explain)	32.2%	232
Explanation for 'No' or 'Other' responses		328
answered question		720
skipped question		238

11. Based upon your involvement with OPC, do you believe its lawyers and staff act professionally and with civility?

	Response Percent	Response Count
YES	57.3%	494
NO (please explain)	8.6%	63
Other (please explain)	[SEE ATTACHED SUMMARY OF COMMENTS] 24.1%	177
Explanation for 'No' or 'Other' responses		261
answered question		744
skipped question		224

12. Based upon your involvement with OPC, do you have any recommendations as to how the performance of the lawyers and/or staff of OPC might be improved?

	Response Count
[SEE ATTACHED SUMMARY OF COMMENTS.]	421
answered question	421
skipped question	537

13. If you have had experience with a screening panel that hears OPC cases, please comment on your perception on the effectiveness of the screening panel process, and provide any recommendations for its improvement.

[SEE ATTACHED SUMMARY OF COMMENTS.]

Response  
Count

369

answered question

369

skipped question

589

14. Do you have any suggestions to improve the OPC process or procedures?

[SEE ATTACHED SUMMARY OF COMMENTS.]

Response  
Count

380

answered question

380

skipped question

578

15. Are you aware of a no-cost service offered by the Bar known as the Ethics Hotline (Ph: 801-531-9110) whereby a lawyer can call OPC and receive answers and guidance to ethical questions?

YES

Response  
Percent

59.4%

Response  
Count

557

NO

40.6%

380

answered question

937

skipped question

21

16. Have you personally ever used the Ethics Hotline?

YES

Response  
Percent

29.4%

Response  
Count

275

NO

70.6%

661

answered question

936

skipped question

22

17. If your answer to the last question was "Yes," please comment on the helpfulness or effective of the Ethics Hotline, and provide any recommendations for improvement.

[SEE ATTACHED SUMMARY OF COMMENTS.]

Response  
Count

309

answered question

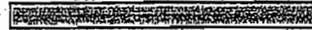
309

skipped question

649

18. Are you aware of the Bar's Consumer Assistance Program ([http://www.tlanbar.org/public/consumer\\_assistance\\_program.htm](http://www.tlanbar.org/public/consumer_assistance_program.htm)) which is a service offered to members of the public and to lawyers to help resolve conflicts between clients and lawyers that do not necessarily rise to the level of an ethics violation?

YES



43.6%

40

NO



56.4%

53

answered question

93

skipped question

120

19. Have you ever been contacted by a representative of the Consumer Assistance Program to assist you in resolving an issue with one of your clients?

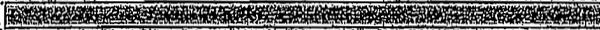
YES



6.9%

65

NO



93.1%

873

answered question

938

skipped question

120

20. If you answered "yes" to the last question, please comment on how helpful or effective you felt the Consumer Assistance Program was in resolving the problem, and provide any recommendations on how this service might be improved to better serve the needs of clients and lawyers.

[SEE ATTACHED SUMMARY OF COMMENTS.]

Response  
Count

116

answered question

116

skipped question

624

21. Do you have any additional comments about the Office of Professional Conduct, the Ethics Hotline, or the Consumer Assistance Program that you believe should be considered by the Bar Commission in its evaluation of these programs?

[SEE ATTACHED SUMMARY OF COMMENTS.]

Response  
Count

334

answered question

334

skipped question

624

Results of E-mail Survey - OPC

Question #	Type of Violation	# of Times Mentioned
Question # 6. Based on personal knowledge . . . what types of violations of Rules of Prof. Conduct are being overlooked	Civility	28
	Advertising	21
	Bias/preference to big firms as opposed to small firms or single practitioners	16
	Unauthorized Practice of Law	13
	Unprofessional/unethical conduct	8
	Conflicts of Interest	7
	dishonesty	6
	Incompetence	6
	Attorneys charging excessive fees	5
	Court misconduct/procedural abuse	5
	OPC too soft on attorneys in cases involving dishonesty or overlooking felony convictions	5
	OPC not screening well enough -overcharging on violations	4
	Trust account fund violations	4
	Appearance to those outside legal community that OPC is protecting attorneys	4
	Actively policing violations	3
	Drug/alcohol abuse	3
	Ex-parte communications with Judges	3
	Calling firm (name of attorney) & Associates but only one attorney in firm.	3
	diligence	2
	OPC trying to justify existence	1
Overlooking violations of OPC itself	1	
Acts of moral turpitude	1	

