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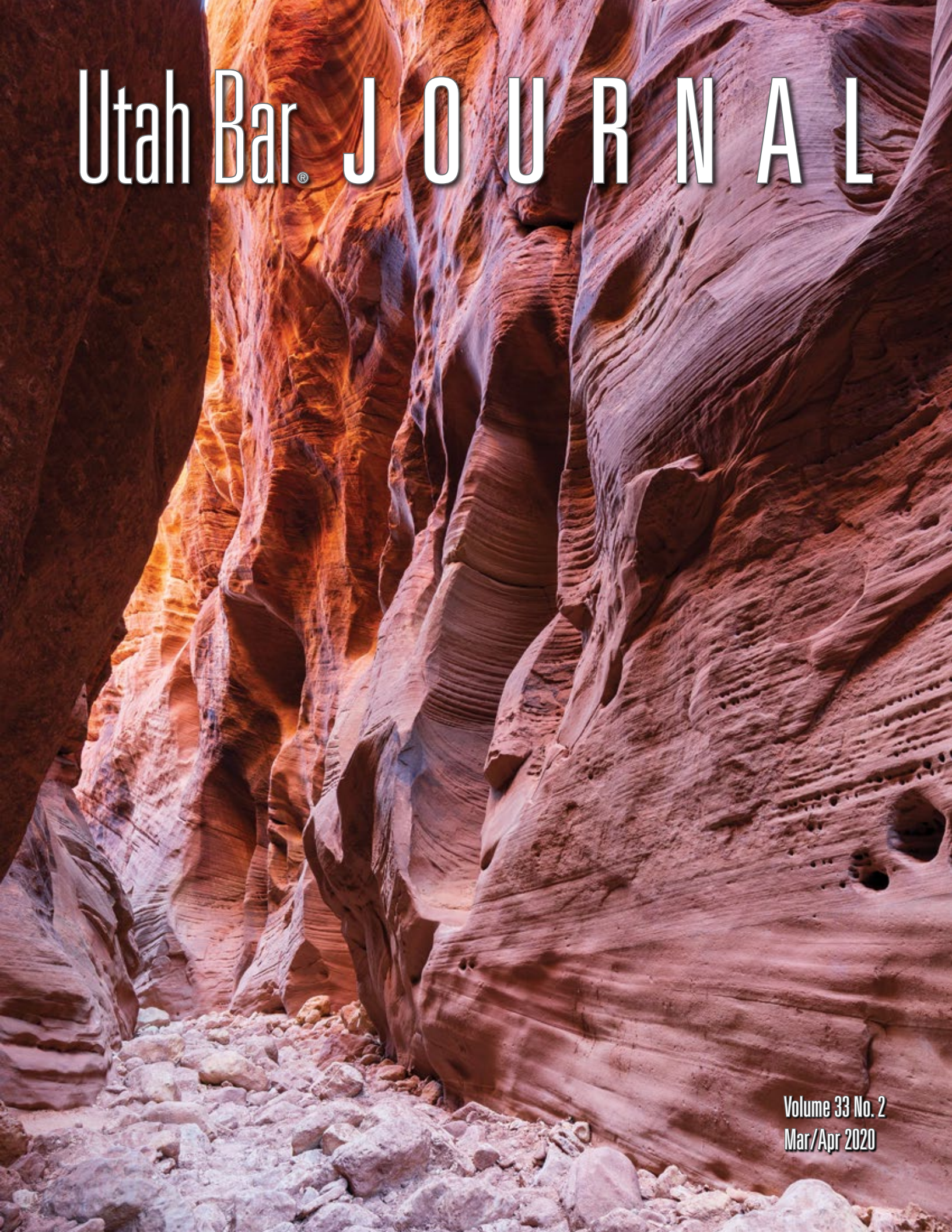

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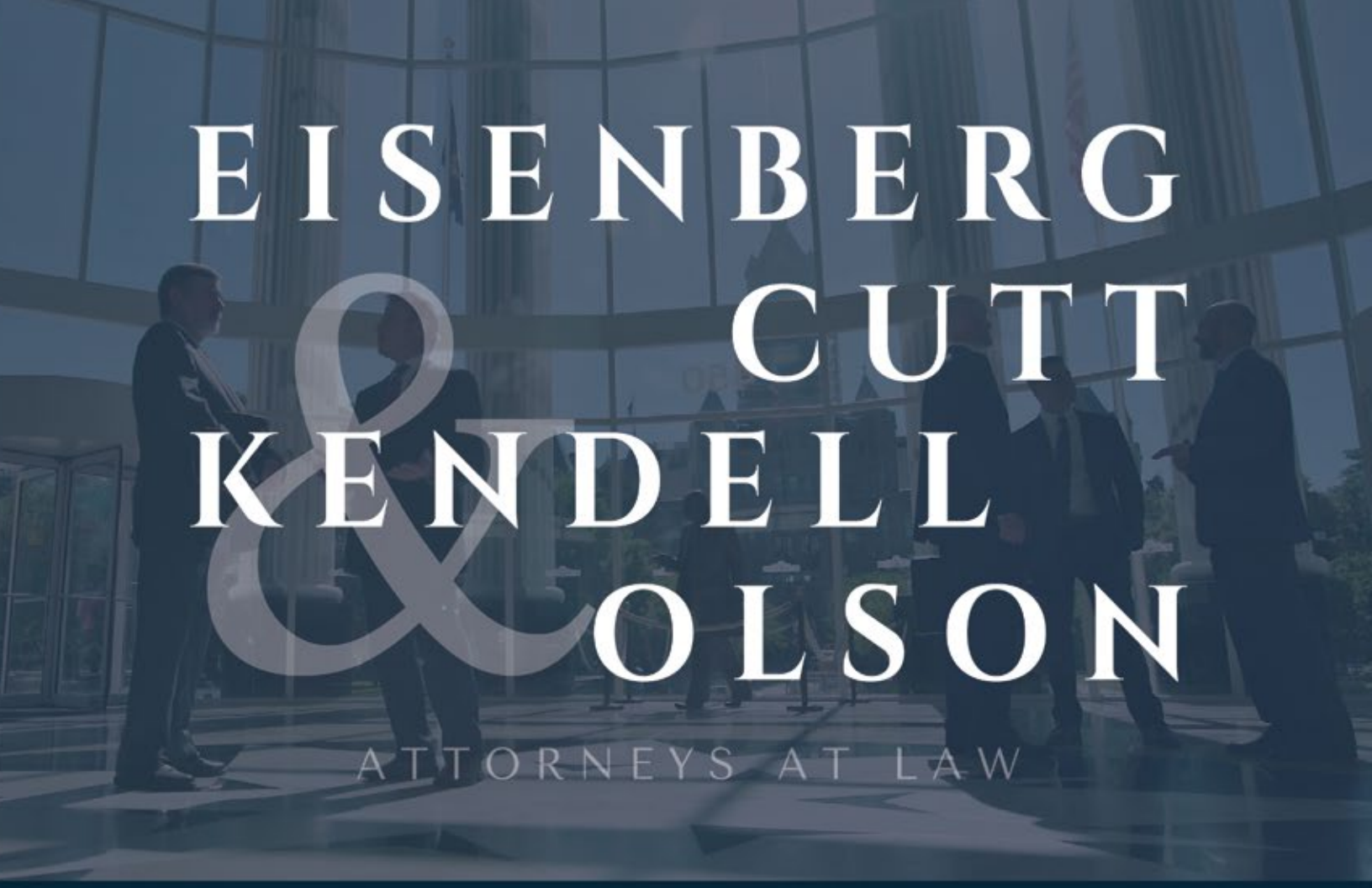

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The lawyers of the Utah State Bar serve the public and legal profession with excellence, civility, and integrity.
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Cover Photo

Utah's Buckskin Gulch – world's longest slot canyon by Utah State Bar member Michael Steck.

MICHAEL STECK is a solo practitioner focusing on business litigation and transactional matters. After two combat tours to the Middle East and a lung injury from Iraq, he moved his firm and family to St. George, Utah to escape the poor winter breathing conditions of the Wasatch Front. When asked about how he captured this cover photo, Michael said:

> *I find great solace in exploring Southern Utah with my camera, hiking boots and backpack (sometimes you'll find me canyoneering on a rope with harness and helmet). I love catching reflected light, which is what led me to explore Buckskin Gulch and the Paria River slot canyons on this trip with over twenty miles of hiking and camping.*

SUBMIT A COVER PHOTO

Members of the Utah State Bar or Paralegal Division of the Bar who are interested in having photographs they have taken of Utah scenes published on the cover of the *Utah Bar Journal* should send their photographs (compact disk or print), along with a description of where the photographs were taken, to Utah Bar Journal, 645 South 200 East, Salt Lake City, Utah 84111, or by e-mail .jpg attachment to barjournal@utahbar.org. Only the highest quality resolution and clarity (in focus) will be acceptable for the cover. Photos must be a minimum of 300 dpi at the full 8.5" x 11" size, or in other words 2600 pixels wide by 3400 pixels tall. If non-digital photographs are sent, please include a pre-addressed, stamped envelope if you would like the photo returned, and write your name and address on the back of the photo.

Utah Bar JOURNAL

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Volume 33 No. 2
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David R. Olsen • Paul M. Simmons

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The Editor of the *Utah Bar Journal* wants to hear about the topics and issues readers think should be covered in the magazine. If you have an article idea, a particular topic that interests you, or if you would like to review one of the books we have received for review in the *Bar Journal*, please contact us by calling 801-297-7022 or by e-mail at barjournal@utahbar.org.

GUIDELINES FOR SUBMISSION OF ARTICLES TO THE UTAH BAR JOURNAL

The *Utah Bar Journal* encourages the submission of articles of practical interest to Utah attorneys and members of the bench for potential publication. Preference will be given to submissions by Utah legal professionals. Submissions that have previously been presented or published are disfavored, but will be considered on a case-by-case basis. The following are a few guidelines for preparing submissions.

ARTICLE LENGTH: The *Utah Bar Journal* prefers articles of 5,000 words or less. Longer articles may be considered for publication, but if accepted such articles may be divided into parts and published in successive issues.

SUBMISSION FORMAT: Articles must be submitted via e-mail to barjournal@utahbar.org, with the article attached in Microsoft Word or WordPerfect. The subject line of the e-mail must include the title of the submission and the author's last name.

CITATION FORMAT: All citations must follow *The Bluebook* format, and must be included in the body of the article.

NO FOOTNOTES: Articles may not have footnotes. Endnotes will be permitted on a very limited basis, but the editorial board strongly discourages their use, and may reject any submission containing more than five endnotes. The *Utah Bar Journal* is not a law review, and articles that require substantial endnotes to convey the author's intended message may be more suitable for another publication.

ARTICLE CONTENT: Articles should address the *Utah Bar Journal* audience – primarily licensed members of the Utah Bar. Submissions of broad appeal and application are favored. Nevertheless, the editorial board sometimes considers timely articles on narrower topics. If an author is in doubt about the suitability of an article they are invited to submit it for consideration.

EDITING: Any article submitted to the *Utah Bar Journal* may be edited for citation style, length, grammar, and punctuation. While content is the author's responsibility, the editorial board reserves the right to make minor substantive edits to promote clarity, conciseness, and readability. If substantive edits are necessary, the editorial board will strive to consult the author to ensure the integrity of the author's message.

AUTHORS: Authors must include with all submissions a sentence identifying their place of employment. Authors are encouraged to submit a head shot to be printed next to their bio. These photographs must be sent via e-mail, must be 300 dpi or greater, and must be submitted in .jpg, .eps, or .tif format.

PUBLICATION: Authors will be required to sign a standard publication agreement prior to, and as a condition of, publication of any submission.

LETTER SUBMISSION GUIDELINES

1. Letters shall be typewritten, double spaced, signed by the author, and shall not exceed 300 words in length.
2. No one person shall have more than one letter to the editor published every six months.
3. All letters submitted for publication shall be addressed to Editor, *Utah Bar Journal*, and shall be emailed to BarJournal@UtahBar.org or delivered to the office of the Utah State Bar at least six weeks prior to publication.
4. Letters shall be published in the order in which they are received for each publication period, except that priority shall be given to the publication of letters that reflect contrasting or opposing viewpoints on the same subject.
5. No letter shall be published that (a) contains defamatory or obscene material, (b) violates the Rules of Professional Conduct, or (c) otherwise may subject the Utah State Bar, the Board of Bar Commissioners or any employee of the Utah State Bar to civil or criminal liability.
6. No letter shall be published that advocates or opposes a particular candidacy for a political or judicial office or that contains a solicitation or advertisement for a commercial or business purpose.
7. Except as otherwise expressly set forth herein, the acceptance for publication of letters to the Editor shall be made without regard to the identity of the author. Letters accepted for publication shall not be edited or condensed by the Utah State Bar, other than as may be necessary to meet these guidelines.
8. The Editor-in-Chief, or his or her designee, shall promptly notify the author of each letter if and when a letter is rejected.

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President-Elect & Bar Commission Candidates

Candidate for President-Elect

Heather Thuet is the sole candidate for the office of President-elect. Utah State Bar bylaws provide that if there is only one candidate for the office of President-elect, the ballot shall be considered as a retention vote and a majority of those voting shall be required to reject the sole candidate.

HEATHER THUET

Dear Friends,

Thank you for encouraging me to run for Pres-Elect of the Utah State Bar. I am humbled to receive the nomination. Since 2005, I have volunteered in various capacities with the Bar. I have been fortunate to serve as the Chair of the Litigation Section, the largest section in our Bar. This is my second term serving as your Bar Commissioner in the Third Division.

As your representative, I will continue to serve as an important link between you, the public, the legislature, and our Courts. As you know, our Bar is facing significant challenges. I plan to embrace these challenges and the relationships built over the years to ensure our Bar has a positive future.

I am grateful for your ongoing encouragement and support. I value your friendship and insight. Together, we advance our profession.

Heather Thuet

Third Division Bar Commissioner Candidates

TRACI GUNDERSON

A recognized expert in administrative law, real estate licensing, consumer sales practices, and civil litigation, Traci Gundersen started practicing law in 2001. Her practice covers a broad array of government topics, including planning and zoning issues, commerce and licensing, and municipal research. She recently served as Chair of the Utah Bar's Administrative Law Section (2014–2015) and presented "Res Judicata issues at the Administrative Level" at the Utah Bar's Summer 2013 Convention in Snowmass, CO. Since 2013, she has served as a Draper Planning & Zoning Commissioner.

Prior to starting a solo practice in 2014, Traci worked for civil litigation law firms in both Salt Lake City, Utah and Indianapolis, Indiana from 2001 to 2008. She then became an Assistant Attorney General representing the Utah Division of Real Estate before the Utah Real Estate Commission, Appraiser Licensing Board, and the Residential Mortgage Regulatory Commission. In 2010, Traci was appointed by Utah Governor Gary Herbert as Director of the Utah Division of Consumer Protection, where she managed a small government agency in enforcing the Utah Consumer Sales Practices Act, as well as regulating Franchises, Career Colleges, Credit Service Organizations, Debt Management Services companies, Health Spas and Gyms, and charitable organizations. She was educated at BYU and Pepperdine University.

MARK MORRIS

It has been an important honor for me to represent the Third Division on the Utah State Bar Commission. My primary reason for wanting to serve was, and remains, because I feel blessed and fortunate to have had a career not only helping clients with problems, but I hope helping to perpetuate a terrific environment to practice law. The Bar is a steward and guardian of that environment. I want to jealously and zealously preserve a legal community of professionals that insists on civility and professionalism, and allows good fellowship

among people who may have strident and heartfelt disagreements with one another on many issues, but get along…happily and well. The Bar is and should remain above political and any other differences of opinion that are independent of what should be a common and mutual desire to foster an environment of collegiality, often amidst a lot of stress. That is my highest priority. I still like lawyers. My perspective is unique and, as I get more experience, continues to evolve. I welcome and appreciate your support in my wanting to make Utah an even better place to live and practice law.

ANDREW M. MORSE

I am running for Bar Commissioner to address regulatory perform and access to justice; to maintain an integrated Bar; to oppose taxes on legal services; and to promote well-being in the legal community. These are four movements or issues that will fundamentally alter the legal landscape for generations. I would like to bring my legal experience, energy and leadership skills to bear on these difficult tasks.

I have been a trial lawyer for 36 years, mostly on the defense. My service to the Bar includes 25 years on the Character and Fitness Committee, 5 years as Co-Chair. I serve on the Admissions Committee. My most important Bar work has been as a member of the Well-Being Committee for Legal Profession.

My nonprofits work include serving as a volunteer big brother for Big Brothers Big Sisters program, and 7 years on its Board of Directors. I served 5 years on the Board of the Ronald McDonald House. I was Board Chair for both organizations.

As president of Snow Christensen & Martineau from 2011 through 2018, I became very familiar with how lawyers think and legal markets work. Thank you.

For a more detailed biography, please visit https://www.scmlaw.com/person/andrew-m-morse/.

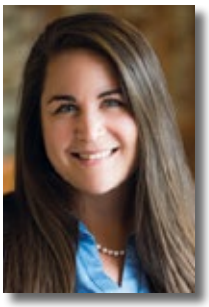
MICHAEL STAHLER

Our profession faces incredible challenges and crucial decisions that will be made in the immediate future. My biggest concern is that you have information regarding the implications of the proposed rule changes being contemplated by the courts so that you can evaluate what is best for our profession. I will continue to communicate your feedback to those considering these changes. I am concerned as to the impact of these changes on every attorney, especially younger attorneys. I am also interested in improving training for new lawyers and improving the image of our profession.

Over the last eight years I have served on many Bar committees and gained an understanding of the many functions of the Bar and how to improve it. I also know attorneys in every practice setting. I have used your feedback to successfully lead the Litigation Section and to make needed reforms at the Bar level that have greatly improved section support and financial transparency. I am deeply interested in your input and in working with you and decisionmakers to make the right choices as we consider what is best for our profession in Utah.

In April, I ask that you vote for me as one of the three Third Division Commissioners.

Michael Stahler
Assistant Attorney General, Litigation Division, State of Utah



BRENDA WEINBERG

I would be honored to receive your support as candidate for Third Division Commissioner.

