

2004

DJ Investment Group, LLC, a Utah limited liability company v. DaeWestbrook LLC, a Delaware Limited liability company; Draper City, a municipal corporation; John DOes 1 to 15 : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

D.J. INVESTMENT GROUP,
L.L.C., a Utah limited liability
company,

:
:

Plaintiff and Appellee,

:

Appellate Court No. 20040340-CA

v.

:

DAE/WESTBROOK, L.L.C.,
a Delaware limited liability
company; DRAPER CITY,
a municipal corporation;
JOHN DOES 1 to 15,

:

Trial Court Civil No. 010402305

**UTAH COURT OF APPEALS
BRIEF**

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Defendants and Appellants.

:

DOCKET NO. 20040340-CA

REPLY BRIEF OF DEFENDANT/APPELLANT

Interlocutory Appeal from the Judgment
of the Fourth Judicial District Court,
Utah County,
Judge Lynn W. Davis

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ORAL ARGUMENT AND PUBLISHED OPINION REQUESTED

**FILED
UTAH APPELLATE COURTS**

NOV 10 2004

IN THE UTAH COURT OF APPEALS

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L.L.C., a Utah limited liability :
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Plaintiff and Appellee, :
Appellate Court No. 20040340-CA
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DAE/WESTBROOK, L.L.C., : Trial Court Civil No. 010402305
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IN THE UTAH COURT OF APPEALS

D.J. INVESTMENT GROUP, L.L.C.:

Plaintiff/Appellee,:

v.:

DAE/WESTBROOK, L.L.C.:

Defendant/Appellant.:

Case No. 20040340-CA:

REPLY BRIEF OF DEFENDANT/APPELLANT

ARGUMENT

I. D.J.'S BRIEF APPLIES THE INCORRECT STANDARD OF REVIEW.

Throughout its Brief, D.J. Investment Group, L.L.C. (“D.J.”) incorrectly seeks to apply the abuse of discretion standard of review to all issues raised by this appeal. (See Appellee D.J. Investment Group, L.L.C.’s Brief (“D.J. Brief”) at 2, 15, 26, 30.) Although a trial court’s factual findings and decision on whether to disqualify are reviewed for abuse of discretion, (see Houghton v. Dep’t of Health, 962 P.2d 58, 61 (Utah 1998); Weeks v. Ind. Sch. Dist. No. I-89, 230 F.3d 1201, 1208 (10th Cir. 2000)), the trial court’s interpretation of a disciplinary rule is reviewed de novo. See

In re Grand Jury Subpoenas, 906 F.2d 1485, 1488 (10th Cir. 1990); State v. Pena, 869 P.2d 932, 937 (Utah 1994); Weeks, 230 F.3d at 1208. This distinction is extremely important because “in order to weigh the district court’s exercise of its discretion, [the appellate court] must resolve several purely legal questions,” including the trial court’s interpretation of an attorney disciplinary rule, under a “de novo” review. In re Grand Jury Subpoenas, 906 F.2d at 1488; see Pena, 869 P.2d at 937 (stating Utah appellate courts “generally consider de novo a trial court’s statement of the legal rule”); Weeks, 230 F.3d at 1208 (“We review de novo the trial court’s interpretation of the applicable rules of professional responsibility.”); LeaseAmerica Corp. v. Stewart, 876 P.2d 184, 187 (Kan. 1994) (“[A] trial court’s interpretation of a disciplinary rule is subject to a de novo review.”); State v. Barnett, 965 P.2d 323, 327 (N.M. 1998) (“[T]he abuse-of-discretion standard does not preclude an appellate court from correcting errors premised on the trial court’s misapprehension of the law.”) Under the de novo standard, the appellate court must “apply [its] own independent judgment” to the trial court’s interpretation of an attorney disciplinary rule. In re Grand Jury Subpoenas, 906 F.2d at 1488; Weeks, 230 F.3d at 1208.

As discussed below, in denying SunCrest L.L.C.’s (“SunCrest”) Motion to Disqualify Snuffer, the district court made three critical errors of

law.¹ The Court should review these errors de novo, applying its own independent judgment to the applicable law.

A. The District Court Erred as a Matter of Law By Refusing to Make an Initial Determination As to Whether Snuffer Was Likely to Be a Necessary Witness.

In denying SunCrest's Motion to Disqualify, the district court ruled that Snuffer's continued representation of D.J. "may implicate" Rule 3.7, but refused to determine whether or not Snuffer was "likely to be a necessary" witness because SunCrest's request was untimely and would impose a "significant hardship" on D.J. (R. 2452). However, the exceptions to disqualification under Rule 3.7, including the "substantial hardship" exception, only apply and can only be considered properly if the lawyer is "likely to be a necessary witness." See UTAH R. PROF'L CONDUCT 3.7; Kehrer v. Nationwide Ins. Co., 21 Pa. D. & C. 4th 385, 389 (1994) ("[T]he

¹ A published written decision in this case would help clarify Utah law with regard to situations where a lawyer may be a necessary witness. Utah has a paucity of precedent on this subject. The most relevant case in Utah, State v. Leonard, 707 P.2d 650 (Utah 1985), was decided under Rule 5-102(A), the predecessor to Rule 3.7 of the Utah Rules of Professional Responsibility. When deciding the instant matter, the district court did not even have the benefit of the recent ethical opinion released by the Utah State Bar on April 19, 2004, which addresses situations where an attorney may be a necessary witness. See Utah State Bar Ethics Advisory Op. Comm., Op. No. 04-02, April 19, 2004. A review of this opinion, which cites almost exclusively to out-of-state cases, demonstrates the lack of Utah case law on the subject. A copy of this opinion is attached to the Addendum of SunCrest's original Brief at Tab 3.

threshold issue is whether counsel is ‘likely to be a necessary witness;’” interpreting identical Rule 3.7 of the Pennsylvania Rules of Professional Conduct); DiMartino v. Dist. Ct., 66 P.3d 945, 947 (Nev. 2003) (overruling the district court's disqualification decision where, among other errors, the “district court [] did not determine whether [the attorney] was likely to be a necessary witness”; interpreting Nevada SCR 178, identical to Rule 3.7 of the Utah Rules of Professional Conduct). Part of the reason the court must first determine whether the attorney is a necessary witness is because the exceptions to disqualification cannot be sufficiently assessed without understanding what the attorney will testify about. Thus, the district court erred as a matter of law when it refused to determine whether Snuffer was “likely to be a necessary witness” before addressing the exceptions to disqualification enumerated in Rule 3.7.² Because the trial court incorrectly

² Had the district court properly applied the law and resolved the question of whether Snuffer was “likely to be a necessary witness,” it would have been required to find that Snuffer is a necessary witness in the underlying litigation. The district court did not hold an evidentiary hearing and therefore did not exercise any judgment based on anything not in front of this Court. The record demonstrates that Snuffer participated significantly in the settlement negotiations, as both a negotiator and drafter, and in other key events in the lawsuit underlying this appeal. (R. 2214-13; R. 2413-11). His testimony will therefore be crucial in determining the intended effect of the Settlement Agreement and whether SunCrest made false representations to D.J. during the settlement negotiations. Thus, the district court’s failure to find that Snuffer is a necessary witness was an abuse of discretion. See Houghton, 962 P.2d at 61.

interpreted Rule 3.7, this Court should review the district court's interpretation of the rule de novo. See In re Grand Jury Subpoenas, 906 F.2d at 1488; Weeks, 230 F.3d at 1208; LeaseAmerica Corp., 876 P.2d at 187.

B. The District Court Erred as a Matter of Law in Applying the Law and Facts of Jensen to the Present Case to Find SunCrest's Motion Untimely.

The district court, in determining that SunCrest's motion was untimely, erred as a matter of law in applying the law and facts from Zion's First National Bank v. Barbara Jensen Interiors, Inc. 781 P.2d 478 (Utah 1989). That case involved disqualification of an attorney for a conflict of interest, as opposed to disqualification based on counsel's being a necessary witness, as in the instant case. The motion to disqualify in Jensen involved a conflict regarding a prior representation that was readily apparent to the party seeking the disqualification. See 781 P.2d 478, 481. However, the basis for disqualification in the present case was not readily apparent until the district court ruled, on November 17, 2003, that it would admit parol evidence to clarify the intentions of the parties in drafting the Settlement Agreement.³ (R. 2004-03). Further, the case law surrounding

³ Until the time of this ruling, SunCrest had always contended that the language of the Settlement Agreement was clear and unambiguous and that parol evidence would therefore not be admitted into evidence at trial. (R. 1667; 1652; 1647-46; 1637; 1614; 1551). D.J. also maintained that the Settlement Agreement's language was unambiguous. (R. 1903-02).

disqualification of attorney witnesses all indicate that the challenging party must wait until the case is far enough along to allow for the determination to be made, with certainty, that the attorney will be a necessary witness. See Morganroth & Morganroth v. DeLorean, 213 F.3d 1301, 1309 (10th Cir. 2000) (finding motion to disqualify under Rule 3.7 premature where the proceeding was not near the trial stage); Vanguard Sav. & Loan Ass'n v. Banks, 1994 U.S. Dist. LEXIS 8697 at *5 (E.D. Penn. June 28, 1994) (finding motion to disqualify premature where discovery was not complete). Thus, SunCrest's Motion to Disqualify, filed only three months after the court determined to allow parol evidence, was not untimely. Because the district court's interpretation of applicable law was incorrect, this Court should review de novo the district court's application of Jensen to the facts of the present case. See In re Grand Jury Subpoenas, 906 F.2d at 1488; Weeks, 230 F.3d at 1208; LeaseAmerica Corp., 876 P.2d at 187.

C. The District Court Erred as a Matter of Law When It Failed to Balance the Interests of the Parties, As Required by Rule 3.7.

The district court, in deciding D.J. would suffer a substantial hardship were the motion granted, failed to balance the interests of both parties.

Although the district court's ruling states that it "weigh[ed] the interests of

the parties,” nothing in the ruling suggests that the court did so. (R. 2450). The district court states that disqualifying Snuffer “would result in significant financial and tactical prejudice to D.J.” (R. 2448), and also notes that “the Court doubts another attorney could be brought up to speed in this matter and recognizes that such an effort would require D.J. to expend an exorbitant amount of time and money.” (R. 2449). However, the district court never mentions any prejudice or hardship that SunCrest would suffer were Snuffer allowed to remain as D.J.’s counsel. (See R. 2454-46). In order to balance the competing interests of the parties, the Court must consider the harm to each side. Instead, the district court only considered the hardship D.J. would suffer. (R. 2450-48). Because “a balancing is required between the interests of the client and those of the opposing party,” this one-sided consideration was improper under Rule 3.7. See UTAH R. PROF’L CONDUCT 3.7, Comment (emphasis added); Thompson v. Goetz, 455 N.W. 2d 580, 588 (N.D. 1990) (“Even when it has been adequately shown that an attorney will be a ‘necessary witness,’ Rule 3.7(a) envisions a balancing of the interests at stake in resolving the disqualification question;” interpreting similar Rule 3.7(a) of the North Dakota Rules of Professional Conduct); DiMartino, 66 P.3d at 947 (overruling the district court’s disqualification decision where, among other errors, the district court “d[id]

not balance the parties' interests;" interpreting identical Rule 3.7 of the Nevada Rules of Civil Procedure). Thus, the district court's one-sided consideration constitutes an error of law.⁴ Again, given that the trial court's interpretation of Rule 3.7 is disputed, this Court should review the district court's interpretation of the rule de novo. See In re Grand Jury Subpoenas,

⁴ Had the district court correctly applied the law and balanced the interests of the parties, the case law and facts presented required the district court to find that the prejudice SunCrest will suffer were Snuffer allowed to remain as D.J.'s counsel outweighs the hardship D.J. will suffer if Snuffer is disqualified. Any party can of course argue that not having the counsel of its choosing is a hardship. While this is a hardship, it is the case in every disqualification situation. That Snuffer could continue as a consultant to plaintiff's counsel significantly ameliorates this hardship. More importantly, a plaintiff's preference for a particular attorney does not outweigh the damage of a tainted trial. If Snuffer remains D.J.'s counsel and testifies at trial, his dual roles as both advocate and witness will likely confuse the jury and taint the trial as well as any further proceedings in this case. See World Youth Day, Inc., v. Famous Artists Merch. Exch., Inc., 866 F. Supp. 1297, 1303 (D. Colo. 1994). Given Snuffer's significant involvement in the events underlying this litigation, a situation where Snuffer would first introduce the case in his role as advocate, then testify as a witness, and then again, as an advocate, comment upon his own testimony, would certainly "taint" the trial and unfairly prejudice SunCrest. See Davisair Inc. v. Butler Air Inc., 40 Pa. D. & C. 4th 403, 408 (1998) ("The purpose of Rule 3.7 is to eliminate the situation in which the lawyer who testified is commenting on the testimony that he or she gave;" interpreting identical Rule 3.7 of the Pennsylvania Rules of Professional Conduct). Such a circus taints the legal system. Thus, the district court abused its discretion by failing to balance the interests of the parties properly, as required by Rule 3.7, and find that the prejudice to SunCrest outweighs D.J.'s hardship in having to obtain new counsel. See Houghton, 962 P.2d at 61.