Question #	Type of Violation	# of Times Mentioned
	Crackdown on payment of referral fees	1
	Fee disputes	1
	violating fiduciary duties	1
	Judicial Conduct	1
	Abuse of publicity	1
	Require fee mediation	1
	Communication	1
	If client is not current on payment of bill to attorney they can't file Complaint	1
	Bullying of state employees	1
	Difficult to defend because OPC does not disclose relevant information	1
	Start proceedings more quickly	1
	Level of involvement inadequate	1
<p>Summary of #6 -- 493 Total Responses. 332 responded no, not aware of, or have no knowledge of. 161 responses identified above.</p>		

Question #	Type of Violation	# of Times Mentioned
<p>Question #7</p> <p>Based on personal knowledge ... what types of violations of Rules of Prof. Conduct should not be pursued or are being overzealously pursued by OPC</p>	Over zealous in pursuing complaints - overcharging - better screening	22
	Punished or pursued for minor trust fund accounting errors or errors by bank	13
	Fee/billing disputes (particularly when pursuing collection of unpaid attorneys' fees)	13
	Pursuit of small firms and sole practitioners over those in large firms	9
	Too zealous in pursuing claims of failure to communicate with clients	8
	All complaints should be pursued by OPC - would make attorneys better attorneys and would not have so many problems with carelessness	7
	Clients who file complaints because they are unhappy with the outcome of their case	5
	OPC adding charges/infractions on their own that are unrelated to original charge	5
	OPC needs to be more impartial (innocent until proven guilty) as to attorneys. They tend to treat them like they are guilty right from the start	4
	Lack of due process - OPC examining matters without getting input from attorney being examined (attorney should be allowed to respond at screening stage)	4
	Complaints by Complainants being used to diver attention from Complainants own guilt	4
	Too much time spent on petty violations	4
	Complaints filed against opposing parties	3
	Illegal practice of law	3
Better screening of inmate allegations	3	

Question #	Type of Violation	# of Times Mentioned
	Frivolous complaints filed by pro se complainants	2
	Too much emphasis on civility, OPC should not be involved in adjudicating Standards of Professional Conduct and Civility	2
	More emphasis on helping lawyers rather than finding guilt	2
	Would like to see them not publish names in journal unless they are disbarred	1
	OPC should have to comply with the Rules of Evidence	1
	Do pursue cases where attorneys have a personal ax to grind	1
	Should not pursue any complaint where a retainer has not been paid or a fee agreement signed	1
	Pursuing attorneys who have not completed their CLE	1
	Seeking excessive punitive sanctions	1
	Conduct that does not violate rule of ethics only violates ethical opinion	1
	Select members of OPC from all qualified licensed attorneys. Make OPC a more impartial body	1
	When a ruling in a civil action has been made as to the same complaint that OPC is pursuing, they should honor the ruling in the civil action and not continue to pursue on their own	1
	Better follow-up on claims	1
	DUI	1
	Fee shifting statutes	1

Question #	Type of Violation	# of Times Mentioned
	Look more closely at conflict of interest matters in small towns before pursuing a claim against attorney	1
	Too much emphasis on complaints filed against attorneys in domestic cases	1
	Litigation misconduct	1
	OPC members should have to disclose possible conflicts of interest.	1
	Attorneys taking sexual favors for fees	1
	Fee disputes should be sent to fee arbitration instead of OPC	1
	Anything Brian Bernard complains about	1
	Disappointment on way Bar handled Robert S. Thompson matter	1
	OPC Addresses Complaints properly, comfortable with their efforts	10
	OPC is doing good job	4
	OPC doing better job than in the past	2
	I concur with status quo	1
	OPC necessary to protect from unfit attorneys	1
<p>Summary of Question #7: 466 Total Responses. 151 responses identified above. 4 Yes responses with no explanation. 311 Responses of no knowledge, don't know, no basis to make a decision, etc.</p>		

QUESTION 8: Based on your personal knowledge or experience, please comment about what changes, if any, should be made to the process in which complaints are referred to OPC.

Better define powers (conflict of interest)	8
Better funding	1
Pre-Screening complaints	43
Attorney vs. Attorney complaints	4
Too adversarial	1
Process is unfair	8
Attorney lack real-world experience	7
Defendant's are not afforded counsel	3
Mediation	3
Overhaul entire office	1
Complaints filed to avoid payment (bond)	10
Office is unprofessional	3
Expungement from record	3
Bias in favor of big firms	1
Allow OPC to bring its own complaints	1
Takes too long	3
No notice of status	1