Since admission to the Bar, I have practiced commercial litigation and criminal defense at a small boutique firm, served on the Litigation Section Executive Committee, participated in Bar programs like the Leadership Academy, and remained active in the Salt Lake community playing in a concert band with music educators and students.

I seek to improve and maintain the integrity of our profession on the Commission, which codifies rules, takes positions on legislation, and assists sections of the Bar. This work is of even greater importance at this juncture, as we face the greatest changes in the Bar's history that profoundly reimagine the practice of law. I aim to ensure that the impending regulatory reform increases access to justice and upholds existing standards for nonlawyer investment in and ownership of law firms. This regulatory reform will affect us all, but young lawyers will feel the effects throughout our entire careers.

I am proud of my efforts and involvement with the Bar, and I plan to accomplish much more. I ask for your vote in the upcoming election.

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Character Counts

by Herm Olsen

My mom would say: "Respect your elders. Chew with your mouth closed. Say "Please" and "Thank you," – because little courtesies make good manners."

Mom would also say: "Be nice to people; tell the truth; don't be a bully, because manners create your character."

Character counts!

Look at Harry Truman: The only asset he had when he died was the house he and his wife inherited from her mother in Independence, Missouri. I have been to that house while he was still alive. It was nice – but clearly modest. Other than his years in Washington, D.C., he and Bess lived their entire adult lives there. When he retired from the Presidency in 1952, his income was $13,507.72 a year. When in the White House, he purchased (and licked) his own postage stamps for personal letters. After President Eisenhower was inaugurated, Harry and Bess drove home to Missouri by themselves.

When offered corporate positions at large salaries, he declined, stating: "You don't want me. You want the office of the President, and that doesn't belong to me. It belongs to the American people and it's not for sale." Now THAT is character!

As president, he paid for his own travel expenses and his own (and Bess's) food.

He observed once: "My choices in life were either to be a piano player in a whore house or a politician. And to tell the truth, there's hardly any difference." He not only had character, he WAS a character!

How about us?

I recently saw an inquiry asking about a particular attorney. "She is AWFUL!" Another said: "She is the WORST possible human being! Gives attorneys a bad name!" Another chimed in: "Very, very, very difficult to work with."

How painful to have developed such a character valuation. But we earn it, one way or the other, choice by choice, day by day. Sure – we're in a highly competitive profession. But that doesn't mean we can't say "Please" and "Thank you." It doesn't mean we must be rude or snarky. Such behavior bears fruit in unexpected ways, sometimes years later.

Consider this account from the presidency of Abraham Lincoln. He had an opportunity to appoint a new Justice to the Supreme Court, and each state vigorously jockeyed for their own candidate.

One day Senator Chandler and the Michigan delegation proceeded to the White House. Lincoln welcomed them in his usual, cordial way, and when they were all seated, Chandler began to sound the praises of James F. Joy, of Detroit, as a learned and able man, and a lawyer of national reputation. The perennial smile on Lincoln's face began to "set" like a plaster-of-Paris cast. But he said nothing, and sat with his long legs crossed, with the upper one moving up and down like a pump handle.

When Chandler had finished, Lincoln arose, fumbled in his pocket, and drew out a bunch of keys, and, moving up to an old-fashioned bookcase, which had evidently been brought from his law office in Springfield, unlocked it and commenced looking for a certain bunch of files. He saw the letter J, pulled out the file box, and retrieved a letter. Then he cleared his throat and read as follows,

Abraham Lincoln, Esq., Springfield, Ill.

Dear Sir: Your bill for $300 for legal services in the tax case received and contents noted. I think your charge is altogether too much. The work

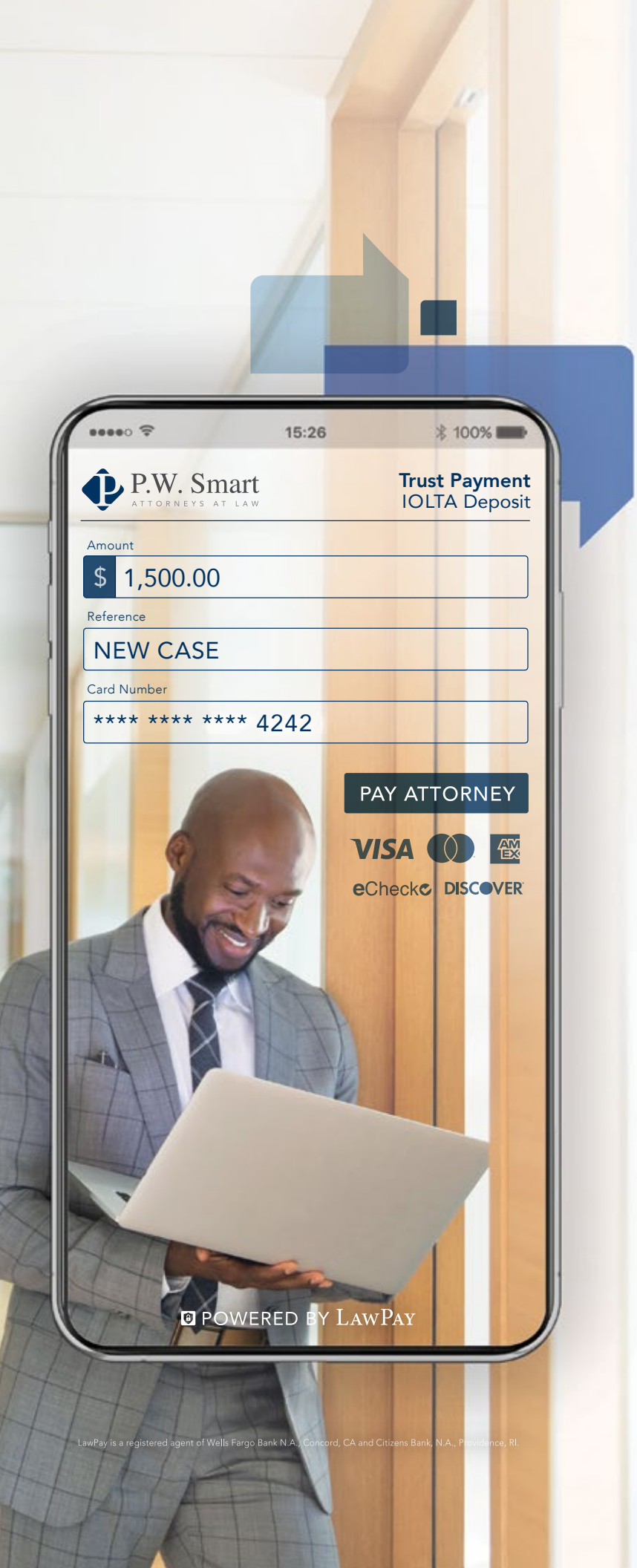
> done was nothing but what a country lawyer could do, and I enclose a check for $100, which you will please accept in full for your services in that suit. Yours respectfully, James F. Joy.

The silence that ensued could be cut with a knife. Lincoln folded up the letter, put it back with the other documents, placed them all in the file box, and put the latter back into the bookcase, and said in a steady voice:

"Gentlemen, the man who wrote that letter has not the requisite sense of justice that would warrant me in appointing him to the Supreme Bench of the United States. Good morning, gentlemen."

Character counts in your private life. Character counts in your professional life. And character counts in the collective life of our nation, as confirmed by Harry Truman:

> Once a government is committed to the principle of silencing the voice of opposition, it has only one way to go, and that is down the path of increasingly repressive measures, until it become a source of terror to all its citizens and creates a country where everyone lives in fear.



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The Changing Landscape of Juvenile Justice

by The Honorable Suchada P. Bazzelle

"Even when laws have been written down, they ought not always to remain unaltered."

– Aristotle, Politics

It seems Aristotle had it right. Perhaps the most prominent feature of the law is its constant evolution to keep up with the knowledge, needs, and development of humankind. Utah's juvenile justice law has recently undergone such an evolution. Beginning in 2017 with the passage of House Bill 239 Juvenile Justice Amendments, Utah policy makers have been trying to address areas in which the law may better handle juvenile delinquency. Like all reforms, the transition has not been painless or without controversy. But in that special Utah way, the many diverse factions of our system have been able to set aside their differences and work together to achieve a vision. In order to gain some perspective on Utah's most recent reform, a brief examination of history is helpful.

Once upon a time, delinquent youths in the United States were treated not as children, but as small adults. Children as young as seven years old could be tried in criminal courts, even for petty offenses such as begging, theft, or ungovernability. Sentences for youthful offenders were generally indistinguishable from adult sentences and could include prison time and even death. The first juvenile court in the nation was established in 1899 in Chicago as a part of changes sweeping the nation to deal with a myriad of social problems. At the time, attitudes about juvenile delinquency were also evolving. Recognizing that children were developmentally different from adults, reformers believed that children who committed crimes should not be treated like adult criminals. Because children are less mature and have less judgment than adults, they were deemed to be less culpable for their criminal behavior. Reformers argued that delinquent youths should be educated and rehabilitated rather than punished, and that mixing youthful offenders with adult criminal populations was needlessly harsh and would teach and encourage additional criminal behavior. These principles have survived the test of time and continue to be the cornerstones of the juvenile court. However, with little legal precedent and regulation, there was vast variation in early juvenile courts on how to deal with youthful offenders.

By the early 1900's, critics of the juvenile court system began to question its fairness and effectiveness, citing the informality of the proceedings and lack of due process protections, such as access to legal representation and the right to a trial. It was argued, and rightfully so, that the lack of these basic protections resulted in discrimination and illegal incarceration. In the 1960's the Supreme Court handed down a series of decisions that called into question the fundamental fairness of the juvenile court. In the 1966 watershed case of *Kent v. United States*, Justice Abe Fortas said,

> While there can be no doubt of the original laudable purpose of juvenile courts, studies and critiques in recent years raise serious questions as to whether actual performance measures well enough against theoretical purpose to make tolerable the immunity of the process from the reach of constitutional guaranties applicable to adults.… There is evidence, in fact, that there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children.

Kent v. United States, 383 U.S. 541, 555–56 (1966).

A year later, the Supreme Court underscored its position in the

JUDGE SUCHADA P. BAZZELLE was appointed to the Fourth District Juvenile Court in January 2007 by Governor Jon M. Huntsman, Jr.

case of *In re Gault*. Fifteen-year-old Gerald Gault was on probation for stealing a wallet from a woman's purse when he was accused of making an obscene phone call. *In re Gault*, 387 U.S. 1, 4–5 (1967). The maximum sentence for a similarly situated adult would have been a $50 fine or two months in jail, but Gault was sentenced to a state reformatory for an indeterminate period that could last until his twenty-first birthday. *Id*. at 7–9. Gault had been detained by police overnight without notification to his parents. *Id*. at 5. He appeared in juvenile court the next day without his parents being informed of the charges against him, without an attorney, and without being advised of his legal rights. *Id*. at 5–6. A probation officer filed a petition alleging that Gault was a delinquent minor in need of care and custody of the court. *Id*. No witnesses were called, there was no sworn testimony, and there was no written record of court proceedings. *Id*. Justice Fortas again spoke up for juveniles, saying "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone." *Id* at 1.

Following the Supreme Court's lead, juvenile courts across the nation put in place procedural safeguards, giving juveniles many rights similar to those of adults charged with a crime. Along with protecting their constitutional rights, the juvenile court has long sought to protect children from the stigmatization of criminal activity. For example, delinquency offenses in Utah are considered civil rather than criminal cases. Petitions alleging an offense identify a criminal act, as outlined by the Utah Criminal Code, followed by the statement "if committed by an adult." (i.e. Johnny is within the jurisdiction of the court because it is alleged he committed Assault, a Class B Misdemeanor if committed by an adult.) When a child is found to have committed an offense, it is considered an "adjudication" rather than a "conviction" and the child's consequence is called a "disposition" rather than a "sentence." With this special language, Utah's Juvenile Court has tried to distinguish youthful misbehavior, even serious misbehavior, from adult criminal activity. The juvenile court has always sought to rehabilitate children and help them to grow into upstanding citizens through a balance of accountability, restitution, and skill-building education. But there has always been a swing in the pendulum of law, and juvenile delinquency is no exception. While many vestiges of the original reformers' principles were still evident in Utah's juvenile law prior to HB 239, there were also many aspects that had been incorporated through eras of "get tough on crime" policies which resulted in harsher sanctions for youthful offenders. There were also principles and practices that were implemented in good faith, but without the benefit of later scientific, social, and technological advances.

In the years leading up to the passage of HB 239, Utah's Juvenile Court judges and probation officers had wide discretion on how to handle juvenile delinquency. Unlike Adult Probation and Parole, Utah's Juvenile Probation Department in Utah is housed within the Juvenile Court itself. These probation officers have always served as the front line when a youth first comes into contact with the court.

In the pre-HB 239 years, when a youth was referred to court, a probation officer reviewed the case and, based upon probation guidelines and directions from that district's judges, determined whether the offense should be petitioned to court or a nonjudicial adjustment offered. A nonjudicial adjustment allowed a youth to accept a consequence for the alleged offense without having to admit to the offense or appear before a judge. This allowed a youth to resolve a criminal citation without building a juvenile court record. If the youth failed to comply with the nonjudicial adjustment, then the case could be petitioned and the matter brought before a judge. There was significant variation surrounding when a youth would be offered a nonjudicial adjustment or be immediately petitioned to court. Some districts decided to allow any offense below a Class A Misdemeanor to be offered a nonjudicial adjustment, while others wanted all drug and alcohol offenses to be referred directly to court, regardless of the offense level. Thus, a youth in one district could obtain a

nonjudicial adjustment for a certain offense, while a youth with the same offense in a different district would not.

Once an offense was referred to court, whether immediately or after a failed nonjudicial adjustment, a judge became involved. After adjudicating the offense, judges and probation officers used a sanctions matrix as a guide to determine an appropriate consequence. This matrix offered a broad range for each level of offense and allowed judges to deviate from them for mitigating or aggravating circumstances. If a youth continued to collect adjudications for subsequent offenses, the youth's risk level – referring to the likelihood of committing more offenses – was considered to be increasing, thereby justifying higher level sanctions. If a youth failed to comply with a court order of any kind, the youth could be held in contempt, which opened the entire range of sanctions, including being placed in state custody, even if the original offense was a minor one.

It should be noted here that every juvenile court judge and probation officer in Utah is committed to helping children and families. Every day they agonize over cases and use their best judgment to make the right decision. Prior to HB 239, they diligently applied laws that had been cobbled together and tinkered with over decades. Despite their good faith efforts to achieve the right outcome, the broad discretion to consequence and then rehabilitate the children appearing before them caused results that were as varied as the judges and probation officers themselves.

The pre-HB 239 juvenile justice system also struggled with a dearth of effective front-end services that could be offered to a child who was not on probation and who was still living in the child's home. This shortage was exacerbated by the economic recession of 2007–2009. Understaffed and underfunded agencies withdrew supervision and treatment options, buttonholing judges into ordering children into state custody when they had high treatment needs, even when they were at low risk to reoffend. For example, a child might have been referred to the court for a shoplifting offense, but in the course of handling the case, it became apparent that the child was using drugs and was in need of residential level substance use disorder treatment. Parents, desperate to help their child but unable to afford the treatment, often turned to the court for help. In an effort to give the child access to the necessary treatment, the judge might find the child in contempt for failing to pay the shoplifting fine – not because the fine was important, but because the contempt finding allowed the child to be placed in state custody and thereby to access the needed residential treatment program. The facts and offenses varied, but this type of dynamic was frequent and created a statistical picture that said low risk youths (based upon their original minor offenses) were being harshly sanctioned and mixed with more hardened high risk youths in state custody. The limited availability of front-end services that allowed low risk youths to remain in their homes while still obtaining the right level of supervision and treatment was even more pronounced in rural districts, which led to disparate outcomes for rural versus urban youths.

Another effect of the shortage of front-end services was the frequent use of juvenile detention centers to hold youths pending an appropriate placement. For instance, a juvenile who sexually perpetrated on a sibling often could not safely remain in the family home, but the offense and risk level were not always so serious as to require residential treatment. Such a youth could be treated on an outpatient basis if a placement other than the youth's own home was available. Many families in this situation turned to relatives or friends to allow the child to live with them during treatment. However, not all families were fortunate enough to have those options and needed a state-funded proctor home for their child. Such placements were virtually non-existent and those youths often stayed in detention until an alternative was identified. The judge then faced the untenable decision of whether to return the perpetrator to the victim's home without any treatment having been done – placing the

victim at further risk of harm – or placing the perpetrator in a residential program that exceeded the recommended level of treatment, thereby mixing the perpetrator with higher risk youths and placing the offender at risk of harm. It was also not uncommon for youths who had run away from a foster home, where they had been placed because of abuse or neglect perpetrated by their parents rather than their own delinquent behavior, to be held in detention until the Division of Child and Family Services (DCFS) could arrange for the child to be returned to the prior placement or identify a new placement. In short, in the pre-HB-239 system, children could end up in detention centers for any number of reasons and because of limited service and placement options, they often remained there longer than anyone desired.

It was in this environment and on the heels of the 2014 justice reform in the adult criminal system that policy makers decided to take a fresh look at how the juvenile system deals with delinquency. Enter the Utah Commission on Criminal and Juvenile Justice (UCCJJ). The UCCJJ recognized that every once in a while, the law needs to be refreshed to recognize changing community values and social mores, as well as to incorporate advances in child development, psychology and brain science. For this purpose, the UCCJJ composed the Utah Juvenile Justice Working Group, which delved into massive amounts of data and received guidance from experts and stakeholders. The result was a data-driven set of findings and recommendations on how to improve Utah's juvenile justice system.

Taken directly from its Final Report, the key findings of the Working Group were:

- A lack of statewide standards had led to inconsistent responses and disparate outcomes.
- Most youth who entered the system were low-level offenders.
- Youth who had never committed a felony made up a large portion of out-of-home placements, potentially increasing their risk to reoffend.
- Youth remained stalled in the system for a long period due to court-ordered conditions, such as financial obligations.
- Affordable, accessible services shown to hold offenders accountable and keep families intact were largely unavailable to the courts across the state.
- Out-of-home placement could cost up to seventeen times more than community supervision, but with similar rates of reoffending.