906 F.2d at 1488; Weeks, 230 F.3d at 1208; LeaseAmerica Corp., 876 P.2d at 187.

II. SNUFFER'S TESTIMONY WOULD NOT RUN AFOUL OF THE ATTORNEY-CLIENT PRIVILEGE.

In its Brief, D.J. erroneously claims that Snuffer's testimony would be protected by attorney-client privilege.⁵ (See D.J. Brief at 8 (claiming that Snuffer's testimony "will run afoul of the attorney-client privilege); id. at 17-18 (stating that Snuffer "acted as an advisor to his client making all of his communications [] protected by the attorney-client privilege"); id. at 22 ("The only questions that Mr. Snuffer could answer without violating

⁵ D.J. also incorrectly asserts that evidence regarding the Settlement Agreement and settlement negotiations is inadmissible under Rule 408 of the Utah Rules of Evidence. (See D.J. Brief at 9.) Under Rule 408, a party is prohibited from presenting evidence, based on information learned during settlement negotiations, which would establish liability on the underlying claim, should those negotiations breakdown. See Catullo v. Metzner, 834 F.2d 1075, 1079 (1st Cir. 1987). However, the Rule does not protect those settlement negotiations "[w]here the settlement negotiations and terms explain and are a part of another dispute," (id. (internal citations and quotations omitted)), or where one side argues that the other party broke the agreement. See Cates v. Morgan Portable Building Corp., 780 F.2d 683, 691 (7th Cir. 1985) ("Obviously a settlement agreement is admissible to prove the parties' undertakings in the agreement should it be argued that a party broke the agreement.") Nor does the Rule exclude evidence introduced to establish the intent of the parties in entering a settlement agreement. See UTAH R. EVID. 408 (prohibiting the use of settlement information to prove the value of a claim). D.J.'s lawsuit has put the Settlement Agreement, which settled an unrelated prior dispute between the parties, and the negotiations leading to it at issue. (R. 793; R. 2215). Consequently, Rule 408 no longer protects those negotiations. See Catullo, 834 F.2d at 1079; Cates, 780 F.2d at 691.

privilege would be confined to what the nature of the services that he actually did provide.”); *id.* at 23 (“[T]he majority of [the] small amount of testimony [Snuffer could provide] would be protected by privilege.”)⁶

Although the attorney-client privilege may protect confidential communications made between Snuffer and David Mast (“Mast”) (D.J.’s primary member and manager) or Robert Christiansen (“Christiansen”) (vice president of U.S. General (another company owned by Mast)), the privilege does not protect communications made in the presence of third parties, including SunCrest representatives, Micron Technologies, Inc. (“Micron”) representatives, or Draper City representatives.

Under Rule 504 of the Utah Rules of Evidence “[a] client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications . . . between the client and the client’s . . . lawyers.” UTAH R. EVID. 504 (emphasis added); *Doe v. Maret*, 1999 UT 74, ¶ 8, 984 P.2d 980, 983. However, where “the matters communicated to the attorney are intended by the client to be . . . revealed to third persons, obviously the element of confidentiality is wanting.” *Oil, Chemical & Atomic Workers Int’l Union v. Sinclair Oil Corp.*, 748 P.2 283, 289-90 (Wyo. 1987) (internal citations and quotations omitted); *see United*

⁶ That not one of these statements bears a record cite is addressed below. *See* Section III, *infra*.

States v. Stansfield, 874 F. Supp. 640, 646 (M.D. Penn. 1994)

(“Communications which are published to third parties whose interests are adverse to the client are not protected by the attorney-client privilege.”)

The vast majority of Snuffer’s testimony would not run afoul of the attorney-client privilege. Although his confidential communications with Mast and Christiansen may be privileged, all communications made in the presence of “third parties whose interests are adverse” to D.J. – including Edward Grampp (“Grampp”) (SunCrest’s vice president), Bruce Baird (“Baird”) (SunCrest’s counsel), Michael Jones (“Jones”) (SunCrest’s counsel) and Jeff Anderson (“Anderson”) (president of SunCrest Development Corporation) – are not protected by attorney-client privilege. Thus, Snuffer can testify about the critical negotiating session, attended by Baird, Jones, Grampp, Snuffer and Christiansen, where the parties reached agreement on the substantive portions of the Settlement Agreement and reduced them to writing.⁷ (R. 2413, R. 2399). In addition, without violating

⁷ The importance of this negotiating session cannot be overemphasized. During this session, the two sides discussed the “critical” paragraph 14 of the Settlement Agreement, (R. 2214, R. 2162), which D.J. now claims requires SunCrest to build and pay for a road to U-92 touching D.J.’s property. (R. 1903.) However, Christiansen, D.J.’s only other representative at the meeting does not remember any details of the meeting. (R. 2214, R. 2164, R. 2162.) Snuffer, as D.J.’s only other representative at the meeting, is the one person on D.J.’s side who can testify as to the discussions surrounding this critical paragraph at this critical meeting. (R.

the attorney-client privilege, Snuffer can testify to his communications with SunCrest, including his discussion of the critical easements with Anderson, prior to SunCrest's acquisition of the property. (R. 2214-13, R. 2159).

Moreover, Snuffer can testify about the letter he wrote to SunCrest, which demonstrates that he, while acting on D.J.'s behalf, had actual knowledge that Micron had denied the existence of SunCrest's easement.⁸ (R. 2413, R. 2403-02).

Furthermore, D.J., by placing its state of mind at issue, may have waived its privilege on many confidential conversations Snuffer had with Mast and Christiansen. See Doe, 1999 UT 74, ¶ 9, 984 P.2d 980, 983 (stating a client can waive the attorney-client privilege by "placing attorney-client communications at the heart of a case"); Garfinkle v. Arcata Nat'l Corp., 64 F.R.D. 688, 689 (S.D.N.Y. 1974) (holding that "privilege may be

2210.) In addition, if put under oath, Snuffer cannot deny that SunCrest paid D.J. a \$50,000 bonus because the parties completed the substantive portions of the Agreement by the end of this meeting. (R. 2412, R. 2398.)

⁸ In this letter, Snuffer wrote in regard to the Micron easement: "We have been told of its existence (although Micron denies it) but have never been furnished a copy of it." (R. 2403-02.) This knowledge is critical because it refutes any suggestion that SunCrest made a misrepresentation, as well as the claim that D.J. reasonably relied on any representations by SunCrest regarding the easements, absent further independent investigation. Consequently, the basis for Snuffer's statement will certainly form a critical area of questioning when Snuffer is on the stand. No one else can testify about why Snuffer wrote this sentence in his letter.

waived if the privileged communication is injected as an issue in the case by the party which enjoys the protection”). D.J.’s understanding of the various provisions of the settlement are no doubt influenced and shaped by Snuffer’s representations, as well as SunCrest’s. Therefore, SunCrest may be entitled to a waiver of privilege on many of D.J.’ confidential communications with Snuffer.

Moreover, the issue of whether certain communications or observations will be covered by the attorney-client privilege rule is properly addressed after the Court determines that the attorney is a “necessary witness.” The case law surrounding attorney disqualification does not address attorney-client privilege when determining whether the attorney is a “necessary witness.” See e.g., Watkiss & Campbell v. Foa & Son, 808 P.2d 1061 (Utah 1991), Acme Analgesics, Ltd. v. Lemmon Co., 602 F. Supp. 306 (S.D.N.Y. 1985), World Youth Day, 866 F. Supp. 1297.

III. D.J.’S BRIEF FAILS TO COMPLY WITH APPELLATE BRIEF REQUIREMENTS.

D.J.’s brief fails to meet many appellate brief requirements set forth in Rule 24 of the Utah Rules of Appellate Procedure. This failure is not a mere technicality. This failure impairs the determination of the issue on appeal by enabling D.J. to make arguments that have no support in the record or case law.

Rule 24 “contains unambiguous requirements for a brief’s organization and contents.” State v. Green, 2004 UT 76, ¶ 11, 507 Utah Adv. Rep. 45; see UTAH R. APP. P. 24. In Beehive Telephone Company v. Public Service Commission, the Utah Supreme Court recently noted that “compliance with [] appellate briefing rules is not discretionary. Compliance is mandatory, and failure to conform to these requirements may carry serious consequences.” 2004 UT 18, ¶ 12, 89 P.3d 131, 137; see MacKay v. Hardy, 973 P.2d 941, 949 (Utah 1999) (noting that failure to comply with appellate briefing rules “increase[s] the costs of litigation for both parties and unduly burden[s] the judiciary’s time and energy”). For example, “briefs which are not in compliance may be disregarded or stricken, on motion or sua sponte by the court.” UTAH R. APP. P. 24(j). In addition, “attorney fees may also be assessed against the offending lawyer whose brief fails to comply.” Beehive Telephone Co., 2004 UT 18, ¶ 12, 89 P.3d at 137; see UTAH R. APP. P. 24(j).

A. D.J. Does Not Support Statements of Fact and References to the Proceedings Below With Citations to the Record.

Rule 24(a)(7) of the Utah Rules of Appellate Procedure requires that “all statements of fact and references to the proceedings below [] be supported by citations to the record.” UTAH R. APP. P. 24(a)(7) (emphasis added); see Green, 2004 UT 76, ¶ 11. Moreover, the Utah Supreme Court

stated it “will not[] consider any facts not properly cited to, or supported by, the record.” Uckerman v. Lincoln Nat’l Life Ins. Co., 588 P.2d 142, 144 (Utah 1978).

D.J.’s Brief contains only a handful of proper record citations.⁹ In its fact section, D.J. makes numerous bare assertions unsupported by the record.¹⁰ (See D.J. Brief at 5-11.) Moreover, in the argument section, D.J. makes multiple factual assertions, but fails to cite to the record even once. (See UTAH R. APP. P. 24(a)(9) (stating that the argument section “shall contain . . . citations to the . . . parts of the record relied on”); D.J. Brief at 13-30). Additionally, instead of citing to the record, D.J. often cites to SunCrest L.L.C.’s (“SunCrest”) Permission to Appeal Interlocutory Order (see D.J. Brief at 5, 6, 9, 10), SunCrest’s Appellate Brief (see id. at 5, 6, 8),

⁹ D.J. also improperly cites to exhibits. On page 21, D.J.’s Brief states that a letter from Grampp is attached to D.J.’s Brief as Exhibit 4. (See D.J. Brief at 21.) However, this letter is not attached as Exhibit 4 or as any other exhibit number because D.J. included no exhibits in its Addendum. (See D.J. Brief at 32.)

¹⁰ For example, D.J., in its “Facts established in the Record below” section, states “Mr. Mast was always the principle [sic] in any such conversation [with Jeff Anderson]. Further Mr. Snuffer has no recollection of any such conversation. Therefore, his testimony will be he can’t recall any such discussion.” (D.J. Brief at 8.) D.J. fails to provide any record citations to support these factual assertions. Moreover, D.J.’s assertion that Snuffer’s testimony will be that he cannot recall a discussion is self-serving and not part of the record below. Therefore, D.J. inappropriately included it in its statement of facts, and this Court should disregard it.

SunCrest’s Memorandum in Support of Motion to Disqualify Denver C. Snuffer, Jr. and Nelson, Snuffer, Dahle & Poulsen (see id. at 25), and the district court’s “Memorandum Decision” (see id. at 15, 26, 28, 29, 30). Citations to documents, including those from lower court proceedings, other than the “original record as paginated pursuant to [R]ule 11(b) of [] the rules of appellate procedure” are improper. See MacKay, 973 P.2d at 948 & n.10 (“[P]roper citation is imperative. Without it, neither the parties nor this court can quickly and efficiently locate the referenced passages.”)

Furthermore, where D.J. actually cites to the record, most citations do not support the proposition cited. For example, D.J. frequently cites to record pages 2220-2218 to support its contention that Snuffer did not attend the Phoenix meeting where the parties finalized the Settlement Agreement. (See D.J. Brief at 8, 10.) However, all that is contained on these pages of the record are the last page of an affidavit, along with an inapposite letter from Ed Grampp to Harold Killgore of Micron. (See R. 2220-18). In addition, D.J. cites to the district court’s ruling when stating the court’s decision found that “each of the exceptions in Rule 3.7 of the Utah Rules of Professional Responsibility apply in this case.” (See D.J. Brief at 3; see id. at 12) (emphasis added). The lower court made no such finding. (See R.

2454-46). Instead, the court found that one exception – the substantial hardship exception – applied to the present case. (R. 2454, R. 2450-48.)

Moreover, in what is perhaps a result of improper record citations, D.J. seriously mischaracterizes supposed factual assertions in all sections of its Brief.¹¹ One of the most disturbing examples is D.J.’s assertion that SunCrest filed its Motion to Disqualify Snuffer “on the very eve of entering

¹¹ D.J. seriously mischaracterizes the record in its statement of facts. (See D.J. Brief at 5-13.) On page 6, D.J.’s Brief claims that Christiansen stated in his deposition testimony that “Mr. Snuffer was **not at all** involved in the drafting and negotiation that occurred in Phoenix.” (See D.J. Brief at 6.) However, Christiansen, in his deposition, states that during the Phoenix meeting, Snuffer “was involved over telephone, conferences calls and [e]-mails back and forth.” (R. 2164). In addition, D.J. claims that Snuffer “did not participate in the creation of the final documents, nor in the final execution of the agreement.” (See D.J. Brief at 7.) This statement is false. On November 16, 2000, Snuffer signed and sent a letter to First American Title Company detailing “the closing instructions” for the Settlement Agreement. (R. 2298-95). This letter also contradicts D.J.’s contention that Snuffer had no involvement in the Phoenix meeting on November 16, 2000 because “Mr. Snuffer was in court.” (See D.J. Brief at 10.)

Moreover, D.J. mischaracterizes assertions of fact in its argument section. For example, D.J. attempts to argue that “[t]he relationship between paragraph 14 and the road connecting the Plaintiffs’ property to the Alpine Highway is not disputed.” (See D.J. Brief at 21.) This statement could not be further from the truth – the interpretation of this paragraph is the very heart of the underlying lawsuit. (R. 2004-03). Also, D.J. asserts that Snuffer did not “exercise any significant amount of control over the drafting of the agreement.” (See D.J. Brief at 12.) Again, this statement is incorrect. Snuffer attended the all night negotiating session where the parties completed the substantive portions of the Settlement Agreement. (R. 2413). During this negotiating session, Snuffer negotiated nearly every sentence of the Agreement and also drafted some of the language in the Agreement independently. (R. 2413).

into the trial phase.”¹² (D.J. Brief at 3.) This statement is completely inaccurate – no scheduling order exists in this case. (R. 2091; R. 2099-98). SunCrest filed a Motion for Scheduling Order on January 30, 2004. (R. 2091-84; R. 2100-92). While the proposed order is now moot, the district court plans to put a scheduling order in place at a hearing in December, 2004. Moreover, D.J. claims that “depositions of all the key witness [] have taken place” and that “[d]iscovery concluded on September 12, 2003.” (D.J. Brief at 22.) These assertions are patently false. No scheduling order has ever existed in this case, so there has never been a discovery cut-off deadline. (R. 2091; 2099-98). Moreover, D.J. has continued to issue subpoenas, notice depositions, request documents and request admissions up until this very day, more than a year after the date D.J. claims discovery ended.¹³

¹² D.J. also claims that this appeal was filed to “delay resolution” of the case below. (D.J. Brief at 11.) This assertion is belied by SunCrest’s choice not to request a stay in the proceedings below. The case has proceeded in the same manner as if SunCrest had not filed this appeal.