By far the largest number of comments dealt with pre-screening the cases. The comments felt that an individual, not OPC, who could contact all the parties to assess, at the beginning, if the complaint had merit, would save countless hours and dollars. One suggested that the Defendant be entitled to meet with "an unbiased, impartial, independent ethics counselor, to discuss the complaint and hear and consider the attorney's version of the facts before a complaint is moved on. There was a universal sense that OPC was too adversarial and that the pre-screening from an outside person

would solve several problems. The comments also suggested a better screening process of the complainants themselves to see if the complaint was linked to a desire to avoid paying fees. The suggestion was also that the pre-screening should be done by a lawyer that practiced in the same field as the attorney against whom the complaint was lodged. Several comments dealt with the ramifications of frivolous complaints and that there was no sanction for complainants that filed frivolous complaints while it takes hours and hours of an attorneys time regardless of the validity of the complaint. Inferred in the pre-screening was the sense of prosecutorial discretion. Many felt that OPC should exercise more discretion in its sanctions and that it was too heavy-handed in many sanctions. One person felt that OPC should be eliminated entirely and all complaints handled in District Court.

The next highest number of comments dealt with requiring a complainant to post a bond if the complainant owes attorney fees. If the Complainant proved his/her case, the bond would be returned. If not, the attorney would get the bond to go against fees. The sense was that a bond would deter frivolous complaints.

After that were the categories of the process and OPC's duties/powers. These two categories were similar in that it was felt the process is unfair, you are not innocent until proven guilty, in fact just the opposite, and the OPC has an inherent conflict of interest. It was suggested that OPC has no business acting as the intermediary between the parties and the forum. That if OPC was going to prosecute complaints, that should be their position from the beginning and their role should never be blurred by acting in any other capacity, ie, secretary to the screening panels, etc. The suggestion was that there should be an independent investigative arm, and an independent entity which managed the evidence and provided it to the screening panels. There was a sense that there is no independent, impartial entity viewing the complaints. There was a complaint that at one time OPC advertised in the yellow pages for complaints to be brought to them. That OPC accepts and prosecutes complaints without one scintilla of evidence or proof or documentation. This unjustly shifts the burden of proof and burden of work to the Defendant. One comment was very instructive (and very long) comment 318. That set out the issue that there is not a clear definition for probably cause for filing a complaint, or what constitutes an investigation. That comment discusses that only the Utah Supreme Court has the authority to define the rules regulating discipline and define the proportionality of the discipline for the infraction. It also set out the need for appeal, which I think is in the amended rules out for comment now.

Next, there was a general sense that the attorneys lacked the necessary experience and that they should associate an attorney who practices in the field of the Defendant in order to provide actual knowledge of the practice.

Last, there was a sense that the Defendant should be provided counsel as bar dues were paying for the prosecution and the mediation should be introduced.

Question #	Type of Response	# of Times Mentioned
Question # 9. Based on personal knowledge ... comment whether OPC appropriately determines which complaints to pursue, and provide examples	No experience, no comment, don't know	184
	Yes, acted appropriately	127
	N/A	55
	No, did not act appropriately	49
	OPC too zealous	6
	Could be improved	4
	Process too time consuming, waste of time for attorney; need to make it more convenient for attorney	3
	Show favoritism to large firms	3
	Claims where client is angry because of bill or just angry client should not be pursued	3
	Mixed feelings	2
	OPC feels need to justify their existence	2
	Need people in OPC who have practiced law more years	2
	If case is not properly filed make them file it appropriately	2
Summary of #9 -- 442 responses		

## Summary of Results of E-Mail Survey re OPC/CAP

### Question 11

Survey question eleven asked, "Based on your involvement with OPC, do you believe its lawyers and staff act professionally and with civility?" A resounding 67.3% of respondents stated, "Yes," while 8.6% answered, "No," and 24.1% checked, "Other." Of the 261 respondents who added a comment to their answer, 184 asserted they have had little or no contact with OPC and were thus unqualified to weigh in on this question.

While 12 of the remaining 77 respondents remarked only on their good experiences with OPC, the rest had some criticism to offer. Breaking these down into loose categories, this report shows that the largest category were 21 respondents who stated that OPC personnel are arrogant. The underlying behaviors and attitudes of this characteristic were described as curt, "badge heavy," insulting and condescending, and threatening and lecturing.

The second greatest category were 18 respondents who expressed their opinion that OPC personnel are overly zealous in their prosecutorial role. This was also characterized as "overreaching" and assuming the guilt of lawyers against whom complaints had been filed. Nine respondents commented that OPC staff attorneys lack experience. Seven respondents said OPC personnel are unreasonable in their case-analysis. This trait was otherwise conveyed as short-sighted, insufficiently objective, and emotionally involved. One handful of comments suggested OPC staff communicate with phony courtesy, while another handful indicated an opinion that OPC staff members are incompetent and lazy. Finally, one pair of comments castigated the Bar itself for being uncooperative in OPC matters, while a last pair was concerned that OPC personnel had undisclosed conflicts of interest in their cases.