- Most youth did not receive legal representation throughout the duration of the court process, even when their liberty was at stake.

Based upon those findings, the Working Group devised a set of recommendations that eventually found their way into 2017's House Bill 239. Those recommendations were:

- Reinvest in effective early interventions to improve outcomes, strengthen families, and keep lower-level youth out of the juvenile justice system.
- Expand and create statewide standards for non-judicial adjustments to hold lower-level youth accountable, increase fairness, and reduce reoffending.
- Reinvest in a continuum of community-based alternatives to detention in every judicial district and focus pre-adjudication detention on youth who pose a public safety risk.
- Ensure that all youth receive legal counsel at every stage of the court process and that the state collaborates with counties to certify that legal representation meets high standards across Utah.
- Establish timelines to improve fairness and increase the swiftness of responses from the system.
- Expand investment into evidence-based programs in the community so that every judicial district in the state has access to high-quality options proven to strengthen families and reduce reoffending for youth living at home.
- Adopt performance-based contracting to ensure the results and accountability we expect from our system.
- Increase the use of structured decision making to respond uniformly and ensure that the right youth receive the right level of supervision and services for the right amount of time.
- Expand training in order to increase consistency in the use of evidence-based practices and to reduce racial disparities.
- Establish enhanced inter-branch oversight to inform decision-making and ensure the success and sustainability of reforms.
- Promote individualized dispositions, reduce unnecessary, control-oriented probation conditions, and tailor therapeutic conditions to address a youth's assessed risks and needs.
- Tailor eligibility for removal from the home to focus state resources on youth who pose the highest risk to public safety.
- Maximize the impact of supervision and deliver evidence-based interventions in the most effective period of time

House Bill 239 represented a major shift in public policy regarding juvenile offenders and an overhaul of juvenile justice laws and procedures. It proposed mandating non-judicial adjustments for any offense below a felony; sharply reducing the types and amounts of sanctions allowed for each class of offense; and removing all school-based offenses, including truancy and any offenses committed on school property, from the jurisdiction of the juvenile court. Juvenile court judges and prosecutors were understandably concerned over some suggestions that seemed to encroach upon judicial independence and prosecutorial discretion. In response, a concerted effort was made to include representatives from all areas of the juvenile system – police, prosecutors, defense attorneys, and judges – as well as from the legislative and executive branches, the mental health field, and educators. The conversation wasn't always easy, but many changes were made to proposed legislation to address concerns from various factions.

A major selling point of the reform was saving huge sums of money that could be reinvested in the front-end services that would allow youths to remain in their homes and receive the necessary supervision and treatment in the community, rather

than in state custody. The Working Group forecasted a savings of approximately $25 million for Juvenile Justice Services (JJS) and $33 million by DCFS over five years. In order to follow through on this promise of reinvestment, system stakeholders worked with the Juvenile Justice Oversight Committee to gather suggestions on enhancing services and to make recommendations as to where and how the saved funds should be spent.

Once the final version of HB 239 was passed and the direction of the law became clear, Utah's juvenile court rolled up its sleeves and got to work revamping the way it did business. The juvenile court and probation officers were committed to a thoughtful response and to take the lead on implementing HB 239 in a thorough and timely manner. It soon became clear that much of the onus of the reform would fall on the Juvenile Probation Department. The reform drastically changed the landscape of the juvenile probation officer's job, shifting focus from implementation of court orders and supervision of juveniles on probation, to much more emphasis on meeting individually with incoming youth, applying validated assessments, managing non-judicial adjustments, and providing low level educational services. The Juvenile Probation Department has done yeoman's work in carrying out these changes.

Under the current statutory scheme, the available responses to delinquency are very structured and prescribed. There is a sharp focus on risk level, referring specifically to a youth's likelihood to reoffend. The risk level is based only upon the outcome of a validated risk assessment. Low risk youths are diverted from further penetration into the system with a robust nonjudicial process. The philosophy is that low risk youths will self-correct with time and maturity, and over-involvement of these youths in court processes will actually increase recidivism. The brunt of identifying and addressing the needs of these youths has fallen primarily on juvenile probation officers. Upon referral to the court, every youth and the youth's parents are invited to a preliminary meeting with a probation officer. At that meeting, the probation officer discusses the youth's legal rights and the court process. The basis for the referral is reviewed and a validated risk assessment is applied. If the youth is referred for anything below a felony level offense and has no more than two prior adjudications, and no more than three prior unsuccessful nonjudicial adjustment attempts, then the youth is entitled to a nonjudicial adjustment. This standardization of the nonjudicial process ensures that similarly situated youths are treated the same, regardless of which court they were referred to and where they live. Sanctions allowed under a nonjudicial adjustment for a low risk youth are limited and failure to comply with the agreement results in an "unsuccessful" closure of the case, but not in any further consequences.

Any youth who does not qualify for a nonjudicial adjustment is referred to the prosecuting attorney for screening of the alleged offense. The prosecutor may dismiss the case, refer the case back to the probation department for a new attempt at a nonjudicial adjustment, or file a petition with the court. If the case is petitioned, a juvenile court judge becomes involved. Once an offense has been adjudicated, the court is required to order that a validated assessment be applied to determine the youth's risk level and treatment needs. There is a heavy emphasis on keeping the youth in the home. A youth may only be placed in the custody of JJS if the youth has been adjudicated with a felony level offense, a misdemeanor with at least five prior misdemeanor offenses arising from separate criminal episodes, or a misdemeanor offense involving the use of a dangerous weapon. Even if those qualifications are satisfied, a judge may not place a youth in JJS custody until the judge finds that all nonresidential treatment options have been exhausted or that nonresidential treatment options are not appropriate. There is also an emphasis on providing services in the proper dosage. A moderate risk youth requires a dosage of 100 to 120 hours actively engaged in learning new skills, changing behavior, and reducing criminal

activity. A high risk youth requires a dosage of 150 to 200 hours of the same. Those hours can be provided by a probation officer or an evidence-based treatment provider.

The system has certainly had growing pains since the codification of HB 239. When the first provisions started to go into effect in August 2017, many front-line workers did not have the training and resources to fully implement the changes. Many of the services and placements envisioned by the law were not in place for over a year. But now, about two years after the reform, options for interventions and placements are becoming more available and caseworkers, probation officers, and judges are feeling more informed and competent in carrying out their charges. In late 2019, services for youths were opened up for anyone to access directly, an option previously unheard of in juvenile justice circles. A youth does not have to be court-involved or even to have received a citation in order to access needed support services. This is especially helpful for youths in the nonjudicial adjustment phase. The Juvenile Court has become recognized as a major intercept point for youths who have a trauma history, have indications of suicide risk, or suffer from mental health issues. Thus, every youth referred to the court is offered a mental health screening at the preliminary meeting with the probation officer. If results indicate support services are needed, the family can now access those services directly, without having their child move deeper into the juvenile court system.

Only time will tell if the vision of HB 239 will be fully realized, but there has already been progress in achieving a modern take on the original founding principles of the juvenile court. The current juvenile justice laws are based not upon sentiment, but on data-driven research and state of the art guidance from the fields of child development, brain science, and psychology. Stakeholders continue to review the law and incoming data to identify what is and what is not working, and legislators have been open to making revisions where needed. As it stands today, youthful offenders have more access to legal counsel than ever before, increasing their comprehension of the proceedings and the protection of their due process rights. The uniform reliance upon structured decision making will undoubtedly have an impact on increasing consistency from district to district, so that youths are receiving the same level of accountability as their counterparts in other areas of the state, and will also help address the disproportionate representation of minority youths in the system. Services and interventions have improved in both number and quality. Anyone contracting with the state to provide treatment to court-involved youths must demonstrate their program is evidence-based and be held accountable for their performance, which is a huge step forward in ensuring that they are competently addressing the needs of the youths they serve.

While it is still relatively early to say with certainty, the mechanisms for keeping low risk youths out of the system appear to be working. The number of juveniles in detention centers has plummeted and the number of youths in state custody is declining. Juvenile court referral numbers have dropped. Judges are seeing far fewer low-level offenses. When such offenses do finally reach the courtroom, the youth has generally been reoffending for some time and is at a moderate or high risk level. While the prolonged delay in seeing a judge sometimes means problematic behaviors have become more entrenched, it does keep judges involved in only the most serious and complex cases where judicial intervention is most needed.

As we move into the future, it will become clear if Utah's juvenile justice reform will actually result in a long-term reduction of recidivism by minors. The research certainly says it will. In the meanwhile, system stakeholders need to continue working together to fill gaps in processes and services and to address the ever changing needs of children, families, agencies, schools, and communities. Our youth, and our future, are worth it.

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Psychological Capital

Building the Mental Strength and Flexibility to Manage Stress and Boost Performance

by Martha Knudson, J.D., MAPP

Lawyering often comes with a generous helping of stress that can wear on the performance, mental health, and continued job satisfaction of the best of us. It's a byproduct of our role in handling challenges with clients. If increased well-being in the legal profession is indeed a priority, what do we do about stress? We begin by changing our relationship with it. We stop stressing about stress and, instead, we develop our capacity to engage with it in healthy ways.

Stop Stressing About Stress. Understand and Manage it Instead.

A stress-free life is not the secret ingredient for increased well-being. Even if that were possible (it's not), it wouldn't be advisable as a certain amount of stress is actually necessary for our happiness. Stress is bound up with the elements of life that many of us value most: personal growth, positive relationships, love, family, achievement, a fulfilling and successful career, and living a purposeful life. Without stress, none of these things would be possible. When you boil it down, stress is what occurs when something we value is at risk. *See* Kelly McGonigal, *The Upside of Stress: Why Stress is Good for You, and How to Get Good at It* xxi (2015).

Stress is also not the big bad monster it's so often made out to be. It's an adaptive biological response to help our bodies and minds perform better when challenge hits. Stress is also a great teacher, acting to rewire our brains so we can be better at facing a similar demand in the future and can do so with less agitation. *See id*. at 53–55. Think back to your first few years practicing law. Do the things that raised your stress levels then carry the same power now? If they don't, that has a lot to do with your stress response doing its job.

The real problem with stress isn't stress itself. In fact, stress is correlated with things like improved memory, faster brain processing, sharpened hearing, better performance, and increased resilience. Stress can also be cardio protective, lead to a longer and healthier life, and better quality relationships. *Id*. at 50–56. Stress causes health concerns when our stress response is either chronically over-active or rages on unchecked and without recovery. When this happens, our body doesn't return to baseline and the physiological processes which are helpful in the short-term begin to burden our system. Over time, this over-active stress response can become harmful to our physical and mental well-being. *See id*. 1–223; Richard Sutton, *The Stress Code: From Surviving to Thriving a Scientific Model for Stress Resilience* 26–45 (2018).

The idea, then, is to learn how to manage the reactivity of our stress response and to make recovery a priority. One incredible tool we all have and can develop is the power of our own minds. Let me explain. Challenges trigger our stress response. When it happens, one of the first things our brain does is conduct a quick appraisal process where we assess both the demands of the situation and whether or not we have the resources to cope. The more we believe we have what it takes to handle the matter, the more likely we will perceive the stress as manageable and approach the challenge in a proactive way. This, in turn, results in less persistent worry and more confidence which translates into a less aggressive and shorter-lived stress response. *See* McGonigal, at 113.

Cutting edge research also shows that our mindset about stress and our ability to handle what life throws at us is, on its own, enough to actually alter the level and ratio of the stress hormones our bodies release. *Id*. at 14–24; Sutton at 63–70.

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Psychological Capital: Building Your Mental Strength and Flexibility.

Scientific research has demonstrated that a concept known as Psychological Capital, a state that can be thought of as mental strength and flexibility, can be incredibly effective in heightening our ability to meet challenge and manage stress. Also known as PsyCap, this resource, when developed, allows us to respond to challenge in a productive, healthy, and resilient way.

PsyCap has other important advantages. Scientific studies show that having elevated levels of this resource provides us with a competitive edge. It's linked with increased job performance over that which is related to skill and intelligence alone. And, it is also associated with higher job commitment, job satisfaction, and lower absenteeism and attrition rates, things that we and our legal organizations care about. Beyond that, PsyCap is preventative, helping to shield us from burnout, anxiety, and depression. *See* Martha Knudson, *Building Attorney Resources: Helping New Lawyers Succeed Through Psychological Capital*, University of Pennsylvania Scholarly Commons 30–34 (2015). Simply put, PsyCap goes hand in hand with our work as lawyers. It augments our traditional legal skills, allowing us to use them to our highest ability.

The good news is that our PsyCap can be developed. It takes a short training session followed by deliberate daily practice that can be done in connection with legal work. PsyCap is made up of the following four positive mental strengths:

- **Self-Efficacy:** The confidence to successfully take on and put in the necessary effort to succeed at challenging tasks.
- **Resilience:** The capacity to cope, sustain, and bounce back when problems and adversity strike.
- **Hope:** The ability to persevere toward goals and, when necessary, to redirect goal pathways to succeed.
- **Optimism:** A positive expectation about one's ability to meet challenges and succeed now and in the future.

Fred Luthans et al., *Psychological Capital Development: Toward a Micro Intervention*. 27 J. Organizational Behav., 387–93 (2006).

You're probably already using some of these mental strengths in your practice. If so, they're likely helping to drive your success as each strength is scientifically correlated to desirable outcomes.

- **Strong self-efficacy is linked with better performance and work satisfaction, lower burnout, and increased well-being.** Merche Ventura, Marisa Salanova, & Susana Llorens Gumbau, *Professional Self-efficacy as a Predictor of Burnout and Engagement: The Role of Challenge and Hindrance Demands*, 149 J. Psychol.: Interdisc. & Applied 277–302 (2015).

- **People high in resilience are more likely be more flexible to changing demands, better equipped to deal with stress, and show higher job performance and satisfaction.** James B. Avey, Fred Luthans, & Susan M. Jensen, Psychological Capital: *A Positive Resource for Combating Employee Stress and Turnover*, 48 Hum. Res. Mgmt. 677–93 (2009).

- **Hopeful thinkers tend to achieve more, have elevated work performance and satisfaction, and are more mentally and physically healthy than the non-hopeful.** Suzanne J. Peterson & Kristin Byron, *Exploring the Role of Hope in Job Performance: Results from Four Studies*, 29 J. Org. Behav. 785–803 (2008).

- **Many of these same things are true for those who view the world through an optimistic lens as optimism is correlated, among other things, with heightened performance and productivity, job satisfaction, improved immune systems, and heightened ability to cope with stress.** Carolyn M. Youssef & Fred Luthans, *Positive Organizational Behavior in the Workplace; The Impact of Hope, Optimism, and Resilience*, 33 J. of Mgmt. 774–800 (2007).

The magic of PsyCap happens when we use these four strengths together. When we do the result is a synergy greater than when each strength is used alone. This means that, while each resource individually contributes to lawyers' positive mental strength and flexibility, when combined, they become stronger than the sum of their parts.

Improving Self-Efficacy.

Self-efficacy is our subjective belief about our ability to handle challenge and accomplish the goals we set out to achieve. At its center, this isn't based on our objective skills but rather on our subjective perception of what we can and can't do with the skills we have. This may sound simple, but our sense of self-efficacy impacts the difficulty of the goals that we choose, the efforts we put in to reach them, how well we handle the challenges that inevitably pop-up in the practice of law, and the severity of our stress levels when they occur.

Remember, when challenge hits we make some pretty quick choices about the demands the situation requires and our own ability to handle it. These choices set the foundation for how we interact with our work. If we don't believe we have what it takes it's far easier to procrastinate and quickly give up. But when our confidence is high, we're more likely to dig in and put forth the effort necessary to get the job done.

Consider two young lawyers with very similar skills and experience. One lawyer has a strong sense of self-efficacy in her skills while the other one doesn't. The lawyer with high self-efficacy is more likely to: (1) approach problems as challenges to be mastered; (2) show higher interest in and commitment to tasks; and (3) put in the efforts needed to succeed even in the fact of setbacks. In contrast, the lawyer with low self-efficacy is more likely to: (1) avoid or withdraw from challenging tasks; (2) believe that difficult goals are beyond his or her capabilities; and (3) quickly lose confidence when setbacks happen.

Which of these two lawyers will handle stress better? Which is more likely to perform better and have higher job satisfaction over time? Research says it's the one with high self-efficacy. Ventura, Salanova, & Llorens, *supra*, at 277–302. The relationship is cyclical in nature. Self-efficacy impacts performance, which in turn impacts self-efficacy perceptions, a cycle that can be either positive or negative in nature.

Self-efficacy can be developed in four ways. *See* Knudson, *supra*, at 18–20. We learn best by doing, so the first avenue is focus on our past wins, identifying the strengths and skills we used to get the job done, and then reflecting on how we can use these same things to meet the current challenge. The second is to seek constructive feedback from someone we trust. A third option is to learn vicariously. Watching others that we identify with overcome barriers and achieve success goes a long way to strengthening our belief that we can do the same. Fourth is understanding and reframing the stress response that often comes with challenge. *See id*. Instead of perceiving our nervous butterflies to mean we don't have what it takes, we can recognize these feelings as what they are, our bodies' way of preparing us to meet a challenge and succeed. *See* McGonigal, *supra*, at 120.

Developing Resilience.

The PsyCap mental strength of resilience isn't about sucking it up when challenge, curveballs, and setbacks happen in the practice of law. It's about being able to cope in healthy ways, to accurately frame the risk of a situation, and learning to recognize and use all the resources we have available to help us. Our resilience can be built through deliberate practice.

To do so, when a challenging situation hits, slow down and consider (and then re-consider) the real risk. A vital part of

doing this includes spotting those factors that we can and can't control. This is key because it helps us to focus our efforts where they can have impact and stop ruminating about things we can't control. Next, focus on finding realistic options for action. What options are there? Can we look at the matter in a different way that might offer more options? Seeking out the viewpoint of a trusted friend or colleague can really help here as others can often spot something that we missed. *See* Knudson, *supra*, at 24–27.