¹³ On December 5, 2003, D.J. served Bruce Baird, SunCrest’s counsel, with a subpoena requesting documents. (R. 2049-48). Also on December 5, 2003, D.J. served a subpoena on Micron (R. 2048). On December 15, 2003, D.J. served Sean Egan, SunCrest’s former counsel with a subpoena, requesting documents and live testimony at a deposition (R. 2048). D.J. also continued discovery well beyond the date the clerk of the trial court paginated the record in this case pursuant to Rule 11(b) of the Utah Rules of Appellate Procedure. On May 12, 2004, D.J. noticed the deposition of Eric

As demonstrated above, D.J.'s Brief blatantly violates Rule 24(a)(7) of the Utah Rules of Appellate Procedure. Where D.J.'s Brief asserts statements of fact and fails to cite to the record or improperly cites to the record, this Court should disregard those facts. See Uckerman, 588 P.2d at 144 (stating that the court "will not[] consider any facts not properly cited to, or supported by, the record"). Most of D.J.'s factual assertions have no citation or an incorrect or improper citation.¹⁴ Consequently, this Court should disregard the rest of D.J.'s statements of fact, including those contained in D.J.'s argument section.

Keck, City Manager for Draper City. On June 8, 2004, D.J. issued Requests for Admissions and Interrogatories. On August 5, 2004, D.J. noticed the depositions of Edward Grampp, SunCrest's vice president, and Baird. On the same day, D.J. also served Grampp with a subpoena. D.J. also noticed the depositions of Eric Keck and Todd Godfrey, Draper City attorney, on September 30, 2004. Moreover, only a few weeks after making representations to this Court that discovery had ended over a year ago, D.J. has now noticed the depositions of all members of the Draper City Council, as well as the Mayor. These documents appear in SunCrest's Addendum.

¹⁴ With the exception of the procedural history and seven citations in the statement of facts, all of D.J.'s factual assertions have no citation or an incorrect or improper citation. The correct citations are as follows: the "Course of Proceedings and Disposition Below" section, (see D.J. Brief at 4-5), three record cites on page 7 (last sentence of first incomplete paragraph and second and third sentences of second incomplete paragraph), two record cites on page 9 (second sentence of first paragraph), and two record cites on page 10 (third sentence of second incomplete paragraph). Consequently, this Court should disregard the rest of D.J.'s statements of fact, including those contained in D.J.'s argument section.

B. D.J. Fails to Support Legal Arguments With Citations to Relevant Authorities.

Rule 24(a)(9) requires a brief's argument section contain "citations to relevant authorities." MacKay, 973 P.2d 941, 948 (Utah 1998); see UTAH R. APP. P. 24(a)(9). D.J. often fails to cite to any authorities in its argument section. For example, D.J. provides no citation to any authorities to support its argument that the district court did not have to determine whether Snuffer was likely to be a necessary witness before addressing the exceptions to disqualification enumerated in Rule 3.7 of the Utah Rules of Professional Responsibility. (See D.J. Brief at 26.) Instead, D.J. merely asserts that "[t]here is nothing to be gained by delving further into such a determination." (See D.J. Brief at 27.) D.J.'s assertions are incorrect. As discussed in Section I, the exceptions to disqualification under Rule 3.7 apply only if the lawyer is "likely to be a necessary witness." See Section I.A., supra.

In addition, when discussing the balancing of interests requirement of the substantial hardship exception to Rule 3.7, D.J. states

To balance the interests the Court must look at whether or not the hardship that would occur to the party whose attorney is disqualified outweighs the granting of the motion, or vice versa. The exception to the rule is created to avoid disqualifying a party representative when the disqualification creates too great a hardship. It does not work the other way as suggested by [SunCrest].

(See D.J. Brief at 29.) D.J. provides no citations to support these statements, which are contrary to relevant authorities. Specifically, D.J.’s suggestion that the substantial hardship “exception to the rule is created to avoid disqualifying a party representative when the disqualification creates too great a hardship [on the party whose attorney is disqualified] . . . [but] does not work the other way” is erroneous. Rule 3.7’s substantial hardship exception favors neither side, but instead “envisions a balancing of the interests at stake.” Goetz, 455 N.W. 2d at 588 (interpreting similar Rule 3.7(a) of the North Dakota Rules of Professional Conduct); see UTAH R. PROF’L CONDUCT 3.7, Comment (“[A] balancing is required between the interests of the client and those of the opposing party.”) As stated in the Comment to Rule 3.7, the required balancing involves examining the “prejudice” the party seeking disqualification will suffer were the attorney not disqualified along with the “effect of disqualification on the lawyer’s client.” Id.

C. Because D.J.’s Brief Lacks Accuracy, This Court Should Consider Disregarding or Striking D.J.’s Brief and Assess Attorney’s Fees Against D.J.’s Counsel.

Rule 24(j) states that “[a]ll briefs must be concise, presented with accuracy . . . and free from [] irrelevant, immaterial or scandalous matters.” UTAH R. APP. P. 24(j); see MacKay, 973 P.2d at 948. “Briefs which are not

in compliance may be disregarded or stricken . . . sua sponte by the court, and the court may assess attorneys fees against the offending lawyer.” UTAH R. APP. P. 24(j). As discussed above, D.J.’s brief is not “presented with accuracy.” See Sections III.A & III.B, supra. Given the numerous inaccuracies, distortions and other failures of D.J.’s Brief, along with D.J.’s lack of respect for both the Court and the Appellate Rules of Procedure,¹⁵ this Court should consider disregarding or striking D.J.’s Brief and also assessing attorney’s fees against D.J.’s counsel, pursuant to Rule 24(j) of the Utah Rules of Appellate Procedure.

CONCLUSION

For the reasons stated in Section I of this Brief, this Court should review the district court’s three errors of law de novo and reverse the district court’s denial of SunCrest’s Motion to Disqualify Denver C. Snuffer, Jr. and Nelson, Snuffer, Dahle & Poulsen, P.C. and disqualify Snuffer and his firm from acting as D.J.’s counsel at trial and during pretrial activities that might eventually reveal Snuffer’s dual role as advocate and witness if later admitted into evidence at trial. In addition, for the reasons stated in Section

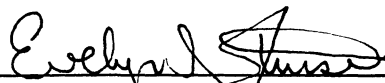
¹⁵ D.J.’s Brief also fails to comply with certain provisions of Rule 27 of the Utah Rules of Appellate Procedure. The most obvious violation is D.J.’s use of 12-point font throughout the Brief. Rule 27 (b) states that “[a] proportionally spaced typeface must be 13-point or larger.” UTAH R. APP. P. 27(b).

III, the Court should disregard all facts in D.J.'s Brief which contain improper citations to the record. Also, given D.J.'s numerous violations of Rule 24 of the Appellate Rules of Procedure, this Court should consider striking D.J.'s Brief in its entirety and assessing attorney's fees against D.J.'s counsel pursuant to Rule 24(j) of the Utah Rules of Appellate Procedure.

Respectfully submitted this 10th day of November, 2004.

**BENDINGER, CROCKETT,
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CASEY PC**

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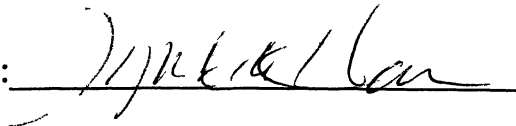
By 
Attorneys for Defendant/Appellant
SunCrest L.L.C.

CERTIFICATE OF SERVICE

I hereby certify that on this 10 day of November, 2004, a true and correct copy of **REPLY BRIEF OF DEFENDANT/APPELLANT** was served upon the person named below, at the address set out below their name, either by mailing postage prepaid, hand-delivery, Federal Express, or by telecopying to them a true and correct copy of said document.

Denver C. Snuffer, Jr.
NELSON, SNUFFER,
DAHLE & POULSEN, P.C.
10885 South State Street
Sandy, UT 84070

- U.S. Mail
- Federal Express
- Hand-Delivery
- Telefacsimile
- Other:

By: 

ADDENDUM

Denver C. Snuffer, Jr. (3032)
NELSON, SNUFFER, DAHLE & POULSEN
10885 South State
Sandy, Utah 84070
Telephone: (801) 576-1400
Attorneys for Plaintiff

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

D.J. INVESTMENT GROUP, L.L.C., a
Utah Limited Liability Company,

Plaintiff,

NOTICE OF DEPOSITION
OF ERIC KECK

vs.

Civil No. 010402305

DAE/WESTBROOK, L.L.C., a Delaware
limited liability company, DRAPER CITY,
a municipal corporation, JOHN DOES 1 to
15,

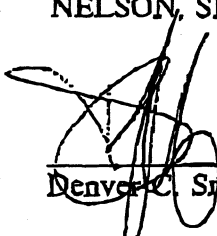
Judge Lynn W. Davis

Defendant.

PLEASE TAKE NOTICE that on June 1st, 2004, Plaintiff will take the deposition of Eric Keck, commencing at 9:00 a.m., at the offices of NELSON, SNUFFER, DAHLE & POULSEN, 10885 South State Street, Sandy, Utah. This deposition will be taken upon oral interrogatories pursuant to the Utah Rules of Civil Procedure before a certified shorthand reporter and will continue from day to day until completed.

Dated this 12 day of May, 2004.

NELSON, SNUFFER, DAHLE & POULSEN



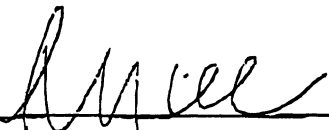
Denver C. Snuffer, Jr.

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of **NOTICE OF DEPOSITION OF ERIC KECK** was mailed, postage prepaid to the following:

Steven G. Crockett
Richard W. Casey
Evelyn Furse
BENDINGER, CROCKETT, PETERSON & CASEY
170 South Main, Suite 400
Salt Lake City, UT 84101

DATED this 17 day of May, 2004.



IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY
STATE OF UTAH

D.J. INVESTMENT GROUP, L.L.C., a
Utah Limited Liability Company,

Plaintiff,

vs.

SUBPOENA TO APPEAR AT
DEPOSITION

Civil No. 010402305

DAE/WESTBROOK, L.L.C., a Delaware
limited liability company, DRAPER CITY,
a municipal corporation, JOHN DOES 1 to
15,

Defendant.

Judge Lynn W. Davis

Served Eric Keck

Date 5-12-04

By [Signature]

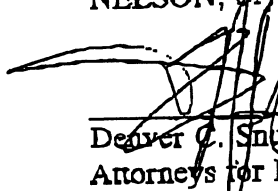
This [Signature]

TO: Eric Keck

YOU ARE COMMANDED to appear at the law firm of Nelson, Snuffer, Dahle & Poulsen, 10885 South State, in the City of Sandy, State of Utah, on the 1st day of June, 2004, at 9:00 a.m. to appear to testify at the taking of deposition in the above-entitled action pending in the District Court in and for Utah County, State of Utah.

Dated this 11 day of May, 2004.

NELSON, SNUFFER, DAHLE & POULSEN



Denver C. Snuffer, Jr.
Attorneys for Plaintiff
10885 South State
Sandy, Utah 84047
Telephone: (801) 576-1400

* Any subpoenaed organization not a party to this suit is hereby admonished pursuant to Rule 30(b)(6), Utah Rules of Civil Procedure, to file a designation with the court specifying one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and shall set forth, for each person designated, the matters on which he will testify or produce documents or things. The persons so designated shall testify as to matters known or reasonably available to the organization.

Notice to Persons Served with a Subpoena**Subpoena to Appear at Trial, at Hearing, or at Deposition:**

1. If this subpoena commands you to appear to give testimony at trial or at hearing, you must appear in person at the place designated in the subpoena.
2. If this subpoena commands you to appear to give testimony at deposition, you must appear in person at the place designated in the subpoena. If you are a resident of Utah, the subpoena may command you to appear only in the county where you reside, or where you are employed, or where you transact business in person, or where the court orders you to appear. If you are not a resident of Utah, the subpoena may command you to appear only in the county where you are served with the subpoena, or where the court orders.
3. If this subpoena commands you to appear to give testimony at trial, at hearing, or at deposition, but does not command you to produce or to permit inspection and copying of documents or tangible things, or inspection of premises, you have the right to object if the subpoena: (i) imposes an undue burden or expense upon you; (ii) does not allow you a reasonable time to comply, which may be less than 14 days, depending on the circumstances; or (iii) commands you to appear at deposition at a place in violation of paragraph 2, above.
4. To object to complying with the subpoena, you must file with the court issuing the subpoena a motion to quash or modify the subpoena. You must comply with the subpoena unless you have obtained a court order granting you relief from the subpoena.