## Question 12

Survey question twelve asked, "Based upon your involvement with OPC, do you have any recommendations as to how the performance of the lawyers and/or staff of OPC might be improved?" Out of 421 responses, 311 declined to comment. The remaining comments were so diverse that they generally resisted tight categorization.

However, some categories contained rather uniform recommendations. The top vote-getter, with 18 respondents, advised hiring lawyers with more private-practice experience. The next, with 10 respondents, proposed more thorough screening, resulting in fewer cases being brought. Seven respondents a piece suggested, respectively, that OPC personnel tone down their arrogance and that the Bar simply eliminate the OPC. Six respondents urged that OPC personnel become more competent and flexible. And, five respondents a piece recommended, respectively, that OPC staff communicate better with attorneys and that the Bar install new OPC leadership.

Other categories were supported with four or fewer respondents who proposed that OPC staff keep in mind the serious risk their cases pose to attorneys' livelihoods; receive better training; be fairly selected; add employees; subtract employees; receive more funding; be more responsive to legitimate complaints; take ownership of their cases; decline prosecution of cases with a technical violation in which there is no real harm to employees; clearly define its role in screening panels, whether neutral or prosecutorial; should have less discretion; should decline to expand their investigation into matters outside complaints; speed up the process; stem turnover; improve uniformity in case management; make the ethics hotline more reliable; check for and disclose conflicts of interest; and see their role as helping lawyers instead of criminalizing them.

More specific advice regarding OPC's process included: giving the investigated attorney all information gathered before requiring a response; waiting until underlying litigation is over before pursuing a complaint; using alternative dispute resolution; providing a thorough compilation of documents for hearings; requiring a complainant to state a prima facie case before OPC pursues the complaint; striking unfounded complaints from an attorney's disciplinary record; providing regular progress reports; maintaining suspicion when complaints derive from opposing counsel or parties; publicizing criteria for case management; and disallowing plea bargains.

More specific advice regarding the Bar's support of OPC included: supplying a "public defender's office" for attorney-respondents; improving the website for opinion research; launching a public-relations campaign explaining the differences between rules violations and malpractice and encouraging the public to call OPC when appropriate; educating members better regarding ethics; adding investigators experienced in white-collar crime; finding a way for OPC to justify its existence without having to find a violation to do so; paying screening panels; creating a voluntary ombudsman position; lobbying to enact a law that makes it a felony to bring a frivolous administrative complaint against a lawyer; establishing an oversight board over OPC staff that is easily accessible by attorneys; and placing term limits on the head of OPC.

<p>Opinion on the effectiveness of the screening panel process and how to improve it</p>	<p>Opinion</p>	<p>Number of responses</p>
--	----------------	--------------------------------

### Summary of Responses to Question 13

There were 369 responses categorized generally as follows:

	No experience or no opinion	241
	Reported a favorable experience or a favorable perception of effectiveness	57

The balance of the responses cited negative experiences or negative perceptions categorized generally as follows:

	Failure of OPC to properly dismiss non-meritorious or trivial cases prior to hearing before the screening panel	6
	OPC acting as advocate, partisan or prosecutor in matters before the screening panel	4
	Screening panel members were inexperienced and unable to properly understand and rule upon the cases presented	2
	The screening panels are staffed with lawyers from large firms unfamiliar with practice areas in which the cases being heard arise and are not professionally and geographically representative of the respondents	13
	The screening panels defer to OPC and rubber stamp OPC's view of cases	3
	The hearing process does not contain adequate due process such as requiring actual attendance of witnesses and the ability to cross-examine or otherwise challenge untruthful witnesses or incompetent or hearsay evidence	6
	Insufficient time is allotted for presentation of cases	4

	Lack of training of panel members and inconsistency of results	3
	The negative influence of lay members who do not understand the issues of cases	4
	The screening panel members are in some fashion unprepared, prejudiced, incompetent, unprofessional, arrogant or insensitive	6

**QUESTION 14: Do you have any suggestions to improve the OPC process or procedures?**

Bias	1
Screening	7
Attorney vs. Attorney	2
Defense counsel	1
Hotline (ineffective – need independence)	3
Complaints to avoid paying fees	2
Separate discipline from the Bar (DOPL)	2
Educate the membership	2
Mediation	1
Oversight of OPC (ombudsman)	3
Educate screening panel members	1
Timing of prosecution too long	2
Rules are too broad	1
Penalties for frivolous complaints	2
Field of Practice	1
Attorney for Attorney (tactical)	1
Prosecutorial discretion	1
Professionalism	1
Judicial Review	1

There were three primary category responses to this question. First, that there must be better screening of the complaints at the very beginning. Second, that the Hotline and Consumer Assistance Office be completely separate from OPC to allow attorneys what amounts to a safe-harbor to resolve problems or get answers to questions. Third, that OPC should have what amounts to an ombudsman to oversee their activities.