Resilience is also built by proactively considering the skills and resources we have at our disposal that can help us handle the situation. These can include anything from our knowledge, skill set, work ethic, and past experiences, to our finances, creativity, access to support staff, and our supportive relationships. *Id*.

Cultivating Hope.

Hope is more than just what "rebellions are built on" (shout out to you Star Wars fans), it's about learning goal setting and planning skills for meeting challenges and overcoming obstacles: skills that are really handy for lawyering. Hope levels can be built through deliberate practice. To start, when meeting our next challenge, we can set a goal that is directly related to helping us overcome it. The goal should stretch us but also be achievable and have clear beginning and end points. Difficult or complex goals should be broken down into manageable steps that can be tackled along the way. *Id*. at 13–16.

Next is to identify multiple routes to goal attainment. It helps to write down all the paths we can think of that could realistically lead to success, and to think through the skills and resources needed for each path. When considering routes to goal success it's also important to anticipate any possible obstacles and strategize ways around them. *Id*.

Building Our Optimism.

PsyCap optimism isn't an unchecked process of figuring that everything will somehow just work out. Instead, it's about learning to accurately evaluate a challenge while also believing that we have what it takes to succeed. Lawyers can find this to be tricky as we are basically trained professional pessimists. We're paid to spot risk and potential downsides to protect our clients. We're good at it and, when used correctly, it's a great lawyering skill. But unchecked, pessimism can come with a cost.

Pessimists tend to assume responsibility for negative things that happen, including for things that are way outside of their control. This can be highly demotivating when approaching challenge. In contrast, optimists emphasize favorable events and more easily see their role in making good things happen.

Having this mindset minimizes self-doubt and motivates us to make challenging goals and commit to achieving them. *Id*. at 20–24. To build this capacity, it helps to pay close attention to our mindset and self-talk in times of challenge and adjust if we are being overly pessimistic. *Id*.

Paying Attention to Building Our PsyCap Can Bring a Big Return of Investment.

Investing our attention to building our PsyCap mental strengths of self-efficacy, resilience, hope, and optimism is good for us and the organizations we work for and, ultimately, translates to our bottom line. Science tells us that our PsyCap resources of self-efficacy, resilience, hope, and optimism shape the underlying attitudes and behaviors known to increase and sustain performance while also keeping us healthy and able to successfully navigate the stresses of the profession. It takes a little training and deliberate practice, but it is an investment in ourselves that is well worth the effort.

Interested in learning more about working with stress and/or building PsyCap for yourself or for those in your law firm or legal organization? The Well-Being Committee for the Legal Profession can help provide you with resources and training. Contact martha.knudson@utahbar.org with questions.

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The Utah Lawyer Well-Being Study: Preliminary Results Show Utah Lawyers at Risk

by Matthew S. Thiese, PhD, MSPH

Lawyers and doctors have much in common. One similarity is the history of both professions largely ignoring mental health in the workplace. Due to the unfortunate stigma associated with mental health concerns, those who had feelings of depression, anxiety, or other negative thoughts have traditionally been forced to face them alone.

Fortunately, the medical field is paying attention and scientifically assessing both *why* this is happening and *how* they can best address the issue. As a result, we're seeing an increased recognition of the meaningful connection between positive mental health and physical health, as well as the positive relationship between elevated well-being and increased productivity, performance, and job satisfaction. These desirable connections have translated to boosting the performance of entire medical industries and companies.

The legal field is similarly seeing highly elevated incidents of mental health and well-being issues. However, unlike the medical field, law is lagging behind in efforts to scientifically understand both the *why* and the *how*. This means that there is very scant data on which to base decisions regarding actual risk factors for lawyers and potential interventions that might work.

What we do know is that each of the seven peer-reviewed publications assessing lawyer well-being report some level of serious concern. Lawyers rank fourth in suicides among professionals, behind dentists, pharmacists, and doctors. A 2016 study of 13,000 lawyers across nineteen states showed 11.5% of practicing lawyers experience suicidal thoughts. Patrick R. Krill ET AL., *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICTION MED. 46, 49–50 (2016). Many recent lawyer suicides are linked to depression. The national lawyer study also showed that lawyers have a high prevalence of depression (~25%), anxiety (~20%), problematic alcohol use (24% to 36%), substance abuse (11%), and burnout (14%). *Id.* at 48–50.

This data has raised concerns with the Utah Supreme Court about the state of lawyer well-being in Utah. In response, the court organized a task force in 2018, charged with both assessing the state of lawyer well-being in Utah and making recommendations to increase it. Guided by the 2016 report of the National Task Force on Lawyer Well-Being, Utah's Task Force published its report and recommendation to the Utah Bar in February 2019. The Utah Task Force on Attorney and Judge Well Being, *Creating a Well-Being Movement in the Utah Legal Community* (2019), https://www.utahbar.org/wp-content/uploads/2019/07/Task-Force-Report-2.pdf.

Recognizing both the importance of being guided by scientific evidence and the dearth of lawyer well-being data, one of the Task Force's primary recommendations was for the Utah Bar to commission a study specific to Utah practitioners. The Task Force wanted to know if Utah lawyers experience the same well-being concerns seen in national studies. And, if so, the Task Force wanted to examine whether risk factors and possible areas of intervention be identified to guide well-being education and initiatives.

The Utah Bar answered the call, hiring me and my research team from The University of Utah School of Medicine. I am an occupational epidemiologist, which means that I study the health of different working populations. The Utah lawyer study is the first one of its kind being conducted both from this point of view and being focused on well-being and health related behaviors. Our goal is to identify the state of Utah lawyer well-being, evaluate the existence and impact of depression, stress, and substance abuse, and identify potential risk and protective factors. The data will ultimately be used to foster education and interventions aimed at increasing lawyer well-being.

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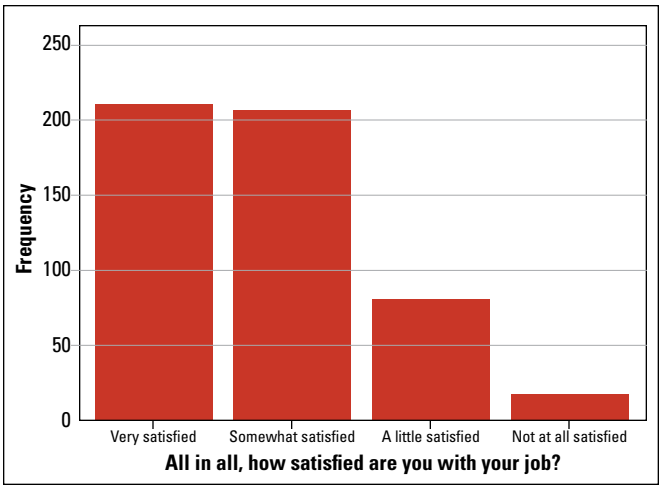
Data has been collected from a representative sample of active Utah lawyers. Initial data analysis shows an adequate distribution among gender, age, years of practice, type of practice, and geographic location. This means that the study results can be comfortably and accurately generalized to the larger Utah lawyer population. Data was collected using a survey assessing symptoms of depression, anxiety, stress, problem drinking, substance abuse, and deteriorating mental health. The survey also inquired about satisfaction with life, work relationships, law practice, and inquired into potential occupational and personal risk factors.

The research team is in the process of analyzing the data, looking for incidents of clinical well-being outcomes like mental health and substance use concerns. Additionally, we are analyzing the relationships between these outcomes and modifiable personal and occupational factors. Preliminary data analysis suggest that meaningful problems exist among practicing lawyers in Utah. These concerns include:

- 44.4% of responding lawyers reporting feelings of depression
- 10.5% reporting prior drug abuse
- 48.7% reporting some level of burnout
- Lawyers in the study being 8.5 times more likely to report thoughts of being "better off dead or hurting themselves" as compared to the general working population

When considered in terms of the magnitude of risk, this data tell us that if you are a lawyer in Utah you are more likely to experience one or more of these concerns. One of the most concerning is the magnitude of risk for suicidal ideation noted above. An odds ratio with a magnitude of 8.5 is on par with the risk of lung cancer among smokers.

The preliminary data isn't all grim. It also highlights areas where lawyers are doing well, showing a majority of participating attorneys having a moderate (46%) or high (46%) level of job satisfaction, as can be seen in the figure below.



We are still analyzing data to help explain these initial findings. There are several trends in the responses that are interesting. When lawyers were asked to share what aspects of their job help them to do well or thrive at work, the following top four response trends showed up:

- Collaboration/Enjoy working with others
- Creativity/ Intellectual challenge
- Flexible work schedule, ability to do other things
- Knowing that my contributions are valued

Conversely, when asked to share what aspects of their job prevented them from doing well or thriving at their job, we received the following top five response trends:

- Actions of other attorneys at my firm
- Billable hour requirement
- Client stress/pressure
- Frustrations with opposing counsel
- Inflexible court deadlines

The study is ongoing, and there is still much work to do to understand these results and what elements of the practice of law in Utah are either contributing to or harming lawyer well-being. We are hopeful that we are heading toward an identification of these things as well as the areas where a targeted intervention may help improve attorneys' mental well-being and have a subsequent impact on their productivity. In the meantime, we recommend taking advantage of the well-being education and resources offered through Utah's Well-Being Committee for the Legal Profession.

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Why Can't I Self-Check Out My Percocet?:
Evaluating Current Drug Pricing Proposals through the Lens of the Opioid Crisis

by Cami Schiel, RN, JD, MBA

A PwC Health Research Institute study found that prices, and not utilization, are pushing up healthcare costs. *Medical cost trend: Behind the numbers 2020*, PwC Health Res. Inst., 42 (June 2019) *available at* https://www.pwc.com/us/en/industries/health-industries/assets/pwc-hri-behind-the-numbers-2020.pdf.

One of the highest price categories is prescription drugs. *Id.* In 2019, drug companies raised the prices of over 3,400 drugs at an average rate of 10.5%. Aimee Picchi, *Drug prices in 2019 are surging, with hikes at 5 times the rate of inflation*, CBS News (July 1, 2019), *available at* https://www.cbsnews.com/news/drug-prices-in-2019-are-surging-with-hikes-at-5-times-inflation/. That's five times the rate of inflation. *Id.* Rx Savings Solution reports that near forty-one drugs have boosted prices by over 100%. *Id.* Politicians have proposed solutions to reign in these out-of-control prices.

CURRENT DRUG PRICING PROPOSALS

Elijah E. Cummings Lower Drug Costs Now Act of 2019.

This bill recently passed in the House would:

- Permit the Centers for Medicare and Medicaid Services (CMS) to negotiate prices for as many as 250 of the most expensive drugs, including insulin, for Medicare Part D, something currently prohibited by law.[1] H.R.3, 116th Cong. (2019). CMS could impose hefty monetary penalties if drug manufacturers refuse to negotiate. *Id.*
- The negotiated price may not exceed 120% of the average price in Australia, Canada, France, Germany, Japan, and the United Kingdom. *Id.* Other countries pay sometimes a half or a third of what the U.S. pays for certain drugs, such as the patented Humira, that don't yet have a generic version competing for market share. Selena Simmons-Duffin, *How An 'International Price Index' Might Help Reduce Drug Prices*, NPR (Sept. 19, 2019), *available at* https://www.npr.org/sections/health-shots/2019/09/19/762435585/how-an-international-price-index-might-help-reduce-drug-prices.
- Require drug companies to rebate any price increases that exceed inflation. Congress.gov *supra*.
- Limit out-of-pocket drug spending for Medicare beneficiaries. *Id.*
- Require drug companies to offer the prices negotiated by HHS to all commercial plans. *Id.*

Prescription Drug Pricing Reduction Act.

This bill recently approved by the Senate Finance Committee is very similar and, among other things, would:

- Focus on lowering prices of drugs that face minimal competition.
- Establish a new $3,100 out-of-pocket cap on drug spending for Medicare Part D plans, effectively limiting what patients would be charged for their drugs and eliminating the "donut hole." Loren Adler, Paul B. Ginsburg, & Steven M. Lieberman, *Understanding the bipartisan Senate Finance prescription drug reform package*, Brookings (Oct. 3, 2019), *available at* https://www.google.com/amp/s/www.brookings.edu/blog/usc-brookings-schaeffer-on-health-policy/2019/10/03/understanding-the-bipartisan-senate-finance-prescription-drug-reform-package/amp/.
- Require manufacturers to rebate drug prices in Part D and Part B plans that grow faster than inflation.

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- Change federal reinsurance from 80% to 20% for brand name drugs and 40% for generic drugs, thereby incentivizing plans to shift usage to less costly alternatives.

- Eliminate "spread pricing" that lets Pharmacy Benefit Managers (PBMs) retain a large portion of the drug payments by limiting PBMs' ability to mask a source of their revenue.

- Establish "Drug Pricing Dashboards" through which the public can review drug spending and utilization information.

Foreign Importation of Pharmaceuticals.

Some politicians have championed foreign importation of drugs to introduce competition and push prices downward. They claim these drugs are identical to those in America, but sell for 50, 60, or 70% lower abroad. Thomas Barrabi, *Trump to Florida: Go to Canada to import cheaper prescription drugs*, Fox Bus. (Nov. 26, 2019), *available at* https://www.foxbusiness.com/politics/trump-florida-prescription-drug-plan-canada. However, not all foreign drugs have the same identifying marks on the individual pills and shipping cases that match our databases here in the United States, so this legislation would have to also provide protections for counterfeit drugs. Adam J. Fein & Dirk Rodgers, *State drug importation laws undermine the process that keeps our supply chain safe*, Stat News (July 11, 2019), *available at* https://www.statnews.com/2019/07/11/state-drug-importation-laws-undermine-supply-chain-safety/.

Price Transparency.

Some efforts have been made to require drug companies to include prices in their television ads, with limited success. *Id.*

Profit Ratios.

Medical Loss Ratio regulation targets health insurers and requires them to rebate any profits that exceed a specific threshold back to consumers. This guardrail limits the amount they can spend on marketing, administrative expenses, and profits while promoting transparency and allowing for some profits. Rachel Fehr & Cynthia Cox, *Data Note: 2019 Medical Loss Ratio Rebates*, Kaiser Family Found. (Sept. 10, 2019), *available at* https://www.kff.org/private-insurance/issue-brief/data-note-2019-medical-loss-ratio-rebates/. In 2019 the total rebates reached nearly $1.3 billion. *Id.* If applied to the pharmaceutical industry, especially for drugs still under patent, similarly substantial rebates might be possible and would also allow pharmaceutical companies to make a profit, unlike a strict price cap. Yet some adjustment is required given drug companies' enhanced ability to manipulate expenses.

Evaluating the effectiveness of these proposals requires understanding why drug prices rise virtually unrestrained in the first place. Interestingly, the opioid crisis illustrates some of the abnormal market factors that contribute to lofty drug price hikes. Analyzing the opioid crisis provides insight into the drug market and thus the potential effectiveness of these drug pricing proposals.

OPIOID CRISIS

In the late 1990s drug manufacturers claimed that opioids were not addictive. *Opioid Overdose Crisis*, Nat. Inst. on Drug Abuse (Jan. 2019), *available at* https://www.drugabuse.gov/drugs-abuse/opioids/opioid-overdose-crisis. Thus, healthcare providers began to prescribe them at increasing rates for pain. *Id.* However, in reality, these substances were highly addictive and their increased distribution eventually led to widespread diversion and misuse before their addictive nature could be fully recognized. *Id.* In 2017, President Trump officially declared the opioid crisis a public health emergency. *Ending America's Opioid Crisis*, The White House, *available at* https://www.whitehouse.gov/opioids/. A 2018 cost estimate of the opioid crisis was over $1 trillion through 2017; this is estimated to increase by $500 billion by 2020. *Economic Toll of Opioid Crisis in U.S. Exceeded $1 Trillion Since 2001*, Altarum (Feb. 13, 2019), *available at* https://altarum.org/news/economic-toll-opioid-crisis-us-exceeded-1-trillion-2001. This includes the costs of lost productivity, addiction treatment, healthcare, and criminal justice involvement. The U.S. Bureau of Labor and Statistics notes that unintentional overdoses at work increased 25% between 2016 and 2017. Dep't of Labor, *National Census of Fatal Occupational Injuries* (Dec. 18, 2018), *available at* https://www.bls.gov/news.release/pdf/cfoi.pdf. Utah is above average for opioid deaths – in 2017 Utah's rate of deaths was 15.5

per 100,000 persons; the national average was 14.6. *Utah Opioid Summary*, NAT'L. INST. ON DRUG ABUSE (Mar. 2019), *available at* https://www.drugabuse.gov/opioid-summaries-by-state/utah-opioid-summary. While state-wide efforts have started reversing this trend of death, this loss of human life and potential is immeasurable. *Id.*

Understanding how the "opidemic," and by extension prescription drug prices, have reached such crisis proportions requires understanding the nature of the pharmaceutical industry. In general, the pharmaceutical industry lacks many forces that facilitate free market competition.

PERFECT COMPETITION

In a theoretical perfect competition, multiple sellers offer a product to multiple buyers while price and product information is freely and symmetrically available to each participant. *Perfect Competition*, INVESTOPEDIA, *available at* https://www.investopedia.com/terms/p/perfectcompetition.asp. No market has perfect competition, but one that comes close is supermarkets. *Id.* Supermarkets generally offer a variety of similar products, all clearly price-marked (price transparency) and easily researchable (information symmetry). *See id.* In order to purchase any of the products, from tomatoes to bleach, all a buyer must do is walk into the store, observe and compare prices of various products, take one off the shelf, and pay for it at the checkout stand. Prices and product information are similar and transparent, and the buyer can act independently. All of these perfect competition aspects manage affordability, making a grocery store's products accessible to just about everyone.

OPIOID MARKET

The drug market, specifically the opioid drug market, lacks all of these perfect market factors. There is limited price transparency and comparison, information is not freely available for all, and buyers have fairly inconsequential market power.

Limited Price Transparency

Unlike prices in a grocery store, drug and hospital prices are not transparent, other than perhaps an insurance copay. Patients rarely see the total price until after they have bought everything in their proverbial grocery cart.