Subpoena to Produce or to Permit Inspection of Documents or Tangible Things or to Permit Inspection of Premises:

5. If this subpoena commands you to produce or to permit inspection and copying of documents or tangible things, or to permit inspection of premises, but does not command you appear to give testimony at trial, at a hearing, or at a deposition: (i) you need not appear in person at the place of production or inspection; (ii) you must produce documents as you keep them in the ordinary course of business or organize and label them to correspond with the categories demanded in the subpoena; and (iii) you need not make any copies or advance any costs for production, inspection or copying. If you agree to make copies, the party who has served the subpoena upon you must pay the reasonable costs of production and copying.
6. You have the right to object if the subpoena: (i) imposes an undue burden or expense upon you; (ii) does not allow you at least 14 days to comply, unless the party serving the subpoena has obtained a court order requiring an earlier response; (iii) requires you to disclose a trade secret or other confidential research, development or commercial information; (iv) requires you to disclose privileged communication with your attorney or privileged trial preparation materials; or (v) requires you to disclose an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from expert's study made not at the request of any party.
7. To object to a subpoena for one of the reasons stated in paragraph 6, you must provide notice in writing of your objection to the party or attorney serving the subpoena before the date specified in the subpoena for you to respond. If your objection is based on either paragraph 6(iii), 6(iv) or 6(v), your written objection must describe the nature of the documents, communications or things that you object to producing with sufficient specificity to enable the party or attorney serving the subpoena to contest your objection. You must also comply with the subpoena to the extent that it commands production or inspection of materials to which you do not object.
8. After you make timely written objection, the party who has served the subpoena upon you must obtain a court order to compel you to comply with the subpoena. The party must give you a copy of its motion for a court order and notice of any hearing before the court. You have the right to file a response to the motion with the court and a right to attend any hearing. After you make a timely written objection, you have no obligation to comply with the subpoena until the party serving the subpoena has served you with a court order that compels you to comply.
9. If this subpoena commands you to produce or to permit inspection and copying of documents or tangible things, or to permit inspection of premises, and to appear to give testimony at trial, at a hearing, or at a deposition, you may object to the production or inspection of documents or tangible things, or inspection of premises, by following the procedure identified in paragraph 7. Even though you object to production or inspection of documents or tangible things, or inspection of premises, you must appear in person at the trial, at the hearing or at the deposition unless you obtain an order of the court by following the procedures identified in paragraph 4.

Denver C. Snuffer, Jr. 3032
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Telephone: (801) 576-1400
Attorneys for Plaintiff

IN AND FOR THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH

D.J. INVESTMENT GROUP, LLC
A Utah Limited Liability Company,

REQUESTS FOR ADMISSIONS

Plaintiff,

vs.

DAE/WESTBROOK, a corporation
DRAPER CITY, a municipal
corporation, JOHN DOES 1
TO 15;

Civil No. 010402305

Judge Lynn Davis

Defendants.

Plaintiff requests that the Defendant either admit or deny the following Requests for Admissions, within the time permitted by the Utah Rules of Civil Procedure:

1. Admit or deny DAE/Westbrook has a reciprocal easement agreement with Plaintiff's manager, U.S. General, Inc. dated March 24, 1997.

2. Admit or deny, prior to November 16, 2000, DAE/Westbrook had a right to an easement through Micron Technology's Utah County property, permitting DAE/Westbrook to connect to the Alpine Highway (U-92).
3. Admit or deny, prior to November 16, 2000, DAE/Westbrook agreed with the City of Draper to construct and locate its southern (secondary) access connection to the Alpine Highway (U-92) through Micron's Property.
4. Admit or deny, prior to November 16, 2000, DAE/Westbrook issued to the City of Draper a Performance Bond for the approximate sum of eight million five hundred fifty thousand five hundred eight dollars fifty six cents (8,550,508.56) to build a southern (secondary) access road through Micron's property to connect with the Alpine Highway (U-92).
5. Admit or deny, prior to November 16, 2000 DAE/Westbrook included with its Performance Bond to the City of Draper, an itemized construction costs spread sheet, dated October 19, 2000 for stations 233+50 to 495+22.51.
6. Admit or deny, prior to November 16, 2000 DAE/Westbrook instructed its engineer, Thompson –Hysell to design and engineer its southerly (secondary) access road through Micron's property first to run adjacent to Plaintiff's property then via 8000 West to U-92.
7. Admit or deny, after November 16, 2000 DAE/Westbrook filed a multi-million dollar lawsuit against Micron because it did not allow DAE/Westbrook to construct the southerly (secondary) access through Micron's property.

8. Admit or deny, after November 16, 2000 within the lawsuit DAE/Westbrook filed against Micron is a claim by DAE/Westbrook that Micron interfered with DAE/Westbrook's third party agreements with adjacent landowners by Micron not providing access through its property and allowing DAE/Westbrook to construct the southerly (secondary) access through Micron's property.

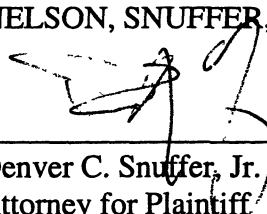
9. Admit or deny, as of June 8, 2004 DAE/Westbrook has not build any road through Micron's property.

10. Admit or deny, as of June 8, 2004 DAE/Westbrook law suit against Micron is still ongoing and has not been resolved or settled.

11. Admit or deny, defendant's legal counsel has instructed DAE/Westbrook (a.k.a. SunCrest and Terrabrook) employees (such as Ed Grampp) not to talk with or discuss settlement directly with Plaintiff, David Mast.

DATED this 8 day of June, 2004.

NELSON, SNUFFER, DAHLE & POULSEN, P.C.



Denver C. Snuffer, Jr.
Attorney for Plaintiff

Denver C. Snuffer, Jr. 3032
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Telephone: (801) 576-1400
Attorneys for Plaintiff

IN AND FOR THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH

D.J. INVESTMENT GROUP, LLC
A Utah Limited Liability Company,

INTERROGATORIES

Plaintiff,

vs.

DAE/WESTBROOK, a corporation
DRAPER CITY, a municipal
corporation, JOHN DOES 1
TO 15;

Civil No. 010402305

Judge Lynn Davis

Defendants.

COMES NOW Plaintiff and hereby submits the following interrogatories to
DAE/Westbrook, to be answered in writing within the time permitted by the Utah Rules of Civil
Procedure as follows:

1. State the names of the persons, past and present, representing or working for DAE/Westbrook who supplied those Thompson -Hysell engineered road drawings through Micron's property to the Plaintiff prior to November 16, 2000 and,

a. The date(s) the Thompson - Hysell drawings that were delivered to Plaintiff.

b. A description of the Thompson - Hysell road drawings.

2. State the names of the persons, past and present, representing or working for DAE/Westbrook who met with the Micron Technologies representatives prior to November 16, 2000 and,

a. The dates of those meeting with Micron.

b. The reason for those meeting with Micron.

3. State the names of the persons, past and present, representing or working for DAE/Westbrook who gave any information and/or representations to any third parties stating the southern secondary road access was to be connected to Plaintiff's 94 acres in Utah County and,

a. The dates of the information and/or representations were made to third parties (including Draper City employees).

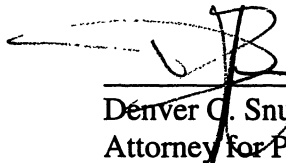
b. The names of all such third parties as described in item 3, above.

4. State whether or not defendant or any of its representatives, including the law firm of Baird and Jones, sent to Micron any further follow-up communication to Ed Grampp's letter of March 21, 2001 sent to Harold Killgore of Micron Technologies and,

a. What action Defendant took in response to Micron's response to Ed Grampp's letter of March 21, 2001.

DATED this 8 day of June, 2004.

NELSON, SNUFFER, DAHLE & POULSEN, P.C.



Denver C. Snuffer, Jr.
Attorney for Plaintiff

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Telephone: (801) 576-1400
Attorneys for Plaintiff

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

D.J. INVESTMENT GROUP, L.L.C., a
Utah Limited Liability Company,

Plaintiff,

**NOTICE OF DEPOSITION
OF ED GRAMPP**

vs.

Civil No. 010402305

DAE/WESTBROOK, L.L.C., a Delaware
limited liability company, DRAPER CITY, a
municipal corporation, JOHN DOES 1 to
15,

Judge Lynn W. Davis

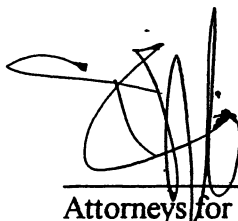
Defendant.

TO: Ed Grampp, 2021 Village Green Circle, Draper, Utah 84020

PLEASE TAKE NOTICE that on Wednesday, August 18, 2004, Plaintiff will take the deposition of Ed Grampp, commencing at 9:00 a.m., at the offices of NELSON, SNUFFER, DAHLE & POULSEN, 10885 South State Street, Sandy, Utah. This deposition will be taken upon oral interrogatories pursuant to the Utah Rules of Civil Procedure before a certified shorthand reporter and will continue from day to day until completed.

DATED this 5 day of August, 2004.

NELSON, SNUFFER, DAHLE & POULSEN



Attorneys for Plaintiffs


JOHN DOES

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of **NOTICE OF DEPOSITION OF ED GRAMPP** was mailed, postage prepaid to the following:

Steven G. Crockett
Richard W. Casey
Evelyn Furse
BENDINGER, CROCKETT, PETERSON, GREENWOOD & CASEY
170 South Main, Suite 400
Salt Lake City, UT 84101

DATED this 5 day of August, 2004.

A handwritten signature in black ink, appearing to be "RWC", is written over a horizontal line. The signature is stylized and somewhat illegible.

Denver C. Snuffer, Jr. 3032
NELSON, SNUFFER, DAHLE & POULSEN, P.C.
10885 South State Street
Sandy, Utah 84070
Telephone: (801) 576-1400
Attorneys for Plaintiff

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

D.J. INVESTMENT GROUP, L.L.C., a
Utah Limited Liability Company,

Plaintiff,

**SUBPOENA TO APPEAR AT
DEPOSITION**

vs.

DAE/WESTBROOK, L.L.C., a Delaware
limited liability company, DRAPER CITY,
a municipal corporation, JOHN DOES 1 to
15,

Civil No. 010402305

Judge Lynn W. Davis

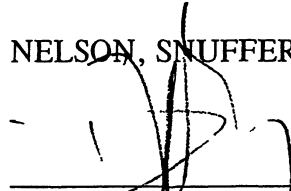
Defendant.

TO: Ed Grampp, 2021 Village Green Circle, Draper, Utah 84020

YOU ARE COMMANDED to appear at the law firm of Nelson, Snuffer, Dahle & Poulsen, 10885 South State, in the City of Sandy, State of Utah, on the 18th day of August, 2004, at 9:00 a.m. to appear to testify at the taking of deposition in the above-entitled action pending in the District Court in and for Utah County, State of Utah.

Dated this 5th day of August, 2004.

NELSON, SNUFFER, DAHLE & POULSEN


Denver C. Snuffer, Jr.
Attorneys for Plaintiff
10885 South State
Sandy, Utah 84047
Telephone: (801) 576-1400

RECEIVED

AUG 10 2004

BENDINGER, CROCKETT
PETERSON, GREENWOOD &
CASEY PC

consent to testify on its behalf, and shall set forth, for each person designated, the matters on which he will testify or produce documents or things. The persons so designated shall testify as to matters known or reasonably available to the organization.

Notice to Persons Served with a Subpoena

Subpoena to Appear at Trial, at Hearing, or at Deposition:

1. If this subpoena commands you to appear to give testimony at trial or at hearing, you must appear in person at the place designated in the subpoena.
2. If this subpoena commands you to appear to give testimony at deposition, you must appear in person at the place designated in the subpoena. If you are a resident of Utah, the subpoena may command you to appear only in the county where you reside, or where you are employed, or where you transact business in person, or where the court orders you to appear. If you are not a resident of Utah, the subpoena may command you to appear only in the county where you are served with the subpoena, or where the court orders.
3. If this subpoena commands you to appear to give testimony at trial, at hearing, or at deposition, but does not command you to produce or to permit inspection and copying of documents or tangible things, or inspection of premises, you have the right to object if the subpoena: (i) imposes an undue burden or expense upon you; (ii) does not allow you a reasonable time to comply, which may be less than 14 days, depending on the circumstances; or (iii) commands you to appear at deposition at a place in violation of paragraph 2, above.
4. To object to complying with the subpoena, you must file with the court issuing the subpoena a motion to quash or modify the subpoena. You must comply with the subpoena unless you have obtained a court order granting you relief from the subpoena.

Subpoena to Produce or to Permit Inspection of Documents or Tangible Things or to Permit Inspection of Premises:

5. If this subpoena commands you to produce or to permit inspection and copying of documents or tangible things, or to permit inspection of premises, but does not command you appear to give testimony at trial, at a hearing, or at a deposition: (i) you need not appear in person at the place of production or inspection; (ii) you must produce documents as you keep them in the ordinary course of business or organize and label them to correspond with the categories demanded in the subpoena; and (iii) you need not make any copies or advance any costs for production, inspection or copying. If you agree to make copies, the party who has served the subpoena upon you must pay the reasonable costs of production and copying.
6. You have the right to object if the subpoena: (i) imposes an undue burden or expense upon you; (ii) does not allow you at least 14 days to comply, unless the party serving the subpoena has obtained a court order requiring an earlier response; (iii) requires you to disclose a trade secret or other confidential research, development or commercial information; (iv) requires you to disclose privileged communication with your attorney or privileged trial preparation materials; or (v) requires you to disclose an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from expert's study made not at the request of any party.
7. To object to a subpoena for one of the reasons stated in paragraph 6, you must provide notice in writing of your objection to the party or attorney serving the subpoena before the date specified in the subpoena for you to respond. If your objection is based on either paragraph 6(iii), 6(iv) or 6(v), your written objection must describe the nature of the documents, communications or things that you object to producing with sufficient specificity to enable the party or attorney serving the subpoena to contest your objection. You must also comply with the subpoena to the extent that it commands production or inspection of materials to which you do not object.
8. After you make timely written objection, the party who has served the subpoena upon you must obtain a court order to compel you to comply with the subpoena. The party must give you a copy of its motion for a court order and notice of any hearing before the court. You have the right to file a response to the motion with the court and a right to attend any hearing. After you make a timely written objection, you have no obligation to comply with the subpoena until the party serving the subpoena has served you with a court order that compels you to comply.
9. If this subpoena commands you to produce or to permit inspection and copying of documents or tangible things, or to permit inspection of premises, and to appear to give testimony at trial, at a hearing, or at a deposition, you may object to the production or inspection of documents or tangible things, or inspection of premises, by following the procedure identified in paragraph 7. Even though you object to production or inspection of documents or tangible things, or inspection of premises, you must appear in person at the trial, at the hearing or at the deposition unless you obtain an order of the court by following the procedures identified in paragraph 4.

Denver C. Snuffer, Jr. 3032
NELSON, SNUFFER, DAHLE & POULSEN, P.C.
10885 South State Street
Sandy, Utah 84070
Telephone: (801) 576-1400
Attorneys for Plaintiff

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY
STATE OF UTAH

D.J. INVESTMENT GROUP, L.L.C., a
Utah Limited Liability Company,

Plaintiff,

**NOTICE OF DEPOSITION
OF BRUCE BAIRD**

vs.