Question #	Type of Violation	# of Times Mentioned
Question #17. If your answer to last question was "Yes" . . . comment on helpfulness of Ethics Hotline and provide any recommendations for improvement	Helpful	151
	N/A	34
	Not helpful	31
	Helpful but took too long to get a response, not very timely	21
	Helpful to an extent (marginally helpful) they make too many disclaimers, left him without much to rely on, too non-committal	21
	Answers too conservative, won't commit, vague answers	8
	Not sure, don't know, no comment	6
	Some quality variance in answers -- helpful in one instance but not in another	3
	Did not get call back after left message	3
	Would be helpful if it could be a written commitment,	3
	Good depending on who you are talking to -- if speaking with experienced practitioner good not if not	2
	Question of accuracy of advice	2
	Do not believe the information given was accurate	2
	Suggest that they publish selected questions and answers each month in Bar Journal or online	2
	Have not used it but referred others to it	2
	Sounds like a good idea	2
	Not helpful if it goes to voice mail, do not like leaving message on voice mail with question	2
Asked a difficult question and person giving advice could not answer it	1	
Followed their advice but was still admonished	1	

Question #	Type of Violation	# of Times Mentioned
	Suggestion keeping records of interaction in case of a bar complaint in future	1
	Would be helpful in they could give additional information, i.e. pointing to an opinion, etc.	1
	Understood hotline was not anonymous – needs to be in matters of ethics	1
	Person answering question threatened to turn him in to OPC for asking question/not knowing answer so has not used the hotline since	1
	Has not used it himself but heard from others that it was not a positive experience	1
	Either give an opinion or quit pretending to	1
	Suggest its existence be more widely communicated to others	1
	Ended up submitting written statement to Ethics Committee, they helped	1
	Believe it is most helpful to smaller firms and sole practitioners	1
	Feels it can be manipulated by an unethical attorney	1
	Because OPC is adversarial would not recommend it	1
	Not very helpful but best Bar has so far	1

Question #	Type of Violation	# of Times Mentioned
<p>Question #20            If you answered "yes" to last question ... how helpful or effective was CAP in resolving the problem and provide any recommendations on how this might be improved to better serve lawyers</p>	N/A	51
	Effective/helpful	42
	No personal knowledge	4
	Not helpful	3
	Can't remember	2
	Declined to participate	2
	Believe CAP assigned person assisted Complainant in manufacturing complaint	1
	Suggest starting a hot line for those being abused by opposing counsel	1
	CAP decided it was not a CAP issue	1
	If it doesn't rise to an ethics violation the Bar should not spend members money to meddle	1
	Resolved on its own	1
	Same as OPC? Failed to explain distinction between two	1
	CAP is just a conduit to relay client communication	1
	Their interest lay with the Bar	1
	Took too long	1
	A "make work" job for Jeannine Timothy	1
If it is a fee dispute let customer file Complaint and let court determine	1	
Why doesn't OPC advise lawyers of the two options	1	

**QUESTION 21: Do you have any additional comments about the Office of Professional Conduct, the Ethics Hotlines, or the Consumer Assistance Program that you believe should be considered by the Bar Commission in its evaluation of these programs?**

Discipline prevents insurance	1
Timing is too long	3
Screening	4
Prosecutorial discretion	1
Educate the members	4
Uphold the profession instead of attacking it	1
Independent Hotline (safe-harbor)	2
Field of law	1
OPC should be separate from the bar	1
Bond for filing a complaint	3
No confidence in system or change (unconstitutional lack of separation of powers – entire Bar and discipline needs to be dissolved)	3
Consumer Assistance a great program	2
Unfair focus on solo and small firms	1
Get away from guilty until proven innocent	1
Oversight of OPC	2
Informal	3

The comments to the final question were similar to the comments to the first two questions. The one difference are the comments that believe the Hotline and Consumer Assistance should be completely separate from OPC to give attorneys the opportunity to correct problems early on, if they exist, or avoid them before they exist. Another sense was that OPC should not be part of the Bar at all. Last, there were consistent comments cross all three questions regarding the need to better educate members about the various services and processes.