Partly, this is because not even providers know ultimate costs ahead of time. Services such as surgeries and the subsequent opioid pain management are not advertised because the hospital does not know ahead of time how much medication and care each patient will need. The surgery and medication doses will be individualized down to the weight and medical conditions of the patient. Pain medications (be it IV Fentanyl or Dilaudid in surgery or oral Flexeril or Percocet after surgery)

affect each patient differently and their effectiveness depends on many factors outside the healthcare providers' control. Furthermore, if the patient has complications during surgery, perhaps an unknown drug allergy, or unusually large kidney stones, or even if the patient takes a long time to wake up and is overly nauseous, she may accrue substantial additional costs. It is next to impossible to tell a patient exactly how much their surgery or medications will cost ahead of time.

Compounding this is that the payment plans with incentives that push prices down are the outcome-based plans, where payment depends on the quality of care provided and the state of the patient after care is provided.[2] By definition, the amount charged per patient cannot be determined until *after* the care is provided. Thus, forecasting prices is virtually impossible.

Furthermore, physicians rarely discuss every medication and associated price – often because they themselves are usually unaware. The hospital manages prices of medications in the hospital, not providers. During surgery patients are completely unaware of the medications administered by the anesthesiologist, much less consent to and price compare each one on an individual basis. Providers go to years of schooling to understand and appropriately prescribe medications; a quick doctor's visit or pre-op discussion may not be enough time to discuss each medication's purpose and price. Price transparency for hospital procedures is extremely difficult.

Even in an outpatient setting, price transparency is difficult. When a patient wants to fill a post-surgical opioid prescription, the patient will rarely find the price on a website, or even by calling the pharmacy. The answer is all too often, "it depends on your insurance." Pharmacies often do not and cannot post prices of these prescriptions, because two different patients can walk out of the pharmacy with the exact same prescription paying two different prices. A person's copay may be the only consistent instance of price transparency for medications, one the insurer advertises to the patient at the initiation of the plan. Yet this copay is only a fraction of the true cost of the medication.

The largest barrier to price transparency in the pharmaceutical industry is insurance. The total price paid by the insurance company will depend on the complex drug formulary arrangement between the insurer, pharmacy, and drug manufacturer; the deductible size; and many other variables. Laura Entis, *Why Does Medicine Cost So Much? Here's How Drug Prices Are Set*, Time (Apr. 9, 2019), *available at* https://time.com/5564547/drug-prices-medicine/. The patient is notably excluded from these negotiations. And the insurers themselves may not know ahead of time how much they will charge the patients for the cost of care. With enormous variety of contracts between suppliers, doctors, nurses, lawyers, IT staff, and drug manufacturers a hospital's expenses may not be practically calculatable ahead of time for the hospital to know the price. Even more variable is the expected income. The amount charged to private insurance will be affected by the mix of Medicaid, Medicare, and private payers over a period of time. In fact, healthcare's complex reimbursement arrangements, such as per diem and percentage reimbursement, bundled payments, and particularly value-based payment models mean that hospitals don't know how much income they'll receive or retain until after patients' outcomes are known. *See generally* Complaint, *Am. Hospital Assoc. et al. v. Azar*, No. 1:19-cv-03619 (D.D.C. Dec. 4, 2019), *available at* https://www.aha.org/system/files/media/file/2019/12/hospital-groups-lawsuit-over-illegal-rule-mandating-public-disclosure-individually-negotiated-rates-12-4-19.pdf%20.pdf. This makes forecasting prices next to impossible. In fact, hospitals argue that the manpower and coordination required to gather and advertise rate information, as required in the recent proposed HHS rule, constitutes a "substantial burden" and will "overwhelm many hospitals," which increases costs. *Id*. Consequently, if hospitals don't know their costs, it is impossible for the patients. This information asymmetry in healthcare significantly cripples normal buyer power.

Limited Price Comparison

Without price transparency, price comparison is impossible. Unlike mom scanning over the prices of laundry detergent until she finds the one that fits her budget, patients cannot survey the opioid aisle until they find the generic pain pills. Moreover, price comparison for many parts of healthcare is almost unethical. Few persons would stop a surgery or emergency medical attention to price compare drugs – and they literally have no power to do that when they are under sedation. And when price comparison tools do exist, they are rarely used (3% of consumers). Shelby Livingston, *Is the Price Right? Solving Healthcare's Transparency Problem*, Mod. Healthcare, *available at* http://www.modernhealthcare.com/reports/achieving-transparency-in-healthcare/#!/. When they are used, patients frequently pick the pricier care that signals higher quality. *Id*.

And again, insurance frustrates price comparison. An insurer-determined copay negates the need to compare prices at different pharmacies if every pharmacy will just charge the insurer's same copay. And if a certain hospital is "out-of-network" it doesn't matter how much that hospital advertises its reduced prices; patients can rarely afford to pay to go out of their insurance network. And advertising prices to consumers may actually have unintended consequences. For example, healthcare systems could reduce prices of drugs and care in shoppable services (colonoscopies, knee scopes, MRIs, etc.) but make up the difference by raising the prices of more emergent care – such

as ER visits or ICU hospitalizations. Thus, advertising hospital prices may not have the desired price-reducing effect.

For patented drugs, price comparison isn't even an option – there is no generic competition with which to compare. By their very design, patents exclude competition from other sellers in order to recoup research and development costs. The manufacturers of these patented drugs, more than any others, hold monopoly power and can engage in price gouging.

Overall, the nature of healthcare services, insurance companies, and drug patents all severely limit a patient's ability to price compare this industry's products and drastically weaken the buyer power in the healthcare market.

Information Asymmetry

The opioid crisis stems heavily from the information asymmetries that are inherent in our healthcare system. Information asymmetry is where either the buyer or seller has significantly more information regarding the product or demand.

Patients' Information

Pain is subjective. Each individual quantifies and exhibits pain differently, and this is not always communicated to prescribers. Pain may have various causes and can be physical or emotional. The twenty or so percent of the population suffering with chronic pain often depend on pain medications to function and thus build up tolerances and require larger doses during surgery compared to the average patient. Nell Greenfieldboyce, *How To Teach Future Doctors About Pain in the Midst of the Opioid Crisis*, NPR (Sept. 11, 2019), *available at* https://www.npr.org/sections/health-shots/2019/09/11/756090847/how-to-teach-future-doctors-about-pain-in-the-midst-of-the-opioid-crisis. A prescriber cannot always tell a patient's true motivation for an opioid prescription, be it physical pain, euphoria, or escape from emotional pain like guilt or isolation. Only the patient knows.

Prescribers' Information

Patients can only (legitimately) obtain opioids with a prescription from a licensed provider. Opioids are indicated for a variety of reasons, yet prescribers have access to other resources that may be more effective and less addictive than opioids.

Tylenol (acetaminophen), Advil (ibuprofen), and other non-steroidal anti-inflammatory drugs (NSAIDs), work well at managing more minor pain, such as a sprained ankle, or even some surgeries. Ice and elevation of an operated limb also reduce swelling and pain, occasionally more effectively than opioids.

Opioids help significantly following back and brain surgeries, however, muscle relaxants such as Flexeril (cyclobenzaprine) and Robaxin (methocarbamol), or even benzodiazepines such as Valium (diazepam), can also significantly reduce pain – especially when prescribed with opioids. However, concurrent usage has also increasingly been linked to opioid-related deaths. Nat'l Inst. of Drug Abuse, *Overdose Death Rates* (Jan. 2019), *available at* https://www.drugabuse.gov/related-topics/trends-statistics/overdose-death-rates. Benzodiazepines are also highly addictive, and the withdrawal symptoms can be lethal. Long term use of opioids and/or benzodiazepenes is not recommended, given that chronic pain can frequently be managed with other alternatives. Neurontin (gabapentin) and Lyrica (pregabalin) target nerve pain. Methotrexate and Adalimumab (Humira) address arthritis. Oxybutynin and phenopyrazidine help bladder and urinary tract pain. Effective migraine cocktails often include caffeine. Diathermy and massage can help deep tissue pain. Human connection and therapy can get to the root of emotional pain. Yet despite all these options, sometimes only opioids can manage chronic foot wounds or bed sores and so providers prescribe them. Yet all this nuanced information is not readily ascertainable to the general public – one of the reasons why patients see doctors.

But even prescribers may not know about alternative therapies and will write inappropriate prescriptions for opioids. One study showed that those who sprain their ankle and go to the ER have a 25% chance of leaving with an opioid prescription, something that might more appropriately be treated with NSAIDs, ice, and elevation. Jamie Ducharme, *A New Study Shows Just How Much Doctors Prescribe Opioids*, Time (July 28, 2018), *available at* https://time.com/5351906/opioid-prescritions-sprained-ankles/. In fact, about a decade ago U.S. medical schools were providing less than an hour of opioid-related instruction on average. *See* Greenfieldboyce, *supra*. This fuels the question, what do doctors and other professionals actually understand about opioids?

Other Professionals' Information

While prescribers play an important role in managing pain, sometimes the administration of opioids can be spread out among the other professionals. Not every prescriber receives education on the vast array of pain management options. Nor do prescribers always monitor patients after pain medication administration to evaluate effectiveness – that usually falls on nurses or family members. And prescribers' understanding of effectiveness of a medication is usually dwarfed by that of the pharmacist, whose training concentrates on drugs, their interactions, and their effectiveness. Additionally, anesthesiologists, whose main role is to manage sedation and pain, are easily forgettable as a main source of opioid prescriptions. Similarly, rheumatologists specialize in pain in joints, muscles, ligaments, bones, etc. including arthritis, and may also contribute to the administration of opioid prescriptions. *See Rheumatology*, Univ. of Utah Healthcare, *available at* https://healthcare.utah.edu/rheumatology/. Interestingly, dentists are the main prescribers of opioids for individuals aged ten to nineteen years. Nora D. Volkow & Thomas A. McLellan, *Characteristics of Opioid Prescriptions in 2009*, JAMA (Apr. 6, 2011), *available at* https://jamanetwork.com/journals/jama/fullarticle/896134. Yet, sometimes these professions are forgotten in the opioid crusade. Pain management information is spread out among the medical professionals, making it even harder for patients to access.

Drug Manufacturers' Information

The current nation-wide opioid litigation hinges on the idea that drug manufacturers had information regarding the safety and addictive properties of opioids that they failed to share with prescribers. Attorneys general from around the nation, together with advocates and doctors, claim that pharmaceutical companies intentionally spent tens of millions of dollars downplaying addiction concerns, marketing exaggerated benefits of their opioid prescriptions, and lobbying doctors to increase prescriptions. Nicole Fisher, *Opioid Lawsuits on Par to Become Largest Civil Litigation Agreement in U.S. History*, Forbes (Oct. 18, 2018), *available at* https://www.forbes.com/sites/nicolefisher/2018/10/18/opioid-lawsuits-on-par-to-become-largest-civil-litigation-agreement-in-u-s-history/#1b83ff8b7fb4. As the researchers and developers of opioids, drug manufacturers are in the best position to understand a drug, its effects, its effectiveness, its addiction potential, and much more information. Prescribers can spend time searching for this information. However, it is hard for providers to counter the manufacturers' substantial marketing and promotion budgets.

Ultimately, information is spread out among many sources and the resulting information asymmetry skews the drug market.

Very Limited Buyer Power

In the opioid market, sellers and middlemen wield significantly greater power than consumers.

Addictive Nature of Opioids Limits Buyer Power

Some basic understanding of the addictive nature of opioids has always been apparent to healthcare providers – which is why opioids are controlled substances. Between 21 and 29% of patients given an opioid prescription for chronic pain misuse the opioids. Opioid Overdose Crisis, *supra*. Startlingly, adolescents have a 33% increased risk of opioid abuse than adults. Richard Meich et al., *Prescription Opioids in Adolescence and Future Opioid Misuse*, Am. Acad. of Pediatrics (Nov. 2015), *available at* https://pediatrics.aappublications.org/content/136/5/e1169.

Once addicted to opioids, many are willing to pay steep prices and go to great lengths to obtain narcotics. Out of desperation, addicts may isolate, even engage in criminal behavior to obtain more opioids. Johns Hopkins Med., *Signs of Opioid Abuse*, *available at* https://www.hopkinsmedicine.org/opioids/signs-of-opioid-abuse.html. While the level of criminal desperation may be limited to opioids, other medications (insulin, heart meds, anti-rejection meds) are just as necessary for survival and tip the power further in the hands of the drug makers. The consequences from refraining from tomatoes are not nearly as serious as refraining from opioids and insulin. Thus, buyers have little, if any, power to refrain from participation in the drug market.

Complex System Limits Buyer Power

Opioid buyers do not legitimately buy directly from opioid sellers. Several players intervene before a patient may purchase an opioid prescription. Unlike the grocery store, a patient may not just walk into a pharmacy, compare the generic hydromorphone with the branded Dilaudid, grab one, and whisk it out the door via the self-check-out stand.

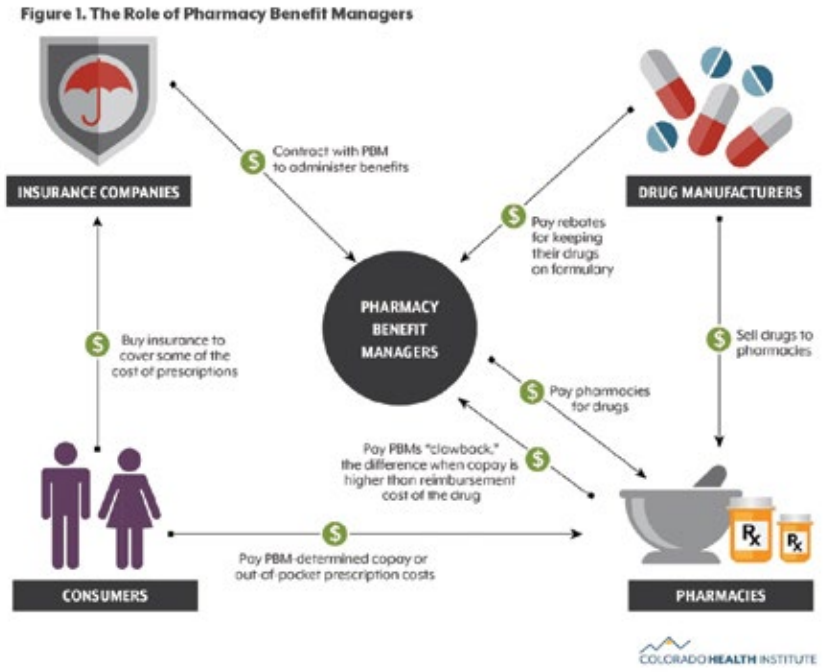
The Insurer: Perhaps the most important player is the insurance company. The insurer often determines preferred providers within a network. The insurer contracts with providers who write prescriptions, pharmacies who sell drugs, pharmacists who dispense the drugs, and the hospitals with the nurses who administer the drugs. This complexity is necessary for safety but leaves much of the price negotiation and decision-making far outside the reach of the patient.

Insurers take steps to lower drug prices, yet even their hands are tied. By law, the Secretary of Health and Human Services (including Medicare Part D drugs) is prohibited from negotiating the prices of medications with drug companies.

Insurers can get creative. For example, insurance companies have adopted strategies to address the opioid crisis through "utilization management" rules of quantity limits, step therapy, and prior authorization. John Hopkins Bloomberg Sch. of Pub.Health, *Health Insurance Plans May Be Fueling the Opioid Epidemic*, *available at:* https://www.jhsph.edu/news/news-releases/2018/health-insurance-plans-may-be-fueling-opioid-epidemic.html. Quantity limits restrict the number of pills that a pharmacy may dispense – usually a thirty-day supply. However, the CDC recommends a shorter supply since the likelihood of addiction and chronic use are associated with the duration of early prescriptions. *Id.* "Step therapy" refers to only prescribing opioids after attempting less addictive and risky alternatives, like NSAIDs. *Id.* However this is rare among insurance plans, possibly because patients usually attempt those alternatives before scheduling expensive doctor's appointments. "Prior authorization" requires a prescriber to contact the insurer and obtain approval before the insurer will pay for a medication. *Id.* While the impact of these utilization management tools is unclear, they illustrate the myriad ways insurers may interfere with the buyer-seller relationship.

Pharmacy Benefit Managers: As a background, pharmacy benefit managers (PBMs) are "giant buying networks" of payers and employers. John Arnold, *Are pharmacy benefit managers the good guys or bad guys of drug pricing?*, Stat News (Aug. 27, 2018), *available at* https://www.statnews.com/2018/08/27/pharmacy-benefit-managers-good-or-bad/. They use their substantial

buying power in aggregate as demand leverage in the drug market to lower costs for their buyers. *Id*. While the buyers' net price is often lower than the list price (the price set by the drug manufacturer) after the PBMs finish negotiating, the opaque nature of PBMs poses some problems, specifically, how much they actually lower drug costs. *Id*.



Courtesy of: Colorado Health Institute
https://www.coloradohealthinstitute.org/research/understanding-pharmacy-benefit-managers

PBMs' profits come from fees from the buyers, retained rebates from drug manufacturers, and pharmacy "spreads," or the difference between what the insurer pays them and what they pay the pharmacy. *Id*. Insurers claim that PBMs are not passing enough rebate revenue back to the payer clients – keeping up to 26% of the list price.[3] *Id*.

Unlike at a supermarket, the (legitimate) opioid market lacks price transparency and comparison, is heavily burdened by information asymmetries, and buyers have little, if any, buying power. The opioid market is not a normal market. Consequently, solutions to the opioid crisis must extend beyond normal market solutions.