Civil No. 010402305

DAE/WESTBROOK, L.L.C., a Delaware
limited liability company, DRAPER CITY, a
municipal corporation, JOHN DOES 1 to
15,

Judge Lynn W. Davis

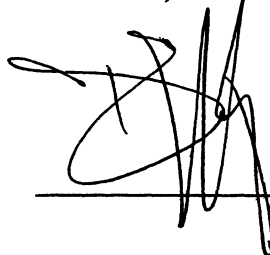
Defendant.

TO: Bruce Baird, 201 South Main, #900, Salt Lake City, Utah
Facsimile (801) 328-1444

PLEASE TAKE NOTICE that on Tuesday, August 17, 2004, Plaintiff will take the deposition of Bruce Baird, commencing at 1:30 p.m., at the offices of NELSON, SNUFFER, DAHLE & POULSEN, 10885 South State Street, Sandy, Utah. This deposition will be taken upon oral interrogatories pursuant to the Utah Rules of Civil Procedure before a certified shorthand reporter and will continue from day to day until completed.

DATED this 5 day of August, 2004.

NELSON, SNUFFER, DAHLE & POULSEN



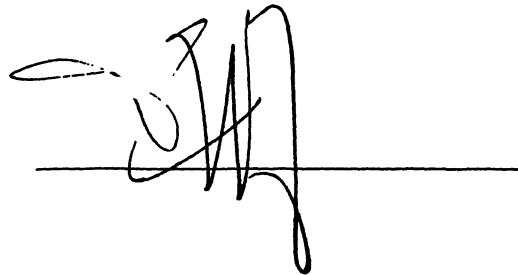
Attorneys for Plaintiffs

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of **NOTICE OF DEPOSITION OF BRUCE BAIRD** was mailed, postage prepaid to the following:

Steven G. Crockett
Richard W. Casey
Evelyn Furse
BENDINGER, CROCKETT, PETERSON, GREENWOOD & CASEY
170 South Main, Suite 400
Salt Lake City, UT 84101

DATED this 5 day of August, 2004.

A handwritten signature in black ink, appearing to be "S.G. Crockett", is written over a horizontal line. The signature is stylized and cursive.

Denver C. Snuffer, Jr. 3032
NELSON, SNUFFER, DAHLE & POULSEN, P.C.
10885 South State Street
Sandy, Utah 84070
Telephone: (801) 576-1400
Attorneys for Plaintiff

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

D.J. INVESTMENT GROUP, L.L.C., a
Utah Limited Liability Company,

Plaintiff,

**SUBPOENA TO APPEAR AT
DEPOSITION**

vs.

Civil No. 010402305

DAE/WESTBROOK, L.L.C., a Delaware
limited liability company, DRAPER CITY, a
municipal corporation, JOHN DOES 1 to
15,

Judge Lynn W. Davis

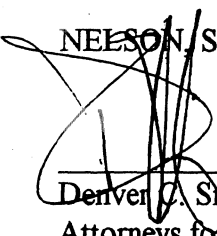
Defendant.

TO: Bruce Baird

YOU ARE COMMANDED to appear at the law firm of Nelson, Snuffer, Dahle & Poulsen, 10885 South State, in the City of Sandy, State of Utah, on the 17th day of August, 2004, at 1:30 p.m. to appear to testify at the taking of deposition in the above-entitled action pending in the District Court in and for Utah County, State of Utah.

Dated this 5 day of August, 2004.

~~NELSON, SNUFFER, DAHLE & POULSEN~~


Denver C. Snuffer, Jr.
Attorneys for Plaintiff
10885 South State
Sandy, Utah 84047
Telephone: (801) 576-1400

RECEIVED

AUG 10 2004

BENDINGER, CROCKETT,
PETERSON, GREENWOOD &
CASEY, P.C.

* Any subpoenaed organization not a party to this suit is hereby admonished pursuant to Rule 30(b)(6), Utah Rules of Civil Procedure, to file a designation with the court specifying one or more officers, directors, or managing agents, or other persons who

Notice to Persons Served with a Subpoena

Subpoena to Appear at Trial, at Hearing, or at Deposition:

1. If this subpoena commands you to appear to give testimony at trial or at hearing, you must appear in person at the place designated in the subpoena.
2. If this subpoena commands you to appear to give testimony at deposition, you must appear in person at the place designated in the subpoena. If you are a resident of Utah, the subpoena may command you to appear only in the county where you reside, or where you are employed, or where you transact business in person, or where the court orders you to appear. If you are not a resident of Utah, the subpoena may command you to appear only in the county where you are served with the subpoena, or where the court orders.
3. If this subpoena commands you to appear to give testimony at trial, at hearing, or at deposition, but does not command you to produce or to permit inspection and copying of documents or tangible things, or inspection of premises, you have the right to object if the subpoena: (i) imposes an undue burden or expense upon you; (ii) does not allow you a reasonable time to comply, which may be less than 14 days, depending on the circumstances; or (iii) commands you to appear at deposition at a place in violation of paragraph 2, above.
4. To object to complying with the subpoena, you must file with the court issuing the subpoena a motion to quash or modify the subpoena. You must comply with the subpoena unless you have obtained a court order granting you relief from the subpoena.

Subpoena to Produce or to Permit Inspection of Documents or Tangible Things or to Permit Inspection of Premises:

5. If this subpoena commands you to produce or to permit inspection and copying of documents or tangible things, or to permit inspection of premises, but does not command you appear to give testimony at trial, at a hearing, or at a deposition: (i) you need not appear in person at the place of production or inspection; (ii) you must produce documents as you keep them in the ordinary course of business or organize and label them to correspond with the categories demanded in the subpoena; and (iii) you need not make any copies or advance any costs for production, inspection or copying. If you agree to make copies, the party who has served the subpoena upon you must pay the reasonable costs of production and copying.
6. You have the right to object if the subpoena: (i) imposes an undue burden or expense upon you; (ii) does not allow you at least 14 days to comply, unless the party serving the subpoena has obtained a court order requiring an earlier response; (iii) requires you to disclose a trade secret or other confidential research, development or commercial information; (iv) requires you to disclose privileged communication with your attorney or privileged trial preparation materials; or (v) requires you to disclose an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from expert's study made not at the request of any party.
7. To object to a subpoena for one of the reasons stated in paragraph 6, you must provide notice in writing of your objection to the party or attorney serving the subpoena before the date specified in the subpoena for you to respond. If your objection is based on either paragraph 6(iii), 6(iv) or 6(v), your written objection must describe the nature of the documents, communications or things that you object to producing with sufficient specificity to enable the party or attorney serving the subpoena to contest your objection. You must also comply with the subpoena to the extent that it commands production or inspection of materials to which you do not object.
8. After you make timely written objection, the party who has served the subpoena upon you must obtain a court order to compel you to comply with the subpoena. The party must give you a copy of its motion for a court order and notice of any hearing before the court. You have the right to file a response to the motion with the court and a right to attend any hearing. After you make a timely written objection, you have no obligation to comply with the subpoena until the party serving the subpoena has served you with a court order that compels you to comply.
9. If this subpoena commands you to produce or to permit inspection and copying of documents or tangible things, or to permit inspection of premises, and to appear to give testimony at trial, at a hearing, or at a deposition, you may object to the production or inspection of documents or tangible things, or inspection of premises, by following the procedure identified in paragraph 7. Even though you object to production or inspection of documents or tangible things, or inspection of premises, you must appear in person at the trial, at the hearing or at the deposition unless you obtain an order of the court by following the procedures identified in paragraph 4.

consent to testify on its behalf, and shall set forth, for each person designated, the matters on which he will testify or produce documents or things. The persons so designated shall testify as to matters known or reasonably available to the organization.

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

D.J. INVESTMENT GROUP, L.L.C., a
Utah Limited Liability Company,

Plaintiff,

vs.

SUBPOENA DUCES TECUM

Civil No. 010402305

DAE/WESTBROOK, L.L.C., a Delaware
limited liability company, DRAPER CITY, a
municipal corporation, JOHN DOES 1 to
15,

Judge Lynn W. Davis

Defendant.

TO: Ed Grampp, 2021 Village Green Circle, Draper, Utah 84020

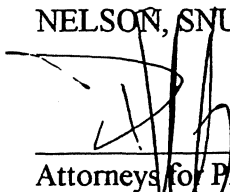
YOU ARE COMMANDED to produce the documents described below to Denver C. Snuffer, Jr., 10885 South State, in the City of Sandy, State of Utah, on the 18th day of August, 2004, at 9:00 a.m., in connection with the above-entitled action pending in the District Court in and for Utah County, State of Utah:

Any and all documents, electronic data, or recordings in your possession, custody or control, including those to which you have access to concerning the south secondary access road known as SunCrest Drive beginning from the top of Traverse Mountain (SunCrest Development) to 8000 West at SR-92 received from and sent to the following (including but not limited to): City of Draper, SunCrest Development, DAE/Westbrook, Westbrook, Terrabrook, Micron Technologies, Timpanogos Sewer District, Utah County, City of Lehi, Thompson-Hysell, Horrocks Engineering, Devere Anderson, and Ed Grampp. This request includes and all engineered drawings, applications, correspondence approvals, permits, written materials, work files, correspondences, letters, memorandums, electronic emails, electronic files, calendars, daily planners, personal logs, computer files and appointment books, or any other party writing or providing any document or recording, including electronic data, relating to the scope of this request. Also, a copy of the management agreement

between Devere Anderson Enterprises on the one hand and Westbrook LLC on the other hand or DAE/Westbrook's agreements with Devere Anderson Enterprises.

DATED this 5 day of August, 2004.

NELSON, SNUFFER, DAHLE & POULSEN



Attorneys for Plaintiffs
10885 South State Street
Sandy, Utah 84047
Telephone: (801) 532-3333

Any subpoenaed organization not a party to this suit is hereby admonished pursuant to Rule 30(b)(6), Utah Rules of Civil Procedure, to file a designation with the court specifying one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and shall set forth, for each person designated, the matters on which he will testify or produce documents or things. The persons so designated shall testify as to matters known or reasonably available to the organization.

* See Notice to Persons Served with a Subpoena on reverse side.

Notice to Persons Served with a Subpoena

Subpoena to Appear at Trial, at Hearing, or at Deposition:

1. If this subpoena commands you to appear to give testimony at trial or at hearing, you must appear in person at the place designated in the subpoena.
2. If this subpoena commands you to appear to give testimony at deposition, you must appear in person at the place designated in the subpoena. If you are a resident of Utah, the subpoena may command you to appear only in the county where you reside, or where you are employed, or where you transact business in person, or where the court orders you to appear. If you are not a resident of Utah, the subpoena may command you to appear only in the county where you are served with the subpoena, or where the court orders.
3. If this subpoena commands you to appear to give testimony at trial, at hearing, or at deposition, but does not command you to produce or to permit inspection and copying of documents or tangible things, or inspection of premises, you have the right to object if the subpoena: (i) imposes an undue burden or expense upon you; (ii) does not allow you a reasonable time to comply, which may be less than 14 days, depending on the circumstances; or (iii) commands you to appear at deposition at a place in violation of paragraph 2, above.
4. To object to complying with the subpoena, you must file with the court issuing the subpoena a motion to quash or modify the subpoena. You must comply with the subpoena unless you have obtained a court order granting you relief from the subpoena.

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7. To object to a subpoena for one of the reasons stated in paragraph 6, you must provide notice in writing of your objection to the party or attorney serving the subpoena before the date specified in the subpoena for you to respond. If your objection is based on either paragraph 6(iii), 6(iv) or 6(v), your written objection must describe the nature of the documents, communications or things that you object to producing with sufficient specificity to enable the party or attorney serving the subpoena to contest your objection. You must also comply with the subpoena to the extent that it commands production or inspection of materials to which you do not object.
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9. If this subpoena commands you to produce or to permit inspection and copying of documents or tangible things, or to permit inspection of premises, and to appear to give testimony at trial, at a hearing, or at a deposition, you may object to the production or inspection of documents or tangible things, or inspection of premises, by following the procedure identified in paragraph 7. Even though you object to production or inspection of documents or tangible things, or inspection of premises, you must appear in person at the trial, at the hearing or at the deposition unless you obtain an order of the court by following the procedures identified in paragraph 4.

Denver C. Snuffer, Jr. (3032)
NELSON, SNUFFER, DAHLE & POULSEN
10885 South State
Sandy, Utah 84070
Telephone: (801) 576-1400
Attorneys for Plaintiff

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

D.I. INVESTMENT GROUP, L.L.C., a
Utah Limited Liability Company,

Plaintiff,

**NOTICE OF DEPOSITION
OF ERIC KECK**

vs.

Civil No. 010402305

DAE/WESTBROOK, L.L.C., a Delaware
limited liability company, DRAPER CITY,
a municipal corporation, JOHN DOES 1 to
15,

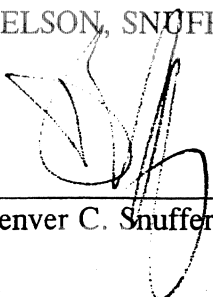
Judge Lynn W. Davis

Defendant.

PLEASE TAKE NOTICE that on October 18th, 2004, Plaintiff will take the deposition of Eric Keck, commencing at 10:00 a.m., at the offices of NELSON, SNUFFER, DAHLE & POULSEN, 10885 South State Street, Sandy, Utah. This deposition will be taken upon oral interrogatories pursuant to the Utah Rules of Civil Procedure before a certified shorthand reporter and will continue from day to day until completed.

Dated this 20 day of September, 2004.

NELSON, SNUFFER, DAHLE & POULSEN


Denver C. Snuffer, Jr.

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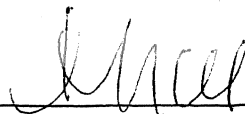
BENDINGER, CROCKETT,
PETERSON, GREENWOOD &
CASEY, P.C.

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of **NOTICE OF DEPOSITION OF ERIC KECK**
was mailed, postage prepaid to the following:

Steven G. Crockett
Richard W. Casey
Evelyn Furse
BENDINGER, CROCKETT, PETERSON & CASEY
170 South Main, Suite 400
Salt Lake City, UT 84101

DATED this 30 day of September, 2004.