OPIOID CRISIS SOLUTIONS FOR UTAH ATTORNEYS

Promote an Awareness of Resources

Naloxone (Opioid Overdose Antidote)

Naloxone reverses opioid overdose. *Id*. Utah has a standing order for naloxone prescriptions, meaning anyone may obtain it from a pharmacy without a prescription. *Id*. If a pharmacy does not have naloxone in stock they usually have the ability to order it. *Id*. Law firms might consider keeping some on hand for attorneys or clients with known substance abuse problems. If a lawyer's client or family member has a known substance abuse problem the lawyer may consider encouraging the family to purchase naloxone. Employers may consider including naloxone in their insurance benefits. Without insurance coverage the cost of naloxone may be anywhere between $50–$200. *Id*. The only side effect to naloxone is opioid withdrawal, which may include fast heartbeat, aggression, high blood pressure, and pain. *Id*. Naloxone wears off after about thirty to ninety minutes, so another dose may be required, which is why it is important to stay with a person experiencing an overdose. *Id*.

The University of Utah's Comprehensive Crisis Program

The University of Utah recently received a federal grant to provide opioid addicts with evidence-based care. Instead of emergency room providers leaving addicts to follow up with their primary care doctor in a few weeks, this grant allows ER providers to give an immediate prescription for buprenorphine to treat opioid withdrawal symptoms and schedule a guaranteed appointment at the University Neuropsychiatric Institute (UNI). Users are paired with a case manager and a peer support coach who has successfully overcome addiction. UNI then provides thirty days of free treatment. At the conclusion of treatment, UNI contacts a community partner for housing and other community resources. This comprehensive and collaborative approach has been shown to meet addicts' needs and drastically reduce opioid usage of addicts and long-term sobriety. Utah Office of the Att'y Gen., *U of U Emergency Opioid Use Disorder Program* (Oct. 25, 2019), *available at* https://attorneygeneral.utah.gov/tag/opioid-epidemic/. This approach should be promoted so that additional grants can increase this program's availability at other locations.

Alternatives to opioid medications

There are a wide variety of pain management options. Reach out to pain management clinics, specialists, rheumatologists, pharmacists at your local pharmacy, and others if you are dealing with chronic pain; opioids may not be the best option. Furthermore, engage other professionals in opioid-crisis discussions. Other activities such as stretching, exercise, acupuncture, diathermy, and dieting may also alleviate pain.

Reduce the Infusion of Opioids in the Community

Utah's yearly Take Back Day amasses tens of thousands of pounds of unneeded prescription drugs. Utah Office of the Att'y Gen., *Utah! Take back your unused drugs on April 27th* (Apr. 19, 2019), https://attorneygeneral.utah.gov/tag/utah-take-back/. Physicians should be encouraged to limit the quantity prescribed. Patients should be encouraged to limit filling prescriptions if they don't need them, and then discard them appropriately.

Therapy

GE Appliances reported that making behavioral health services more available decreased opioid prescriptions. PwC Health Research Inst., *supra* at 15. Law firms can provide and encourage therapy and other behavioral health services to employees. Firms can also invest thought and money into simple process improvements that reduce workload and stress – even as simple as improved communication and coordination. Attorneys can encourage their clients to get therapy when needed. Attorneys can also set aside time (as minimal as five minutes a day) for relaxation or mindfulness exercises to help cope with heavy workloads.

Counsel clients

Warn against dangers of chronic opioid use

As a general rule, if you're not in pain, don't take opioids. Unlike antibiotics, it is not necessary to finish an entire prescription of opioids. These are only to be taken if needed. In fact, opioids should ideally be reserved for pain that limits mobility and usual daily activities.

Signs of an Overdose

Opioids inhibit the natural drive to breathe and an overdose results in a lack of oxygen to the brain and other vital organs. This may result in brain damage and even death. If friends or family members see these symptoms call 911, check for breathing and pulse, administer naloxone if available, perform rescue breathing, and place the individual on their side. *Signs and Symptoms of an Overdose*, Stop the Opidemic, *available at* https://www.opidemic.org/overdose/.

Protection from Liability

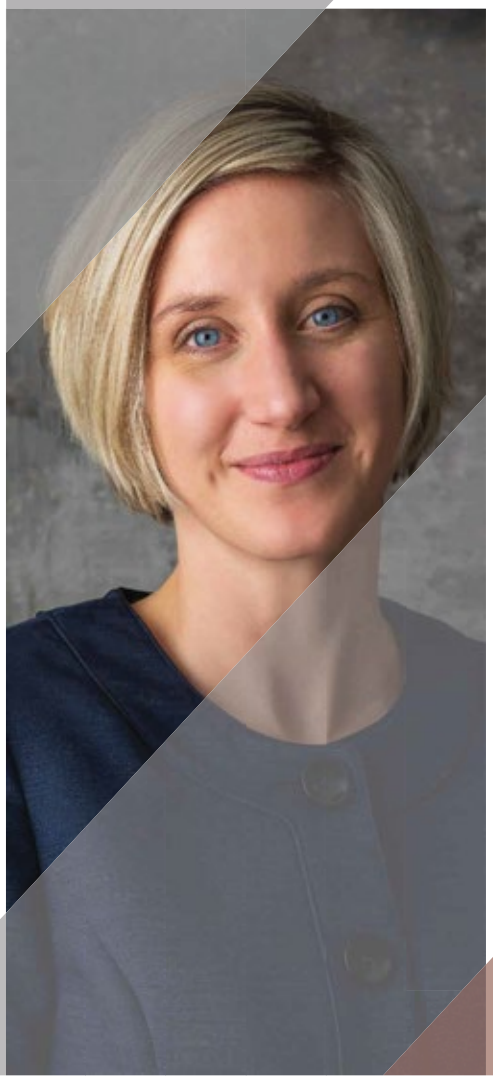
Utah law protects an individual who calls 911 from legal charges concerning the person who has overdosed, the overdose, and any side effects, provided the individual stays with the overdose victim and cooperates with responding medical providers and law enforcement providers. Utah Code Ann. § 58-37-8(16)(a). Furthermore, drug possession has been changed from a third-degree felony to a Class A misdemeanor, significantly reducing the chances that reporters of overdoses will be arrested. *Signs and Symptoms of an Overdose, supra*.

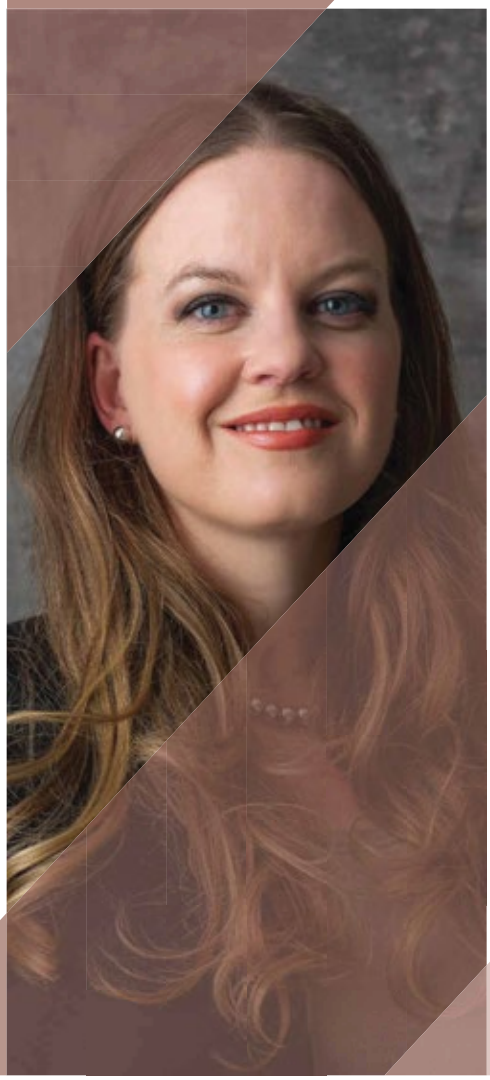
DRUG PRICING SOLUTIONS

Like solutions for the opioid crisis, solutions to skyrocketing drug prices must extend beyond normal market forces in order to sufficiently counter the titan pharmaceutical seller power. While price transparency and foreign competition may be helpful in some instances, they will not be sufficient to increase drug affordability as a whole. As long as insurance plays such a large role in healthcare, only efforts that give insurers more buying power will have any real sway over drug makers. At the very least, Medicare should be permitted to negotiate with drug manufacturers – which will only work if Medicare has some teeth in the fight, such as threatened price ratios or caps. Out-of-pocket maximums should be reduced. Incentives should be aligned, like in the Senate's bill, so that drug manufacturers get higher reimbursement for cheaper drugs. Reforms should anticipate drug makers and PBMs gaming the system and somehow constrain them – including the PBM "spreads." And drug pricing proposals should focus on those drugs most at risk of being exploited – such as the patented drugs with no competition.

Ultimately, solutions exist to both the opioid and drug pricing crises, but they must extend beyond normal market forces since these are not normal supermarkets.

1. Li Zhou, *House Democrats just introduced an ambitious plan to take on prescription drug prices*, Vox (Sept. 19, 2019), *available at* https://www.vox.com/ 2019/9/19/20856948/house-democrats-prescription-drug-prices.
2. Bryan Oshiro, *The Top Success Factors for Making the Switch to Outcomes-Based Healthcare*, Health Catalyst (May 17, 2016), *available at* https://www.healthcatalyst.com/Outcomes-Based-Healthcare-Top-Success-Factors.
3. Aaron Vandervelde & Eleanor Blalock, *The Pharmaceutical Supply Chain: Gross Drug Expenditures Realized by Stakeholders*, Berkeley Research Gr., 13 (Jan. 2017), *available at* https://www.thinkbrg.com/media/publication/863_863_Vandervelde_PhRMA-January-2017_WEB-FINAL.pdf.





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Appellate Highlights

by Rodney R. Parker, Dani Cepernich, Robert Cummings, Nathanael Mitchell, Adam Pace, and Andrew Roth

Editor's Note: *The following appellate cases of interest were recently decided by the Utah Supreme Court, Utah Court of Appeals, and United States Tenth Circuit Court of Appeals. The following summaries have been prepared by the authoring attorneys listed above, who are solely responsible for their content.*

UTAH SUPREME COURT

Castro v. Lemus, 2019 UT 71 (Dec. 19, 2019)

Hinkle v. Jacobsen, 2019 UT 72 (Dec. 19, 2019)

Olguin v. Anderton, 2019 UT 73 (Dec. 19, 2019)

Mackley v. Openshaw, 2019 UT 74 (Dec. 19, 2019)

Under Utah's Uniform Parentage Act ("UUPA"), Utah Code Ann. § 78B-15-204(1)(a), a man is presumed to be the father of any child born during the course of his marriage to the child's mother. A series of companion cases recently issued by the Utah Supreme Court – *Castro v. Lemus*, *Hinkle v. Jacobsen*, *Olguin v. Anderton*, and *Mackley v. Openshaw* – dealt with the standing of an alleged father to challenge this presumption and establish his own paternity.

Castro, the lead opinion, reviewed the dismissal of an alleged father's challenge to the presumed paternity of a child conceived during a period of separation between the child's mother and the presumed father. Under *R.P. v. K.S.W.*, 2014 UT App 38, 320 P.3d 1084, such a challenge could only be raised by the presumed father or the child's mother. The Castro court unanimously overruled *R.P.*, holding instead that **the UUPA unambiguously grants standing to an alleged father to establish his own paternity, even where the child at issue has a presumed father.**

Noting constitutional challenges raised in each of the companion cases, the Castro court observed that any contrary interpretation "raises questions as to the UUPA's constitutionality." Thus, even if the UUPA were ambiguous as to the standing of an alleged father, the canon of constitutional avoidance would demand the same result.

Timothy v. Pia Anderson Dorius Reynard Moss 2019 UT 69 (Dec. 16, 2019)

The supreme court "granted certiorari in this case to address whether a law firm that deposited funds from a client into its trust account is a 'transferee' under the" Uniform Fraudulent Transfer Act. The court of appeals had answered the question in the negative. The supreme court, however, did not reach the issue because while the appeal was pending, the petitioners allowed the judgment from the trial court to expire. **Upon expiration of the judgment, the plaintiffs no longer had a right to payment under the judgment, thereby depriving them of status as a creditor, which is required for a UFTA claim.** Because the judgment expired prior to the court of appeals issuing its opinion, the supreme court vacated the court of appeals' decision as well.

UTAH COURT OF APPEALS

Howe v. Momentum LLC, 2020 UT App 5 (Jan. 3, 2020)

In this interlocutory appeal, the defendant climbing gym appealed the denial of its motion for summary judgment. The court of appeals held the district court did not abuse its discretion in denying the defendant's motion, which was based in part on a challenge to an expert's qualifications. The court held that **the expert's "training as a professional engineer with experience in 'forensic engineering and accident analysis in recreational settings,' 'slip and fall accident analysis,' and 'warnings, design, and standard of care issues' qualifies him to assist the finder of fact in making a determination of the standard of care in the indoor-climbing industry," despite the lack of any training or experience with indoor climbing gyms.**

Case summaries for Appellate Highlights are authored by members of the Appellate Practice Group of Snow Christensen & Martineau.

First Interstate Fin. LLC v. Savage
2020 UT App 1 (Jan. 3, 2020)

This appeal resulted from the dismissal of a legal malpractice case based upon the running of the statute of limitations. First Interstate alleged that Savage failed to identify as trial exhibits 19,000 documents necessary for the defense. Although the complaint was filed more than four years after judgment was entered, the court of appeals allowed the case to go forward, holding that **tolling on the basis of concealment does not "necessarily require[e] active concealment by the defendant" and that the reasonableness of the plaintiff's actions under the circumstances must be considered.** Because First Interstate pled that Savage remained as its attorney in another case, among other things, the court reversed and remanded for further proceedings.

Pioneer Home Owners Association v. TaxHawk, Inc.
2019 UT App 213 (Dec. 27, 2019)

In this appeal, the court of appeals clarified the application of the "transactional test" used to determine whether claims are the "same claims" for purposes of claim preclusion: **"the relevant question [for claim preclusion] under the transactional test is whether a party could and therefore should have brought a claim at the time the lawsuit was filed, not whether a party could and therefore should have done more before or during its lawsuit to better its claim."** The second case was based on "new and material operative facts sufficient to form a new, distinct transaction."

Chard v. Chard, 2019 UT App 209 (Dec. 19, 2019)

This appeal was the result of the demise of Training Table restaurants in Utah. In the trial court, Stephanie Chard and her father, Kent Chard, filed competing claims relating to corporate control over the restaurants, among other things. Relevant here, Stephanie identified her attorneys, who also represented the company, as witnesses having general "knowledge concerning matters in the pleadings[.]" Based upon the broad disclosure, Kent argued that Stephanie had waived attorney/client privilege. The court of appeals agreed, holding **"[w]hen Stephanie identified her two attorneys as witnesses whom she planned to call at trial to testify about 'matters in the pleadings,' she placed the attorneys' knowledge – about all matters raised in the pleadings – at issue in the litigation[,]" thereby waiving the privilege.**

Peeples v. Peeples, 2019 UT App 207 (Dec. 19, 2019)

This appeal arose from the district court's denial of a mother's petition to modify a stipulated divorce decree to give her sole custody of her daughters. The mother argued that the district court erred by not accepting a lesser showing of changed circumstances, where there decree was stipulated and not adjudicated. In affirming the district court's ruling, the court of appeals reasoned that **the stipulated/adjudicated dichotomy is not entirely binary, and that the stipulated decree in this case was more akin to an adjudicated decree than a non-adjudicated decree, because it was the result of a negotiated agreement after the parties fully and robustly participated in litigation for more than four years.**

Burggraaf v. Burggraaf, 2019 UT App 195 (Nov. 29, 2019)

In this appeal from a divorce decree, the court of appeals held that the district court did not abuse its discretion when imputing income based on a high earnings for several months, declining to use self-employment income as a measure for imputing income, awarding unpaid child support, determining that the majority of student loan debt was husband's separate obligation, and dividing property. **The modest alimony award was vacated, however, because the district court did not consider the husband's obligation to service student loan debt when assessing ability to pay.**

State v. Rivera, 2019 UT App 213 (Nov. 21, 2019)

In this appeal from a conviction for three counts of child abuse, the defendant argued that the district court should have rejected the children-victims' testimony as inherently improbable. The court of appeals **discussed and applied the "inherent improbability exception" articulated in *State v. Robbins*, 2009 UT 23, and *State v. Prater*, 2017 UT 13, and held that the defendant had not satisfied the requirements for the exception, such that the district court could not have reconsidered the victims' credibility.** The defendant had failed to show that one of the three required elements of the exception was present: that there was no corroboration of the victims' testimony.

Raas Brothers Inc. v. Rass
2019 UT App 183, 454 P.3d 83 (Nov. 15, 2019)

In this appeal from the imposition of discovery sanctions, the court of appeals addressed whether documents the plaintiff had submitted to the federal Small Business Association were within the plaintiff's custody and control. Although the holding was based on the particular facts of the case, including the plaintiff's refusal to request the documents after being asked by the defendant and informed that the SBA could not release complete copies absent such a request, **the court provided guidance on the 'possession and control" component of Rule 35. It explained, "Especially in today's world of cloud-based server storage, a party need not have a document in its actual physical possession in order for the document to**

be deemed within the party's control." The court referenced a case from the Territory of Utah, a footnote from a Utah Court of Appeals decision, and federal cases that indicate a document is in a party's possession and control if the party has the legal right to it and could obtain it through a request.

Edwards v. Carey, 2019 UT App 182 (Nov. 15, 2019)

The court of appeals held that **the district court abused its discretion in granting the defendant's motion to dismiss on forum non conveniens grounds, where the district court reduced the degree of deference owed to the plaintiff's choice of forum, and erroneously concluded that the balance of its analysis did not need to strongly outweigh this deference.**

10TH CIRCUIT

Mountain Dudes v. Split Rock Holdings, Inc. 946 F.3d 1122 (10th Cir. Dec. 27, 2019)

In this action under Utah's Fraudulent Transfer Act, a judgment creditor sought to undo the purportedly fraudulent modification of an agreement between the judgment debtor and its successor. After trial, the jury deadlocked and both parties renewed their prior Fed. R. Civ. P. 50(a) motions for judgment as a matter of law under Rule 50(b). The district court granted judgment to the defendants as a matter of law on grounds neither party had raised. On appeal, the Tenth Circuit reversed this ruling and vacated the judgment, **holding that the district court erred in granting judgment as a matter of law on grounds raised *sua sponte*, since Rule 50's structure requires both notice and an opportunity to correct any evidentiary deficiency before judgment can be entered.** Further concluding that neither party was entitled to judgment as a matter of law, the Tenth Circuit remanded for a new trial.

Caballero v. Fuerzas Armadas Revolucionarias de Colombia 945 F.3d 1270 (10th Cir. Dec. 27, 2019)

The Tenth Circuit held as a matter of first impression that **28 U.S.C. § 1963 applies only to registration of federal court judgments in federal courts** – not to state court judgments. Accordingly, the court reversed the district court's judgment registering a Florida state judgment in Utah federal court.

United States v. Rodriguez 945 F.3d 1245 (10th Cir. Dec. 23, 2019)

For the first time in a published decision, the Tenth Circuit held that **a district court assessing a violation of a supervised release during sentencing may consider recidivist enhancements.** In doing so, the Tenth Circuit clarified that the maximum punishment that could have been imposed for the supervised release violation determines the grade for sentencing purposes.

United States v. Leffler, 942 F.3d 1192 (10th Cir. Nov. 19, 2019)

In this appeal of a conviction, the Tenth Circuit analyzed the interplay between the forfeiture and waiver in criminal cases at length. **Because the defendant failed to analyze plain error on an unpreserved sufficiency of the evidence challenge in his opening brief, the Tenth Circuit treated the argument as waived on appeal and declined to exercise its discretion to address the issue.**

Tesone v. Empire Mktg. Strategies 942 F.3d 979, 984 (10th Cir. Nov. 8, 2019)

The district court granted summary judgment on a claim arising under the Americans with Disabilities Act, because the plaintiff failed to timely designate an expert to prove disability. The Tenth Circuit clarified that **the necessity of expert testimony on the issue of disability under the ADA should be considered on a case-by-case basis, depending on the nature of the impairment.** Because the district court did not perform a case-specific analysis, summary judgment was reversed and the case remanded. Left open was the issue of whether, on remand, the district court should consider an unsigned doctor's note when assessing disability.

AFTER THREE DECADES OF SERVICE

ROBERT TINGEY ANNOUNCES RETIREMENT

Robert Tingey has enriched the lives of everyone he's met during his career of more than three decades. He joined the Larry H. Miller (LHM) Group of Companies in 2000 and made significant contributions in guiding and mentoring those around him and solidifying the moral standing of the company, protecting the legal and financial well-being of the company, and assisting in strategic acquisitions that supported and will continue to promote the growth of the LHM Group of Companies.

Thank you, Robert, for giving so much of yourself to us. We delight that your family will now benefit full-time from your matchless devotion. You have our admiration ***ad infinitum.***

Larry H. Miller Group of Companies

Legal Industry Disruption May Be Here: A Primer on Regulatory Reform in Utah

by Keith A. Call

Over the past several years, I have watched with wonder and amazement at how the technology revolution has reformed various industries. Printed newspapers have almost disappeared. Ride sharing services, motorized scooters, and shared vehicles are changing the way we move. Brick and mortar retail stores can scarcely survive without taking full advantage of artificial intelligence and the Internet of Things.

I have often wondered how and when technology will disrupt the legal industry in a major way. Oh, the legal industry has been impacted by technology, for sure. Legal research services (some of them free) have changed the way we research. Artificial intelligence has changed evidence review and handling. Words and acronyms like "e-filing" and "ESI" are part of our everyday vernacular. But we have not yet experienced wholesale industry disruption. *Forbes Magazine* described the impacts of technology on the legal industry as "drip, not disruption." Mark A. Cohen, *Legal Change: Why Drip, Not Disruption?,* FORBES (Apr. 26, 2018), *available at* https://www.forbes.com/sites/markcohen1/2018/04/26/legal-change-why-drip-not-disruption/#40d985911fbf.

That might be about to change. In late 2018, the Utah Supreme Court formed a work group to study ways to foster innovation and increase access to and affordability of legal services. The work group issued a report and recommendations in August 2019. *See Narrowing the Access-to-Justice Gap by Reimagining Regulation: Report and Recommendations from the Utah Work Group on Regulatory Reform* (Aug. 2019), *available at* http://sandbox.utcourts.gov/ (Report).

The Report begins by highlighting a serious access to justice problem in our country, which has been ranked 99th out of 126 countries in terms of access to and affordability of civil justice. Report at 1. The Report suggests numerous regulatory changes – changes that are sure to have a radical impact on lawyers and the business of law. As the work group that authored the report candidly acknowledged, "Our proposal will certainly be criticized by some and lauded by others." Report at 22.

It is likely that you will either love or hate these changes. Because these changes are meant to have a radical impact on the legal industry in Utah, lawyers need to understand them and speak out from an informed perspective. This article provides a short overview of the Report and its most significant proposals. It is a starting point to help you be informed so you can provide knowledge-based input to those responsible for regulating how you and others practice law.

Proposed Changes to the Rules of Professional Conduct

The work group concluded that certain aspects of the Rules of Professional Conduct are contributing to our access to justice problem, and they proposed drastic changes in order to address the issue.

First, the work group proposed easing restrictions on lawyer advertising. The work group did not make any specific proposals but concluded that there is no legitimate purpose to restrict advertising other than to protect against false, misleading, or overreaching solicitations and advertising. The group noted that the Advisory Committee on the Rules of Professional Conduct is already working on an overhaul of lawyer advertising rules.

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

Second, the work group suggested amending the ban on lawyer referral fees. Again, without making any specific rule proposal, the group concluded that any restriction on referral fees should better balance the risk of harm to prospective clients with the benefit to lawyers.

Third, and perhaps most significantly, the work group proposed that the rules prohibiting fee sharing with non-lawyers and prohibiting non-lawyer ownership of law firms be eliminated or substantially relaxed. The report states, "We view the elimination or substantial relaxation of Rule 5.4 as key to allowing lawyers to fully and comfortably participate in the technological revolution." Report at 15. The work group believes this change will engage entrepreneurs from a wide swath of platforms to make legal services more readily available. This means that accounting firms, technology companies, and non-lawyer owned entities will be invited to participate in the legal service industry.

The aim of the proposed changes is to increase access to justice, making legal services more affordable and available to greater numbers of people. In different terms, it is expected that the proposed changes will increase competition, resulting in a corresponding benefit for consumers. The full impact of these changes cannot possibly be known until after they are implemented.

A New Regulatory Body and Experimental "Sandbox"

The work group also proposed creation of a "regulatory sandbox" to encourage innovation and experimentation in the legal industry. The Report describes a regulatory sandbox as "a policy structure that creates a controlled environment in which new consumer-centered innovations, which may be illegal (or unethical) under current regulations, can be piloted and evaluated." Report at 18.

The work group also proposes the formation of a new regulatory body, acting under the supervision of the Supreme Court, to regulate legal services in Utah. This new regulatory system would be developed in two phases.

During Phase 1, the Utah Bar would continue to have authority over lawyers and licensed paralegal practitioners. The new regulator would be responsible to regulate non-traditional legal services provided in the regulatory sandbox. The regulator would seek proposals from private individuals or entities who want to experiment with providing legal services in the sandbox. Proposals would describe the services to be provided, how they would be provided, and the ethical rules now in place that would need to be suspended or relaxed in order for the business model to be successful. The regulator would be responsible to approve, oversee, and evaluate the proposed plans. The regulator can use what it learns from this process to shape additional applications or to permanently relax or change regulations for the entire market. The regulator would also make recommendations to the Supreme Court regarding the structure of Phase 2. The work group anticipates that Phase 1 would last approximately two years.

Phase 2 is not yet well defined, because we don't yet know what we don't know. The specifics of Phase 2 will largely be defined by what is learned during Phase 1. The work group anticipates some form of non-profit regulator with delegated regulatory authority over some or all legal services. The regulator would be independent of management and control by lawyers, but answerable to the Supreme Court. The regulatory body would be charged with implementing changes learned from the experimental sandbox.

The Report emphasizes that a core policy objective should be the development of a regulatory system that "allows, supports and encourages the growth of a vibrant market for legal services." Report at 16. The Report also emphasizes that our regulations and regulatory system should shift from a "prescriptive approach" to an "outcomes-based and risk appropriate paradigm." Report at 4.

Status of Proposals

The work group issued its Report in August 2019. The Utah Supreme Court promptly adopted the report and authorized a task force to implement the report's recommendations. The task force has been formed and its work is in process. While the full extent and timing of implementation remains to be seen, it appears quite certain that significant changes are coming, and soon.

Whether you laud or hate these proposals, I encourage you to become informed about the coming changes. Get the most current information by frequently checking http://sandbox.utcourts.gov/. Doing so will help you speak out as an informed participant in the legal industry. It will also help you prepare for disruption to the legal industry that is sure to come, sooner or later.

Every case is different. This article should not be construed to state enforceable legal standards or to provide guidance for any particular case. The views expressed in this article are solely those of the author.

ClydeSnow

CLYDE SNOW IS PLEASED TO ANNOUNCE

Brian A. Lebrecht Elected as President of Clyde Snow

Brian A. Lebrecht, a Shareholder and Director at Clyde Snow since 2013, was elected by its Shareholders as President effective January 21, 2020. Mr. Lebrecht has practiced law for over 25 years and he focuses on securities, mergers and acquisitions, corporate finance, and other transactional matters. We are excited to see what he will accomplish in his new role.

Jake Taylor Joins the Firm as Of Counsel

Jake Taylor, former Salt Lake County Deputy District Attorney and Assistant Utah Attorney General, has joined the firm as Of Counsel. Mr. Taylor has extensive experience handling a variety of white collar crime matters including securities fraud, communications fraud, embezzlement, tax evasion, and regulatory matters. He focuses his practice on white collar criminal defense, government and independent investigations, securities enforcement, and regulatory defense.

Emily E. Lewis, Keith M. Woodwell, and Shaunda L. McNeill Elected as Shareholders of the Firm

Emily E. Lewis
Co-Chair of the Natural Resources & Water Law Group

Keith M. Woodwell
Co-Chair of the White Collar Crime/Regulatory Group

Shaunda L. McNeill
Co-Chair of the Labor & Employment Law Group

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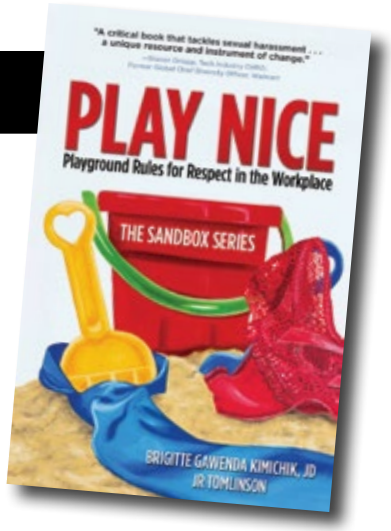
Play Nice: Playground Rules for Respect in the Workplace



by Brigitte Gawenda Kimichik JD and J. R. Tomlinson

Reviewed by Natalya "Ling" Ritter

While the #MeToo movement has brought the pervasiveness of sexual misconduct to the forefront of public awareness and discourse, it remains the case that many continue to feel unequipped to confidently and effectively address instances of such behavior that may arise in their own lives. The trepidation and discomfort that surrounds the issue of where and how to draw a line in the sand can be further compounded by the complex dynamics of the workplace, an environment that is both heavily regulated by behavioral policies and politics and nevertheless rife with sexual harassment and other forms of sex discrimination.

Play Nice: Playground Rules for Respect in the Workplace

by Brigitte Gawenda Kimichik JD and J. R. Tomlinson

Publisher: Brown Books Publishing Group (2019)

Pages: 240

Available in paperback & e-book formats.

In this respect, the legal profession is regrettably closer to the rule than the exception. In 2018, the American Bar Association and American Lawyer conducted a study of the 350 largest law firms in the United States. The survey results revealed that 49% of women and 6% of men reported having been subjected to "unwanted sexual contact," while 74% of women and 8% of men reported having experienced "demeaning communications." Statistics like these provide context for why law is "one of the five fields with the highest reports of sexual harassment."[1] Given this state of affairs, the insights and recommendations in *Play Nice: Playground Rules for Respect in the Workplace* may be of particular relevance and utility to members of the legal community.

In the book, authors JR Tomlinson, a real estate broker, and Brigitte Gawenda Kimichik, a lawyer, aim to put forth clear and comprehensible principles, strategies, and practices that men and women can employ to reduce inappropriate behavior in the workplace and cultivate healthy and productive working relationships. To this end, Tomlinson and Kimichik propose the application of "playground rules" to evaluate and guide conduct in the "sandbox" of the workplace, or the space in which "men and women work, collaborate, receive mentorship, develop ideas and products, and create and complete projects and where the success of any business is ultimately measured." Following this line of reasoning, the authors encourage readers to reference childhood standards like, "Respect the playground and its players" and, "No bullying or intimidation allowed" to understand or explain in elementary fashion why certain actions are unacceptable and to supply a model of good behavior.

Notwithstanding the prominence given to the playground analogy, the book's greatest strengths actually lie in its less emphasized yet notably important treatment of the systems and structures that affect and are affected by sexual harassment.

NATALYA "LING" RITTER is the Assistant Director of the Utah Center for Legal Inclusion (UCLI).

Readers of *Play Nice* will benefit, for instance, from its analysis of how various shortcomings render law and education by themselves incapable of preventing and redressing sexual harassment. They will be challenged to reckon with a compelling moral and financial case for why businesses, and their employers and employees, should fill this gap and welcome the responsibility of driving cultures of equity and inclusivity. Further, they will be presented with a thorough catalogue of research-backed legal and policy changes that can be adopted to make a concrete dent in the incidence of workplace sexual harassment.

Another well-executed aspect of *Play Nice* is its persuasive demonstration of the connection between work climates that are diverse and inclusive and work environments that are free of sexual harassment. Though this argument is also not one that the authors identify as a primary focus, it is nonetheless a crucial one to grasp in order to paint a fuller picture of what is required for enduring change to be made. Tomlinson and Kimichik explore the barriers that exacerbate the chilling effect on the reporting rate for victims of sexual misconduct, and they offer advice for garnering support from coworkers in preparation to come forward. From this discussion, it becomes increasingly evident that reaching a critical mass of female representation is indispensable to resolving these issues,[2] as strength in numbers and a more regularized proximity of men and women in the workplace could help bring about conditions supportive of a greater degree of mutual understanding and respect. This is not to be taken as implying that diversity and inclusion measures are sufficient to tackle these problems; however, *Play Nice* substantiates their rightful place as part of the path forward.

Given the rich food for thought that the book provides outside of the playground-sandbox metaphor, it is my perspective that the authors' centralization of the playground parallel is ultimately disadvantageous. On one hand, the simplicity of the playground concept lends to a more intuitive approach to addressing sexual harassment that may enhance the book's accessibility to a general readership. However, as a close friend, Alessandra Miranda, also observed, using playground rhetoric risks downplaying the gravity of sexual harassment and infantilizing both women and men, who could likely otherwise handle and benefit from a more grown-up conversation.

One subject that demands such added nuance is the ethical implications of the advice we choose to give to those who have experienced sexual harassment. The authors recommend, for example, that women attempt to put a stop to sexual harassment with "a little humor." Are such responses necessary as a survival mechanism for avoiding backlash from offenders, or do suggestions like this further entrench the already cumbersome social roles that women are expected to fulfill? How do we navigate the positive versus the normative in situations like these? *Play Nice* quietly weighs in on these questions through the content of its counsel, but absent a justifying framework or rationale, there remains an unresolved tension in the book that may leave some readers feeling uneasy.

Moreover, overstressing the sandbox trope also carries the downside of presenting sexual harassment as a matter that should be primarily resolved through smaller-scale behavioral adjustments by the playground's players. This unbalanced emphasis on the interpersonal dimension of sexual harassment overshadows, obscures, and detracts attention from the degree to which these issues warrant and require intervention at the systemic level. The authors seem to acknowledge this need for structural change but ultimately fail to give it due weight by comparison.

Whether readers will find *Play Nice* a worthwhile read thus depends on what they hope to gain from it. This book is especially well suited for readers who desire a resource manual or primer that covers the basics of defining and beginning to address sexual harassment in the workplace. For those with the ability to look past the delivery of this information, which is sometimes overly simplistic in nature, there is a wealth of captivating material that can be teased out of the book with some work, making it a challenging yet rewarding read. However, for those who already possess a competency or familiarity with these issues and who are seeking to elevate their understanding to the next level, it may be advisable to continue the search elsewhere.

1. U.S. Equal Emp't Opportunity Comm'n, *Statement of Bob Carlson, President, American Bar Association* (Mar. 20, 2019), https://www.eeoc.gov/eeoc/task_force/harassment/3-20-19/aba.cfm.
2. Utah's legal profession arguably lacks such representation, with women making up a mere quarter of bar membership. Utah State Bar, *2011 Survey of Members* (Dec. 2011), https://www.utahbar.org/wp-content/uploads/2017/08/2011_DanJones_SurveyOfAttorneys.pdf.

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MCLE Reminder – Even Year Reporting Cycle

July 1, 2018 – June 30, 2020

Active Status Lawyers complying in 2020 are required to complete a minimum of twenty-four hours of Utah approved CLE, which must include a minimum of three hours of accredited ethics. **One of the ethics hours must be in the area of professionalism and civility.** At least twelve hours must be completed by attending live in-person CLE.

Please remember that your MCLE hours must be completed by June 30 and your report must be filed by July 31.

Fees:

- $15.00 filing fee – Certificate of Compliance (July 1, 2018 – June 30, 2020)
- $100.00 late filing fee will be added for CLE hours completed after June 30, 2020 OR
- Certificate of Compliance filed after July 31, 2020

Rule 14-405. MCLE requirements for lawyers on inactive status

A lawyer who has been on inactive status for less than twelve months may not elect active status until completing the MCLE requirements that were incomplete at the time the lawyer elected to be enrolled as an inactive member.

Effective May 1, 2017.

For more information and to obtain a Certificate of Compliance, please visit our website at: www.utahbar.org/mcle.