A handwritten signature in cursive script, appearing to read "J. Neal", is written above a horizontal line.

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

D.J. INVESTMENT GROUP, L.L.C., a
Utah Limited Liability Company,

Plaintiff,

**SUBPOENA TO APPEAR AT
DEPOSITION**

vs.

DAE/WESTBROOK, L.L.C., a Delaware
limited liability company, DRAPER CITY,
a municipal corporation, JOHN DOES 1 to
15,

Civil No. 010402305

Judge Lynn W. Davis

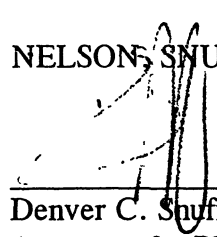
Defendant.

TO: Eric Keck

YOU ARE COMMANDED to appear at the law firm of Nelson, Snuffer, Dahle & Poulsen, 10885 South State, in the City of Sandy, State of Utah, on the 18th day of October, 2004, at 10:00 a.m. to appear to testify at the taking of deposition in the above-entitled action pending in the District Court in and for Utah County, State of Utah.

Dated this 20 day of September, 2004.

NELSON, SNUFFER, DAHLE & POULSEN



Denver C. Snuffer, Jr.

Attorneys for Plaintiff

10885 South State

Sandy, Utah 84047

Telephone: (801) 576-1400

* Any subpoenaed organization not a party to this suit is hereby admonished pursuant to Rule 30(b)(6), Utah Rules of Civil Procedure, to file a designation with the court specifying one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and shall set forth, for each person designated, the matters on which he will testify or produce documents or things. The persons so designated shall testify as to matters known or reasonably available to the organization.

Notice to Persons Served with a Subpoena

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4. To object to complying with the subpoena, you must file with the court issuing the subpoena a motion to quash or modify the subpoena. You must comply with the subpoena unless you have obtained a court order granting you relief from the subpoena.

Subpoena to Produce or to Permit Inspection of Documents or Tangible Things or to Permit Inspection of Premises:

5. If this subpoena commands you to produce or to permit inspection and copying of documents or tangible things, or to permit inspection of premises, but does not command you appear to give testimony at trial, at a hearing, or at a deposition: (i) you need not appear in person at the place of production or inspection; (ii) you must produce documents as you keep them in the ordinary course of business or organize and label them to correspond with the categories demanded in the subpoena; and (iii) you need not make any copies or advance any costs for production, inspection or copying. If you agree to make copies, the party who has served the subpoena upon you must pay the reasonable costs of production and copying.
6. You have the right to object if the subpoena: (i) imposes an undue burden or expense upon you; (ii) does not allow you at least 14 days to comply, unless the party serving the subpoena has obtained a court order requiring an earlier response; (iii) requires you to disclose a trade secret or other confidential research, development or commercial information; (iv) requires you to disclose privileged communication with your attorney or privileged trial preparation materials; or (v) requires you to disclose an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from expert's study made not at the request of any party.
7. To object to a subpoena for one of the reasons stated in paragraph 6, you must provide notice in writing of your objection to the party or attorney serving the subpoena before the date specified in the subpoena for you to respond. If your objection is based on either paragraph 6(iii), 6(iv) or 6(v), your written objection must describe the nature of the documents, communications or things that you object to producing with sufficient specificity to enable the party or attorney serving the subpoena to contest your objection. You must also comply with the subpoena to the extent that it commands production or inspection of materials to which you do not object.
8. After you make timely written objection, the party who has served the subpoena upon you must obtain a court order to compel you to comply with the subpoena. The party must give you a copy of its motion for a court order and notice of any hearing before the court. You have the right to file a response to the motion with the court and a right to attend any hearing. After you make a timely written objection, you have no obligation to comply with the subpoena until the party serving the subpoena has served you with a court order that compels you to comply.
9. If this subpoena commands you to produce or to permit inspection and copying of documents or tangible things, or to permit inspection of premises, and to appear to give testimony at trial, at a hearing, or at a deposition, you may object to the production or inspection of documents or tangible things, or inspection of premises, by following the procedure identified in paragraph 7. Even though you object to production or inspection of documents or tangible things, or inspection of premises, you must appear in person at the trial, at the hearing or at the deposition unless you obtain an order of the court by following the procedures identified in paragraph 4.

Denver C. Snuffer, Jr. (3032)
NELSON, SNUFFER, DAHLE & POULSEN
10885 South State
Sandy, Utah 84070
Telephone: (801) 576-1400
Attorneys for Plaintiff

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

D.J. INVESTMENT GROUP, L.L.C., a
Utah Limited Liability Company,

Plaintiff,

**NOTICE OF DEPOSITION
OF TODD GODFREY**

vs.

Civil No. 010402305

DAE/WESTBROOK, L.L.C., a Delaware
limited liability company, DRAPER CITY,
a municipal corporation, JOHN DOES 1 to
15,

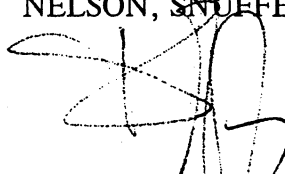
Judge Lynn W. Davis

Defendant.

PLEASE TAKE NOTICE that on October 18th, 2004, Plaintiff will take the deposition of
Todd Godfrey, commencing at 9:00 a.m., at the offices of NELSON, SNUFFER, DAHLE &
POULSEN, 10885 South State Street, Sandy, Utah. This deposition will be taken upon oral
interrogatories pursuant to the Utah Rules of Civil Procedure before a certified shorthand reporter
and will continue from day to day until completed.

Dated this 29 day of September, 2004.

NELSON, SNUFFER, DAHLE & POULSEN



Denver C. Snuffer, Jr.


ROCKETED

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of **NOTICE OF DEPOSITION OF ERIC KECK**
was mailed, postage prepaid to the following:

Steven G. Crockett
Richard W. Casey
Evelyn Furse
BENDINGER, CROCKETT, PETERSON & CASEY
170 South Main, Suite 400
Salt Lake City, UT 84101

DATED this 30 day of September, 2004.



IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

D.J. INVESTMENT GROUP, L.L.C., a
Utah Limited Liability Company,

Plaintiff,

**SUBPOENA TO APPEAR AT
DEPOSITION**

vs.

Civil No. 010402305

DAE/WESTBROOK, L.L.C., a Delaware
limited liability company, DRAPER CITY,
a municipal corporation, JOHN DOES 1 to
15,

Judge Lynn W. Davis

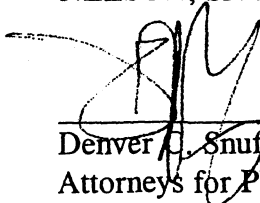
Defendant.

TO: Todd Godfrey, Mazuran & Hayes, 2118 E. 3900 So. #300, SLC, Utah.

YOU ARE COMMANDED to appear at the law firm of Nelson, Snuffer, Dahle & Poulsen, 10885 South State, in the City of Sandy, State of Utah, on the 18th day of October, 2004, at 9:00 a.m. to appear to testify at the taking of deposition in the above-entitled action pending in the District Court in and for Utah County, State of Utah.

Dated this 30 day of September, 2004.

NELSON, SNUFFER, DAHLE & POULSEN



Denver A. Snuffer, Jr.
Attorneys for Plaintiff

10885 South State

Sandy, Utah 84047

Telephone: (801) 576-1400

* Any subpoenaed organization not a party to this suit is hereby admonished pursuant to Rule 30(b)(6), Utah Rules of Civil Procedure, to file a designation with the court specifying one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and shall set forth, for each person designated, the matters on which he will testify or produce documents or things. The persons so designated shall testify as to matters known or reasonably available to the organization.

Notice to Persons Served with a Subpoena

Subpoena to Appear at Trial, at Hearing, or at Deposition:

1. If this subpoena commands you to appear to give testimony at trial or at hearing, you must appear in person at the place designated in the subpoena.
2. If this subpoena commands you to appear to give testimony at deposition, you must appear in person at the place designated in the subpoena. If you are a resident of Utah, the subpoena may command you to appear only in the county where you reside, or where you are employed, or where you transact business in person, or where the court orders you to appear. If you are not a resident of Utah, the subpoena may command you to appear only in the county where you are served with the subpoena, or where the court orders.
3. If this subpoena commands you to appear to give testimony at trial, at hearing, or at deposition, but does not command you to produce or to permit inspection and copying of documents or tangible things, or inspection of premises, you have the right to object if the subpoena: (i) imposes an undue burden or expense upon you; (ii) does not allow you a reasonable time to comply, which may be less than 14 days, depending on the circumstances; or (iii) commands you to appear at deposition at a place in violation of paragraph 2, above.
4. To object to complying with the subpoena, you must file with the court issuing the subpoena a motion to quash or modify the subpoena. You must comply with the subpoena unless you have obtained a court order granting you relief from the subpoena.

Subpoena to Produce or to Permit Inspection of Documents or Tangible Things or to Permit Inspection of Premises:

5. If this subpoena commands you to produce or to permit inspection and copying of documents or tangible things, or to permit inspection of premises, but does not command you appear to give testimony at trial, at a hearing, or at a deposition: (i) you need not appear in person at the place of production or inspection; (ii) you must produce documents as you keep them in the ordinary course of business or organize and label them to correspond with the categories demanded in the subpoena; and (iii) you need not make any copies or advance any costs for production, inspection or copying. If you agree to make copies, the party who has served the subpoena upon you must pay the reasonable costs of production and copying.
6. You have the right to object if the subpoena: (i) imposes an undue burden or expense upon you; (ii) does not allow you at least 14 days to comply, unless the party serving the subpoena has obtained a court order requiring an earlier response; (iii) requires you to disclose a trade secret or other confidential research, development or commercial information; (iv) requires you to disclose privileged communication with your attorney or privileged trial preparation materials; or (v) requires you to disclose an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from expert's study made not at the request of any party.
7. To object to a subpoena for one of the reasons stated in paragraph 6, you must provide notice in writing of your objection to the party or attorney serving the subpoena before the date specified in the subpoena for you to respond. If your objection is based on either paragraph 6(iii), 6(iv) or 6(v), your written objection must describe the nature of the documents, communications or things that you object to producing with sufficient specificity to enable the party or attorney serving the subpoena to contest your objection. You must also comply with the subpoena to the extent that it commands production or inspection of materials to which you do not object.
8. After you make timely written objection, the party who has served the subpoena upon you must obtain a court order to compel you to comply with the subpoena. The party must give you a copy of its motion for a court order and notice of any hearing before the court. You have the right to file a response to the motion with the court and a right to attend any hearing. After you make a timely written objection, you have no obligation to comply with the subpoena until the party serving the subpoena has served you with a court order that compels you to comply.
9. If this subpoena commands you to produce or to permit inspection and copying of documents or tangible things, or to permit inspection of premises, and to appear to give testimony at trial, at a hearing, or at a deposition, you may object to the production or inspection of documents or tangible things, or inspection of premises, by following the procedure identified in paragraph 7. Even though you object to production or inspection of documents or tangible things, or inspection of premises, you must appear in person at the trial, at the hearing or at the deposition unless you obtain an order of the court by following the procedures identified in paragraph 4.

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

D.J. INVESTMENT GROUP, L.L.C., a
Utah Limited Liability Company,

Plaintiff,

**SUBPOENA TO APPEAR AT
DEPOSITION**

vs.

Civil No. 010402305

DAE/WESTBROOK, L.L.C., a Delaware
limited liability company, DRAPER CITY,
a municipal corporation, JOHN DOES 1 to
15,

Judge Pullan

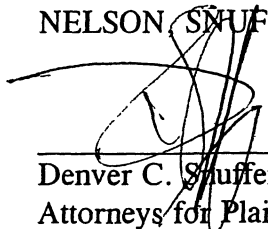
Defendant.

TO: Paul Edwards

YOU ARE COMMANDED to appear at the law firm of Nelson, Snuffer, Dahle & Poulsen, 10885 South State, in the City of Sandy, State of Utah, on the 12th day of November, 2004, at 1:30 p.m. to appear to testify at the taking of deposition in the above-entitled action pending in the District Court in and for Utah County, State of Utah.

Dated this 1 day of November, 2004.

NELSON, SNUFFER, DAHLE & POULSEN



Denver C. Snuffer, Jr.
Attorneys for Plaintiff
10885 South State
Sandy, Utah 84047
Telephone: (801) 576-1400

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NOV 03 2004

BENDINGER, CROCKETT,
PETERSON, GREENWOOD &
CASEY, P.C.

* Any subpoenaed organization not a party to this suit is hereby admonished pursuant to Rule 30(b)(6), Utah Rules of Civil Procedure, to file a designation with the court specifying one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and shall set forth, for each person designated, the matters on which he will testify or produce documents or things. The persons so designated shall testify as to matters known or reasonably available to the organization.

DOCKETED

Notice to Persons Served with a Subpoena

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1. If this subpoena commands you to appear to give testimony at trial or at hearing, you must appear in person at the place designated in the subpoena.
2. If this subpoena commands you to appear to give testimony at deposition, you must appear in person at the place designated in the subpoena. If you are a resident of Utah, the subpoena may command you to appear only in the county where you reside, or where you are employed, or where you transact business in person, or where the court orders you to appear. If you are not a resident of Utah, the subpoena may command you to appear only in the county where you are served with the subpoena, or where the court orders.
3. If this subpoena commands you to appear to give testimony at trial, at hearing, or at deposition, but does not command you to produce or to permit inspection and copying of documents or tangible things, or inspection of premises, you have the right to object if the subpoena: (i) imposes an undue burden or expense upon you; (ii) does not allow you a reasonable time to comply, which may be less than 14 days, depending on the circumstances; or (iii) commands you to appear at deposition at a place in violation of paragraph 2, above.
4. To object to complying with the subpoena, you must file with the court issuing the subpoena a motion to quash or modify the subpoena. You must comply with the subpoena unless you have obtained a court order granting you relief from the subpoena.

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7. To object to a subpoena for one of the reasons stated in paragraph 6, you must provide notice in writing of your objection to the party or attorney serving the subpoena before the date specified in the subpoena for you to respond. If your objection is based on either paragraph 6(iii), 6(iv) or 6(v), your written objection must describe the nature of the documents, communications or things that you object to producing with sufficient specificity to enable the party or attorney serving the subpoena to contest your objection. You must also comply with the subpoena to the extent that it commands production or inspection of materials to which you do not object.
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Denver C. Snuffer, Jr. (3032)
NELSON, SNUFFER, DAHLE & POULSEN
10885 South State
Sandy, Utah 84070
Telephone: (801) 576-1400
Attorneys for Plaintiff

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

D.J. INVESTMENT GROUP, L.L.C., a
Utah Limited Liability Company,

Plaintiff,

**NOTICE OF DEPOSITION
OF PAUL EDWARDS**

vs.

DAE/WESTBROOK, L.L.C., a Delaware
limited liability company, DRAPER CITY,
a municipal corporation, JOHN DOES 1 to
15,

Civil No. 010402305

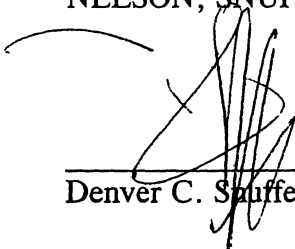
Judge Lynn W. Davis

Defendant.

PLEASE TAKE NOTICE that on November 12th, 2004, Plaintiff will take the deposition of Paul Edwards, commencing at ~~9:00 a.m.~~^{1:30 p.m.}, at the offices of NELSON, SNUFFER, DAHLE & POULSEN, 10885 South State Street, Sandy, Utah. This deposition will be taken upon oral interrogatories pursuant to the Utah Rules of Civil Procedure before a certified shorthand reporter and will continue from day to day until completed.

Dated this 1 day of November, 2004.

NELSON, SNUFFER, DAHLE & POULSEN



Denver C. Snuffer, Jr.

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of **NOTICE OF DEPOSITION OF ERIC KECK**
was mailed, postage prepaid to the following:

Steven G. Crockett
Richard W. Casey
Evelyn Furse
BENDINGER, CROCKETT, PETERSON & CASEY
170 South Main, Suite 400
Salt Lake City, UT 84101

DATED this 1 day of November, 2004.



IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

D.J. INVESTMENT GROUP, L.L.C., a
Utah Limited Liability Company,

Plaintiff,

**SUBPOENA TO APPEAR AT
DEPOSITION**

vs.

Civil No. 010402305

DAE/WESTBROOK, L.L.C., a Delaware
limited liability company, DRAPER CITY,
a municipal corporation, JOHN DOES 1 to
15,

Judge Pullan

Defendant.

TO: Bill Colbert

YOU ARE COMMANDED to appear at the law firm of Nelson, Snuffer, Dahle & Poulsen, 10885 South State, in the City of Sandy, State of Utah, on the 19th day of November, 2004, at 9:00 a.m. to appear to testify at the taking of deposition in the above-entitled action pending in the District Court in and for Utah County, State of Utah.

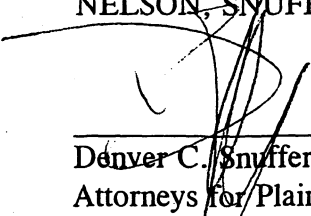
Dated this 19 day of November, 2004.

NELSON, SNUFFER, DAHLE & POULSEN

RECEIVED

NOV 03 2004

BENDINGER, CROCKETT,
PETERSON, GREENWOOD &
CASEY, P.C.


Denver C. Snuffer, Jr.
Attorneys for Plaintiff
10885 South State
Sandy, Utah 84047
Telephone: (801) 576-1400

* Any subpoenaed organization not a party to this suit is hereby admonished pursuant to Rule 30(b)(6), Utah Rules of Civil Procedure, to file a designation with the court specifying one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and shall set forth, for each person designated, the matters on which he will testify or produce documents or things. The persons so designated shall testify as to matters known or reasonably available to the organization.

DOCKETED

Notice to Persons Served with a Subpoena

Subpoena to Appear at Trial, at Hearing, or at Deposition:

1. If this subpoena commands you to appear to give testimony at trial or at hearing, you must appear in person at the place designated in the subpoena.
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3. If this subpoena commands you to appear to give testimony at trial, at hearing, or at deposition, but does not command you to produce or to permit inspection and copying of documents or tangible things, or inspection of premises, you have the right to object if the subpoena: (i) imposes an undue burden or expense upon you; (ii) does not allow you a reasonable time to comply, which may be less than 14 days, depending on the circumstances; or (iii) commands you to appear at deposition at a place in violation of paragraph 2, above.
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Denver C. Snuffer, Jr. (3032)
NELSON, SNUFFER, DAHLE & POULSEN
10885 South State
Sandy, Utah 84070
Telephone: (801) 576-1400
Attorneys for Plaintiff

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

D.J. INVESTMENT GROUP, L.L.C., a
Utah Limited Liability Company,

Plaintiff,

**NOTICE OF DEPOSITION
OF BILL COLBERT**

vs.

Civil No. 010402305

DAE/WESTBROOK, L.L.C., a Delaware
limited liability company, DRAPER CITY,
a municipal corporation, JOHN DOES 1 to
15,

Judge Pullan

Defendant.

PLEASE TAKE NOTICE that on November 19th, 2004, Plaintiff will take the deposition of Bill Colbert, commencing at 9:00 a.m., at the offices of NELSON, SNUFFER, DAHLE & POULSEN, 10885 South State Street, Sandy, Utah. This deposition will be taken upon oral interrogatories pursuant to the Utah Rules of Civil Procedure before a certified shorthand reporter and will continue from day to day until completed.

Dated this 1 day of November, 2004.

NELSON, SNUFFER, DAHLE & POULSEN



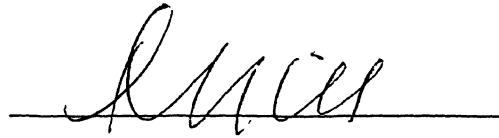
Denver C. Snuffer, Jr.

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of **NOTICE OF DEPOSITION OF ERIC KECK**
was mailed, postage prepaid to the following:

Steven G. Crockett
Richard W. Casey
Evelyn Furse
BENDINGER, CROCKETT, PETERSON & CASEY
170 South Main, Suite 400
Salt Lake City, UT 84101

DATED this 1 day of November, 2004.

A handwritten signature in cursive script, appearing to read "Steven G. Crockett", is written over a horizontal line.

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

D.J. INVESTMENT GROUP, L.L.C., a
Utah Limited Liability Company,

Plaintiff,

**SUBPOENA TO APPEAR AT
DEPOSITION**

vs.

Civil No. 010402305

DAE/WESTBROOK, L.L.C., a Delaware
limited liability company, DRAPER CITY,
a municipal corporation, JOHN DOES 1 to
15,

Judge Pullan

Defendant.

TO: LaMont Smith

YOU ARE COMMANDED to appear at the law firm of Nelson, Snuffer, Dahle & Poulsen, 10885 South State, in the City of Sandy, State of Utah, on the 19th day of November, 2004, at 1:30 p.m. to appear to testify at the taking of deposition in the above-entitled action pending in the District Court in and for Utah County, State of Utah.

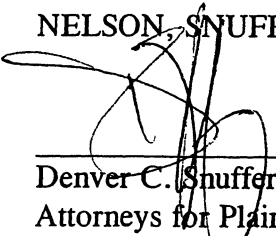
Dated this 1 day of November, 2004.

NELSON, SNUFFER, DAHLE & POULSEN

RECEIVED

NOV 03 2004

BENDINGER, CROCKETT,
PETERSON, GREENWOOD &
CASEY, P.C.


Denver C. Snuffer, Jr.

Attorneys for Plaintiff

10885 South State

Sandy, Utah 84047

Telephone: (801) 576-1400

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5. If this subpoena commands you to produce or to permit inspection and copying of documents or tangible things, or to permit inspection of premises, but does not command you appear to give testimony at trial, at a hearing, or at a deposition: (i) you need not appear in person at the place of production or inspection; (ii) you must produce documents as you keep them in the ordinary course of business or organize and label them to correspond with the categories demanded in the subpoena; and (iii) you need not make any copies or advance any costs for production, inspection or copying. If you agree to make copies, the party who has served the subpoena upon you must pay the reasonable costs of production and copying.
6. You have the right to object if the subpoena: (i) imposes an undue burden or expense upon you; (ii) does not allow you at least 14 days to comply, unless the party serving the subpoena has obtained a court order requiring an earlier response; (iii) requires you to disclose a trade secret or other confidential research, development or commercial information; (iv) requires you to disclose privileged communication with your attorney or privileged trial preparation materials; or (v) requires you to disclose an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from expert's study made not at the request of any party.
7. To object to a subpoena for one of the reasons stated in paragraph 6, you must provide notice in writing of your objection to the party or attorney serving the subpoena before the date specified in the subpoena for you to respond. If your objection is based on either paragraph 6(iii), 6(iv) or 6(v), your written objection must describe the nature of the documents, communications or things that you object to producing with sufficient specificity to enable the party or attorney serving the subpoena to contest your objection. You must also comply with the subpoena to the extent that it commands production or inspection of materials to which you do not object.
8. After you make timely written objection, the party who has served the subpoena upon you must obtain a court order to compel you to comply with the subpoena. The party must give you a copy of its motion for a court order and notice of any hearing before the court. You have the right to file a response to the motion with the court and a right to attend any hearing. After you make a timely written objection, you have no obligation to comply with the subpoena until the party serving the subpoena has served you with a court order that compels you to comply.
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Denver C. Snuffer, Jr. (3032)
NELSON, SNUFFER, DAHLE & POULSEN
10885 South State
Sandy, Utah 84070
Telephone: (801) 576-1400
Attorneys for Plaintiff

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

D.J. INVESTMENT GROUP, L.L.C., a
Utah Limited Liability Company,

Plaintiff,

**NOTICE OF DEPOSITION
OF LaMONT SMITH**

vs.

DAE/WESTBROOK, L.L.C., a Delaware
limited liability company, DRAPER CITY,
a municipal corporation, JOHN DOES 1 to
15,

Defendant.

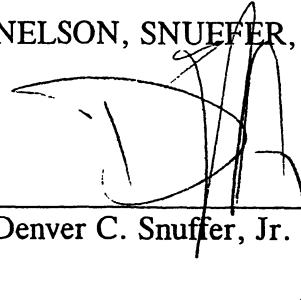
Civil No. 010402305

Judge Pullan

PLEASE TAKE NOTICE that on November 19th, 2004, Plaintiff will take the deposition of LaMont Smith, commencing at 1:30 p.m., at the offices of NELSON, SNUFFER, DAHLE & POULSEN, 10885 South State Street, Sandy, Utah. This deposition will be taken upon oral interrogatories pursuant to the Utah Rules of Civil Procedure before a certified shorthand reporter and will continue from day to day until completed.

Dated this 1 day of November, 2004.

NELSON, SNUFFER, DAHLE & POULSEN



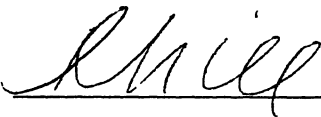
Denver C. Snuffer, Jr.

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of **NOTICE OF DEPOSITION OF ERIC KECK**
was mailed, postage prepaid to the following:

Steven G. Crockett
Richard W. Casey
Evelyn Furse
BENDINGER, CROCKETT, PETERSON & CASEY
170 South Main, Suite 400
Salt Lake City, UT 84101

DATED this 1 day of November, 2004.



IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

D.J. INVESTMENT GROUP, L.L.C., a
Utah Limited Liability Company,

Plaintiff,

**SUBPOENA TO APPEAR AT
DEPOSITION**

vs.

Civil No. 010402305

DAE/WESTBROOK, L.L.C., a Delaware
limited liability company, DRAPER CITY,
a municipal corporation, JOHN DOES 1 to
15,

Judge Pullan

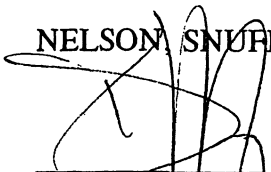
Defendant.

TO: Ryan Daines

YOU ARE COMMANDED to appear at the law firm of Nelson, Snuffer, Dahle & Poulsen, 10885 South State, in the City of Sandy, State of Utah, on the 22nd day of November, 2004, at 9:00 a.m. to appear to testify at the taking of deposition in the above-entitled action pending in the District Court in and for Utah County, State of Utah.

Dated this 1 day of November, 2004.

NELSON, SNUFFER, DAHLE & POULSEN



Denver C. Snuffer, Jr.

Attorneys for Plaintiff

10885 South State

Sandy, Utah 84047

Telephone: (801) 576-1400

RECEIVED

NOV 03 2004

BENDINGER, CROCKETT,
PETERSON, GREENWOOD &
CASEY, P.C.

* Any subpoenaed organization not a party to this suit is hereby admonished pursuant to Rule 30(b)(6), Utah Rules of Civil Procedure, to file a designation with the court specifying one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and shall set forth, for each person designated, the matters on which he will testify or produce documents or things. The persons so designated shall testify as to matters known or reasonably available to the organization.

DOCKETED

Notice to Persons Served with a Subpoena

Subpoena to Appear at Trial, at Hearing, or at Deposition:

1. If this subpoena commands you to appear to give testimony at trial or at hearing, you must appear in person at the place designated in the subpoena.
2. If this subpoena commands you to appear to give testimony at deposition, you must appear in person at the place designated in the subpoena. If you are a resident of Utah, the subpoena may command you to appear only in the county where you reside, or where you are employed, or where you transact business in person, or where the court orders you to appear. If you are not a resident of Utah, the subpoena may command you to appear only in the county where you are served with the subpoena, or where the court orders.
3. If this subpoena commands you to appear to give testimony at trial, at hearing, or at deposition, but does not command you to produce or to permit inspection and copying of documents or tangible things, or inspection of premises, you have the right to object if the subpoena: (i) imposes an undue burden or expense upon you; (ii) does not allow you a reasonable time to comply, which may be less than 14 days, depending on the circumstances; or (iii) commands you to appear at deposition at a place in violation of paragraph 2, above.
4. To object to complying with the subpoena, you must file with the court issuing the subpoena a motion to quash or modify the subpoena. You must comply with the subpoena unless you have obtained a court order granting you relief from the subpoena.

Subpoena to Produce or to Permit Inspection of Documents or Tangible Things or to Permit Inspection of Premises:

5. If this subpoena commands you to produce or to permit inspection and copying of documents or tangible things, or to permit inspection of premises, but does not command you appear to give testimony at trial, at a hearing, or at a deposition: (i) you need not appear in person at the place of production or inspection; (ii) you must produce documents as you keep them in the ordinary course of business or organize and label them to correspond with the categories demanded in the subpoena; and (iii) you need not make any copies or advance any costs for production, inspection or copying. If you agree to make copies, the party who has served the subpoena upon you must pay the reasonable costs of production and copying.
6. You have the right to object if the subpoena: (i) imposes an undue burden or expense upon you; (ii) does not allow you at least 14 days to comply, unless the party serving the subpoena has obtained a court order requiring an earlier response; (iii) requires you to disclose a trade secret or other confidential research, development or commercial information; (iv) requires you to disclose privileged communication with your attorney or privileged trial preparation materials; or (v) requires you to disclose an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from expert's study made not at the request of any party.
7. To object to a subpoena for one of the reasons stated in paragraph 6, you must provide notice in writing of your objection to the party or attorney serving the subpoena before the date specified in the subpoena for you to respond. If your objection is based on either paragraph 6(iii), 6(iv) or 6(v), your written objection must describe the nature of the documents, communications or things that you object to producing with sufficient specificity to enable the party or attorney serving the subpoena to contest your objection. You must also comply with the subpoena to the extent that it commands production or inspection of materials to which you do not object.
8. After you make timely written objection, the party who has served the subpoena upon you must obtain a court order to compel you to comply with the subpoena. The party must give you a copy of its motion for a court order and notice of any hearing before the court. You have the right to file a response to the motion with the court and a right to attend any hearing. After you make a timely written objection, you have no obligation to comply with the subpoena until the party serving the subpoena has served you with a court order that compels you to comply.
9. If this subpoena commands you to produce or to permit inspection and copying of documents or tangible things, or to permit inspection of premises, and to appear to give testimony at trial, at a hearing, or at a deposition, you may object to the production or inspection of documents or tangible things, or inspection of premises, by following the procedure identified in paragraph 7. Even though you object to production or inspection of documents or tangible things, or inspection of premises, you must appear in person at the trial, at the hearing or at the deposition unless you obtain an order of the court by following the procedures identified in paragraph 4.

Denver C. Snuffer, Jr. (3032)
NELSON, SNUFFER, DAHLE & POULSEN
10885 South State
Sandy, Utah 84070
Telephone: (801) 576-1400
Attorneys for Plaintiff

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

D.J. INVESTMENT GROUP, L.L.C., a
Utah Limited Liability Company,

Plaintiff,

**NOTICE OF DEPOSITION
OF RYAN DAINES**

vs.

DAE/WESTBROOK, L.L.C., a Delaware
limited liability company, DRAPER CITY,
a municipal corporation, JOHN DOES 1 to
15,

Defendant.

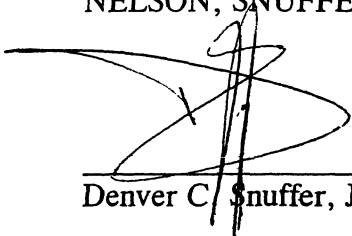
Civil No. 010402305

Judge Pullan

PLEASE TAKE NOTICE that on November 22nd, 2004, Plaintiff will take the deposition of Ryan Daines, commencing at 9:00 a.m., at the offices of NELSON, SNUFFER, DAHLE & POULSEN, 10885 South State Street, Sandy, Utah. This deposition will be taken upon oral interrogatories pursuant to the Utah Rules of Civil Procedure before a certified shorthand reporter and will continue from day to day until completed.

Dated this 1 day of November, 2004.

NELSON, SNUFFER, DAHLE & POULSEN




Denver C. Snuffer, Jr.

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of **NOTICE OF DEPOSITION OF ERIC KECK**
was mailed, postage prepaid to the following:

Steven G. Crockett
Richard W. Casey
Evelyn Furse
BENDINGER, CROCKETT, PETERSON & CASEY
170 South Main, Suite 400
Salt Lake City, UT 84101

DATED this 1 day of November, 2004.

A handwritten signature in cursive script, appearing to read "RWC", is written over a horizontal line.

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

D.J. INVESTMENT GROUP, L.L.C., a
Utah Limited Liability Company,

Plaintiff,

**SUBPOENA TO APPEAR AT
DEPOSITION**

vs.

Civil No. 010402305

DAE/WESTBROOK, L.L.C., a Delaware
limited liability company, DRAPER CITY,
a municipal corporation, JOHN DOES 1 to
15,

Judge Pullan

Defendant.

TO: Peter Larkin

YOU ARE COMMANDED to appear at the law firm of Nelson, Snuffer, Dahle & Poulsen, 10885 South State, in the City of Sandy, State of Utah, on the 22nd day of November, 2004, at 1:30 p.m. to appear to testify at the taking of deposition in the above-entitled action pending in the District Court in and for Utah County, State of Utah.

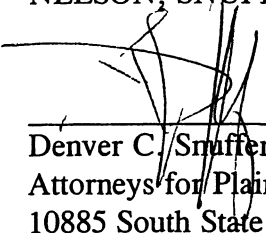
Dated this 1 day of November, 2004.

NELSON, SNUFFER, DAHLE & POULSEN

RECEIVED

NOV 03 2004

BENDINGER, CROCKETT,
PETERSON, GREENWOOD &
CASEY, P.C.


Denver C. Snuffer, Jr.
Attorneys for Plaintiff

10885 South State

Sandy, Utah 84047

Telephone: (801) 576-1400

* Any subpoenaed organization not a party to this suit is hereby admonished pursuant to Rule 30(b)(6), Utah Rules of Civil Procedure, to file a designation with the court specifying one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and shall set forth, for each person designated, the matters on which he will testify or produce documents or things. The persons so designated shall testify as to matters known or reasonably available to the organization.

DOCKETED

Notice to Persons Served with a Subpoena

Subpoena to Appear at Trial, at Hearing, or at Deposition:

1. If this subpoena commands you to appear to give testimony at trial or at hearing, you must appear in person at the place designated in the subpoena.
2. If this subpoena commands you to appear to give testimony at deposition, you must appear in person at the place designated in the subpoena. If you are a resident of Utah, the subpoena may command you to appear only in the county where you reside, or where you are employed, or where you transact business in person, or where the court orders you to appear. If you are not a resident of Utah, the subpoena may command you to appear only in the county where you are served with the subpoena, or where the court orders.
3. If this subpoena commands you to appear to give testimony at trial, at hearing, or at deposition, but does not command you to produce or to permit inspection and copying of documents or tangible things, or inspection of premises, you have the right to object if the subpoena: (i) imposes an undue burden or expense upon you; (ii) does not allow you a reasonable time to comply, which may be less than 14 days, depending on the circumstances; or (iii) commands you to appear at deposition at a place in violation of paragraph 2, above.
4. To object to complying with the subpoena, you must file with the court issuing the subpoena a motion to quash or modify the subpoena. You must comply with the subpoena unless you have obtained a court order granting you relief from the subpoena.

Subpoena to Produce or to Permit Inspection of Documents or Tangible Things or to Permit Inspection of Premises:

5. If this subpoena commands you to produce or to permit inspection and copying of documents or tangible things, or to permit inspection of premises, but does not command you appear to give testimony at trial, at a hearing, or at a deposition: (i) you need not appear in person at the place of production or inspection; (ii) you must produce documents as you keep them in the ordinary course of business or organize and label them to correspond with the categories demanded in the subpoena; and (iii) you need not make any copies or advance any costs for production, inspection or copying. If you agree to make copies, the party who has served the subpoena upon you must pay the reasonable costs of production and copying.
6. You have the right to object if the subpoena: (i) imposes an undue burden or expense upon you; (ii) does not allow you at least 14 days to comply, unless the party serving the subpoena has obtained a court order requiring an earlier response; (iii) requires you to disclose a trade secret or other confidential research, development or commercial information; (iv) requires you to disclose privileged communication with your attorney or privileged trial preparation materials; or (v) requires you to disclose an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from expert's study made not at the request of any party.
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Denver C. Snuffer, Jr. (3032)
NELSON, SNUFFER, DAHLE & POULSEN
10885 South State
Sandy, Utah 84070
Telephone: (801) 576-1400
Attorneys for Plaintiff

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

D.J. INVESTMENT GROUP, L.L.C., a
Utah Limited Liability Company,

Plaintiff,

**NOTICE OF DEPOSITION
OF PETER LARKIN**

vs.

Civil No. 010402305

DAE/WESTBROOK, L.L.C., a Delaware
limited liability company, DRAPER CITY,
a municipal corporation, JOHN DOES 1 to
15,

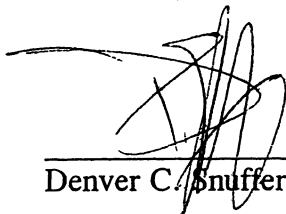
Judge Pullan

Defendant.

PLEASE TAKE NOTICE that on November 22nd, 2004, Plaintiff will take the deposition of Peter Larkin, commencing at 1:30 p.m., at the offices of NELSON, SNUFFER, DAHLE & POULSEN, 10885 South State Street, Sandy, Utah. This deposition will be taken upon oral interrogatories pursuant to the Utah Rules of Civil Procedure before a certified shorthand reporter and will continue from day to day until completed.

Dated this 1 day of November, 2004.

NELSON, SNUFFER, DAHLE & POULSEN



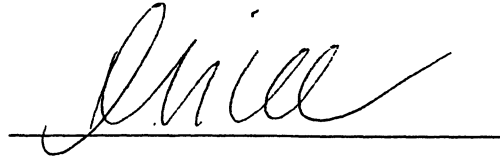
Denver C. Snuffer, Jr.

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of **NOTICE OF DEPOSITION OF ERIC KECK**
was mailed, postage prepaid to the following:

Steven G. Crockett
Richard W. Casey
Evelyn Furse
BENDINGER, CROCKETT, PETERSON & CASEY
170 South Main, Suite 400
Salt Lake City, UT 84101

DATED this 1 day of November, 2004.



IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

D.J. INVESTMENT GROUP, L.L.C., a
Utah Limited Liability Company,

Plaintiff,

**SUBPOENA TO APPEAR AT
DEPOSITION**

vs.

Civil No. 010402305

DAE/WESTBROOK, L.L.C., a Delaware
limited liability company, DRAPER CITY,
a municipal corporation, JOHN DOES 1 to
15,

Judge Pullan

Defendant.

TO: Darrell Smith

YOU ARE COMMANDED to appear at the law firm of Nelson, Snuffer, Dahle & Poulsen, 10885 South State, in the City of Sandy, State of Utah, on the 15th day of November, 2004, at 9:00 a.m. to appear to testify at the taking of deposition in the above-entitled action pending in the District Court in and for Utah County, State of Utah.

Dated this 1 day of November, 2004.

NELSON, SNUFFER, DAHLE & POULSEN



Denver C. Snuffer, Jr.

Attorneys for Plaintiff

10885 South State

Sandy, Utah 84047

Telephone: (801) 576-1400

* Any subpoenaed organization not a party to this suit is hereby admonished pursuant to Rule 30(b)(6), Utah Rules of Civil Procedure, to file a designation with the court specifying one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and shall set forth, for each person designated, the matters on which he will testify or produce documents or things. The persons so designated shall testify as to matters known or reasonably available to the organization.

DOCKETED

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6. You have the right to object if the subpoena: (i) imposes an undue burden or expense upon you; (ii) does not allow you at least 14 days to comply, unless the party serving the subpoena has obtained a court order requiring an earlier response; (iii) requires you to disclose a trade secret or other confidential research, development or commercial information; (iv) requires you to disclose privileged communication with your attorney or privileged trial preparation materials; or (v) requires you to disclose an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from expert's study made not at the request of any party.
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Denver C. Snuffer, Jr. (3032)
NELSON, SNUFFER, DAHLE & POULSEN
10885 South State
Sandy, Utah 84070
Telephone: (801) 576-1400
Attorneys for Plaintiff

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

D.J. INVESTMENT GROUP, L.L.C., a
Utah Limited Liability Company,

Plaintiff,

**NOTICE OF DEPOSITION
OF DARRELL SMITH**

vs.

Civil No. 010402305

DAE/WESTBROOK, L.L.C., a Delaware
limited liability company, DRAPER CITY,
a municipal corporation, JOHN DOES 1 to
15,

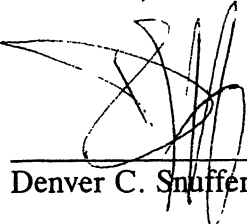
Judge Lynn W. Davis

Defendant.

PLEASE TAKE NOTICE that on November 15th, 2004, Plaintiff will take the deposition of Darrell Smith, commencing at 9:00 a.m., at the offices of NELSON, SNUFFER, DAHLE & POULSEN, 10885 South State Street, Sandy, Utah. This deposition will be taken upon oral interrogatories pursuant to the Utah Rules of Civil Procedure before a certified shorthand reporter and will continue from day to day until completed.

Dated this 1 day of November, 2004.

NELSON, SNUFFER, DAHLE & POULSEN



Denver C. Snuffer, Jr.

RECEIVED

NOV 03 2004

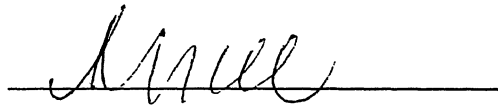
BENDINGER, CROCKETT
PETERSON, GREENWOOD &
CASEY, P.C.

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of **NOTICE OF DEPOSITION OF ERIC KECK**
was mailed, postage prepaid to the following:

Steven G. Crockett
Richard W. Casey
Evelyn Furse
BENDINGER, CROCKETT, PETERSON & CASEY
170 South Main, Suite 400
Salt Lake City, UT 84101

DATED this 1 day of November, 2004.

A handwritten signature in cursive script, appearing to read "Mull", is written over a horizontal line.