Build Your Well-Being by Participating in Lawyer Well-Being Week

The first national Lawyer Well-Being Week is taking place May 4–8, 2020. Its aim is to raise awareness and encourage proactive efforts to raise well-being across the legal profession. Check out https://lawyerwellbeing.net/lawyer-well-being-week/ for high-quality webinars, presentations, resources, and tools that can be accessed and used free of charge.

LAWYER WELL-BEING WEEK
MAY 4-8, 2020

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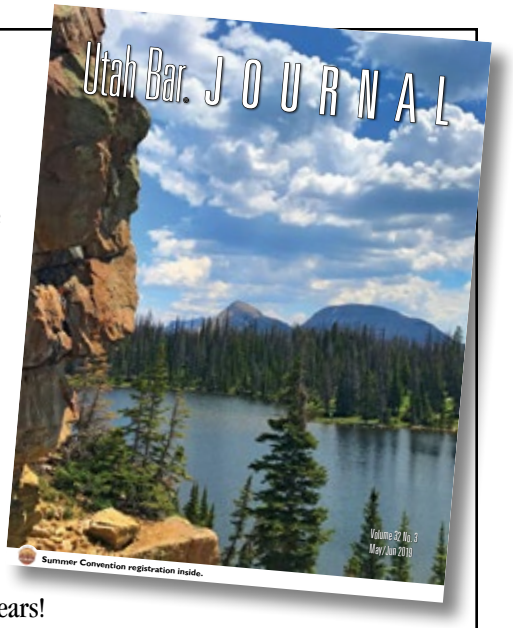
2019 Utah Bar Journal *Cover of the Year*

Byron E. Harvison

The winner of the *Utah Bar Journal* Cover of the Year award for 2019 is *Cliff Lake*, taken by Utah State Bar member Byron E. Harvison. Harvison's photo appeared on the cover of the May/Jun 2019 issue. Asked how he came to take this photo, Byron explained:

> My family and I had been out for a day of climbing at Cliff Lake in the Uintas. My daughter Avery and I had just finished putting a new route up called Critter Conundrum and were walking back along the cliff band towards the lake when I stopped for this shot.



Congratulations to Byron, and thank you to all of the contributors who have shared their photographs of Utah on *Bar Journal* covers over the past thirty-one years!

The *Bar Journal* editors encourage members of the Utah State Bar or Paralegal Division, who are interested in having photographs they have taken of Utah scenes published on the cover of the *Utah Bar Journal*, to submit their photographs for consideration. For details and instructions, please see page three of this issue. **A tip for prospective photographers: preference is given to high resolution portrait (tall) rather than landscape (wide) photographs.**

Summer Convention Award Notice

The Board of Bar Commissioners is seeking nominations for the 2020 Summer Convention Awards. These awards have a long history of publicly honoring those whose professionalism, public service, and personal dedication have significantly enhanced the administration of justice, the delivery of legal services and the building up of the profession.

Please submit your nomination for a 2020 Summer Convention Award no later than Friday, May 22, 2020 using the Award Form located at www.utahbar.org/nomination-for-utah-state-bar-awards/.

Propose your candidate in the following categories:

1. Judge of the Year
2. Lawyer of the Year
3. Section of the Year
4. Committee of the Year

Call for Nominations for the 2019–2020 Pro Bono Publico Awards

The deadline for nominations is March 15, 2020.

The following Pro Bono Publico awards will be presented at the Law Day Celebration on Wednesday, May 1, 2020:

- **Young Lawyer of the Year**
- **Law Firm of the Year**
- **Law Student or Law School Group of the Year**

To access and submit the online nomination form please go to: http://www.utahbar.org/award-nominations/. If you have questions please contact the Access to Justice Director, Robert Jepson, at: probono@utahbar.org or 801-297-7027.

Tax Notice

Pursuant to Internal Revenue Code 6033(e)(1), no income tax deduction shall be allowed for that portion of the annual license fees allocable to lobbying or legislative-related expenditures. For the tax year 2019, that amount is 1.58% of the mandatory license fee.

2020 Summer Convention
ACCOMMODATIONS

PARK CITY | CANYONS VILLAGE

July 16–18

Grand Summit Hotel

Standard Hotel Room	$174
One Bedroom Suite	$217
Two Bedroom Suite	$340

Sundial Lodge

Standard Hotel Room	$143
One Bedroom Suite	$172
Two Bedroom Suite	$223

Silverado Lodge

Standard Hotel Room	$133
One Bedroom Suite	$177
Two Bedroom Suite	$226

All rates are subject to the prevailing taxes and fees. Currently taxes total 13.27% plus resort fee and are subject to change. Grand Summit Hotel Resort fee is $22 per unit, per night. The Sundial and Silverado resort fee is $15 per unit, per night.

HOUSEKEEPING

The Grand Summit is provided with daily housekeeping service. The Sundial and Silverado are provided with midweek house-keeping on stays of five days or more. Daily service can be requested at time of booking.

RESERVATION DEADLINE

The room block will be held until June 16, 2020. After this date, reservations will be accepted on a space available basis.

Confirmed reservations require an advance deposit equal to one night's room rental, plus tax and fee.

To expedite your reservations, please call or visit us online.

RESERVATIONS CENTER: 1-888-416-6195

Reference: Utah State Bar 2020 Summer Convention or CF1UTSB

ONLINE BOOKINGS:

www.utahbar.org/summerconvention

Click on the "HOTEL RESERVATIONS" button to receive the discounted lodging room rates for Utah State Bar 2020 Summer Convention guests.

If you have any questions about the Resort or the accommodations, call 1-888-416-6195 or email ParkCityReservations@vailresorts.com

CHECK IN

Guaranteed by 4:00 pm.
Check out is 11:00 am.

CANCELLATION

Deposits are refundable if cancellation is received at least seven (7) days prior to arrival and a cancellation number is obtained.

www.utahbar.org/summerconvention

LAW DAY
2020

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THE 19TH AMENDMENT AT 100

Utah State Bar.

LAW DAY LUNCHEON

FRIDAY MAY 1, 12:00 NOON – 1:15 PM

Little America Hotel • 500 Main Street • Salt Lake City

AWARDS WILL BE GIVEN HONORING:

- Art & the Law Project (Salt Lake County Bar Association)
- Liberty Bell Award (Young Lawyers Division)
- Pro Bono Publico Awards
- Scott M. Matheson Award (Law-Related Education Project)
- Utah's Junior & Senior High School Student Mock Trial Competition
- Young Lawyer of the Year (Young Lawyers Division)

For further information, to RSVP for the luncheon, and/or to sponsor a table please contact:

Matthew Page: 801-297-7059, Michelle Oldroyd: 801-297-7033, or email: lawday@utahbar.org

For other Law Day related activities visit the Bar's website:
lawday.utahbar.org

LAW DAY
CLE EVENT

Tuesday, April 28
12:00 noon – 1:00 pm

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

1 hour Professionalism/ Civility CLE Credit

Sponsored by the Young Lawyers Division

Utah State Bar 2020 Spring Convention Award Recipients

The Utah State Bar presented the following awards at the 2020 'Spring Convention in St. George':

JEN TOMCHAK
Dorathy Merrill Brothers Award
Advancement of Women in the Legal Profession

MELINDA BOWEN
Raymond S. Uno Award
Advancement of Minorities in the Legal Profession

The Utah State Bar gratefully acknowledges the continued support of our 2020 Spring Convention Sponsors & Exhibitors

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Notice of Utah Bar Foundation Annual Meeting and Open Board of Director Position

The Utah Bar Foundation is a non-profit organization that administers the Utah Supreme Court IOLTA (Interest on Lawyers Trust Accounts) Program. Funds from this program are collected and donated to nonprofit organizations in our State that provide law related education and legal services for the poor and disabled. The Utah Bar Foundation is governed by a seven-member Board of Directors, all of whom are active members of the Utah State Bar. The Utah Bar Foundation is a separate organization from the Utah State Bar.

In accordance with the by-laws, any active licensed attorney, in good standing with the Utah State Bar may be nominated to serve a three-year term on the board of the Foundation. If you are interested in nominating yourself or someone else, you must fill out a nomination form and obtain the signature of twenty-five licensed attorneys in good standing with the Utah State Bar. To obtain a nomination form, call the Foundation office at (801) 297-7046. If there are more nominations made than openings available, a ballot will be sent to each member of the Utah State Bar for a vote. Nomination forms must be received in the Foundation office no later than 5pm on Friday, April 3, 2020 to be placed on the ballot.

The Utah Bar Foundation will be holding the Annual Meeting of the Foundation on Friday, July 17th in Park City, Utah. This meeting will be held in conjunction with the Utah State Bar's Summer Convention. For additional information on the Utah Bar Foundation, please visit our website at www.utahbarfoundation.org.

UCLI Recognizes the UCLI 2020 Certification Program Enrollees

The Utah Center for Legal Inclusion is pleased to recognize over fifty legal organizations that have enrolled in the UCLI 2020 Certification Program. This state-wide program aims to support and enhance our legal community's diversity, equity, and inclusion efforts in order to strengthen Utah's legal profession.

Anderson & Karrenberg
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Conyers & Nix
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Disability Law Center
*Dorsey & Whitney**
Durham Jones & Pinegar
eBay
Fabian VanCott
Fillmore Spencer
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Jones Waldo
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Keller Jolley Preece
Kipp & Christian
Kirton McConkie
Lance Andrew
Law Office of William Pohl
*Lear & Lear**
Long Okura
Magleby Cataxinos Greenwood
Malouf Law Offices
Manning Curtis Bradshaw & Bednar
Maschoff Brennan
Michael Best & Friedrich
Parr Brown Gee & Loveless (first law firm to enroll)
*Parsons Behle & Latimer**
Pitcher & Holdaway
Raffone Dessiné Legal Services
*Ray Quinney & Nebeker**
Richards Brandt Miller Nelson
Salt Lake County District Attorney's Office
Salt Lake Legal Defender Association
Smith Washburn
*Snell & Wilmer**
Snow Christensen & Martineau
Southern Utah University Office of General Counsel
*Stoel Rives**
Strong & Hanni
Thorpe North & Western
Tomchak Law
TraskBritt
Utah Attorney General's Office (first organization to enroll)
Utah Federal Public Defender
Utah Juvenile Defender Attorneys
*Workman Nydegger**
Zimmerman Booher

*First ten enrollees.

Certification information can be found at www.utahcli.org/certification.
Contact UCLI at ucli@utahcli.org; 801-746-5221. Visit us at www.utahcli.org.

UCLI CERTIFIED 2020

Notice of Legislative Positions Taken by Bar and Availability of Rebate

Positions taken by the Bar during the 2020 Utah Legislative Session and funds expended on public policy issues related to the regulation of the practice of law and the administration of justice are available at www.utahbar.org/legislative. The Bar is authorized by the Utah Supreme Court to engage in legislative and public policies activities related to the regulation of the practice of law and the administration of justice by Supreme Court Rule 14-106 which may be found at www.utahbar.org/utcourts_14-106. Lawyers may receive a rebate of the proportion of their annual Bar license fee expended for such activities during April 1, 2019 through March 30, 2020 by notifying Financial Director Lauren Stout at lauren.stout@utahbar.org.

The proportional amount of fees provided in the rebate include funds spent for lobbyists and staff time spent lobbying; a breakfast meeting with lawyer legislators; travel for the Bar's three delegates to the American Bar Association House of Delegates; travel by Bar leadership to lobby in Washington DC with the American Bar Association; the Bar's contribution to the Utah Center for Legal Inclusion; and Utah legislative lobbyist registration fees for the Bar's Executive Director and Assistant Executive Director. Prior year rebates have averaged up to approximately $6.10 depending on the license fee paid. The rebate amount will be calculated April 1, 2020 and we expect the amount to be consistent with prior years.

Young Lawyers Division Expands its Ranks

Lawyers with less than ten years of practice, we want you back! Young Lawyers Division is pleased to announce that it has amended its bylaws to expand its membership to include all attorneys age thirty-six or younger, or with less than ten years of practice (previously limited to the first five years of practice). On behalf of YLD, we extend a warm welcome to those joining or returning to our ranks. Visit our website for information on upcoming events, job opportunities, and news: http://younglawyers.utahbar.org/.

Utah State Bar Request for 2020–2021 Committee Assignment

The Utah Bar Commission is soliciting new volunteers to commit time and talent to one or more Bar committees which participate in regulating admissions and discipline and in fostering competency, public service and high standards of professional conduct. Please consider sharing your time in the service of your profession and the public through meaningful involvement in any area of interest.

Name _____ Bar No. _____

Office Address _____

Phone #_____ Email _____ Fax #_____

Committee Request:

1st Choice _____ 2nd Choice _____

Please list current or prior service on Utah State Bar committees, boards or panels or other organizations:

_____

_____

_____

Please list any Utah State Bar sections of which you are a member:

_____

_____

_____

Please list pro bono activities, including organizations and approximate pro bono hours:

_____

_____

_____

Please list the fields in which you practice law:

_____

_____

_____

Please include a brief statement indicating why you wish to serve on this Utah State Bar committee and what you can contribute. You may also attach a resume or biography.

_____

_____

_____

_____

_____

Instructions to Applicants: Service on Bar committees includes the expectation that members will regularly attend scheduled meetings. Meeting frequency varies by committee, but generally may average one meeting per month. Meeting times also vary, but are usually scheduled at noon or at the end of the workday.

Date_____ Signature _____

Utah State Bar Committees

Bar Examiner
Drafts, reviews, and grades questions and model answers for the Bar Examination.

Character & Fitness
Reviews applicants for the Bar Exam and makes recommendations on their character and fitness for admission.

CLE Advisory
Reviews the educational programs provided by the Bar for new lawyers to assure variety, quality, and conformance.

Disaster Legal Response
The Utah State Bar Disaster Legal Response Committee is responsible for organizing pro bono legal assistance to victims of disaster in Utah.

Ethics Advisory Opinion
Prepares formal written opinions concerning the ethical issues that face Utah lawyers.

Fall Forum
Selects and coordinates CLE topics, panelists and speakers, and organizes appropriate social and sporting events.

Fee Dispute Resolution
Holds mediation and arbitration hearings to voluntarily resolve fee disputes between members of the Bar and clients regarding fees.

Fund for Client Protection
Considers claims made against the Client Security Fund and recommends payouts by the Bar Commission.

Spring Convention
Selects and coordinates CLE topics, panelists and speakers, and organizes appropriate social and sporting events.

Summer Convention
Selects and coordinates CLE topics, panelists and speakers, and organizes appropriate social and sporting events.

Unauthorized Practice of Law
Reviews and investigates complaints made regarding unauthorized practice of law and takes informal actions as well as recommends formal civil actions.

Detach & Mail by June 1, 2020 to:
Heather Farnsworth, President-Elect | 645 South 200 East | SLC, UT 84111-3834

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Pro Bono Honor Roll

The Utah State Bar and Utah Legal Services wish to thank these volunteers for accepting a pro bono case or helping at a free legal clinic during December and January. To volunteer call the Utah State Bar Access to Justice Department at (801) 297-7049 or go to http://www.utahbar.org/public-services/pro-bono-assistance/ to fill out our Check Yes! Pro Bono volunteer survey.

Bountiful Landlord-Tenant/ Debt Collection Calendar

Kirk Heaton
Joseph Perkins

Community Legal: Ogden

Ali Barker
Jonny Benson
Hollee Petersen

Community Legal: Salt Lake

Jonny Benson
Craig Ebert
Gabriela Mena
Katey Pepin
Brian Rothschild
Paul Simmons
Kate Sundwall
Russell Yauney

Community Legal: Sugarhouse

Skyler Anderson
Jonny Benson
Brent Chipman
Sue Crismon
Mel Moeinvaziri
Brian Rothschild

Debtor's Law

Mark Andrus
Michael Brown
Brian Rothschild
Paul Simmons

Expungement Law

Danny Diaz
Jason Jones
Sarah Kuhn
Grant Miller

Family Justice Center

Geidy Achecar
Steve Averett
Kate Barber
Elaine Cochrin
Michael Harrison
Leilani Maldanado
Brandon Merrill
Sandi Ness
Nancy VanSlooten

Family Law

Justin Ashworth
Ed Jang
Orlando Luna
Sally McMinimee
Stewart Ralphs
Linda Smith
Leilani Whitmer

Private Guardian ad Litem Program

Fred Anderson
Sheleigh Harding
Jeffery Ladd Johnson
Jay Kessler
Amy Martz
Kelly Peterson
Jessica Read

Pro Se Debt Collection Calendar – Matheson

Ted Cundick
Rick Davis
Chase Dowden
Kim Hammond
Kyle Harvey
Ben Hathaway
Wayne Petty
Chris Sanders
Zach Shields
Greg Sonnenberg
George Sutton
Fran Wikstrom

Pro Se Landlord/Tenant Calendar – Matheson

Mark Baer
Tiffer Bond
Dave Castleberry
Chad Derum
Brent Huff
Cami Shiel
Mark Thornton

Rainbow Law

Jess Couser
Russell G. Evans
Stewart Ralphs

Street Law

Devin Bybee
Dara Cohen
Dave Duncan
Jennie Garner
John Macfarlane
Cameron Platt
Adam Saxby
Elliot Scruggs

SUBA Talk to a Lawyer Legal Clinic

Thomas Crofts
Zachary Lindley
Russell Mitchell
Lewis Reece
Lane Wood

Third District Court Pro Se Calendar – Family

Jaimla Abou-Bakr
Mario Arras
Matthew Bell
Adam Bondy
Marco Brown
Brad Carr
Ken Carr
Brent Chipman
Scott Cottingham
Kent Cottom
Brennan Curtis
Angilee Dakic
Seth Daniels
Taryn Evans
Jennifer Falk
Cassandra Gallegos
Kaitlyn Gibbs
Thomas Greenwall
Thomas Gunter
Jenna Hatch
Danielle Hawkes
Jon Hibshman
Jim Hunnicutt
Bethany Jennings
Corinne Ketchum
Robin Kirkham
John Kunckler
Kelli Larson
Orlando Luna
Chris Martinez
Shane Marx
Bryan McConkie
Cassie Medura
Lilian Meredith
Beau Olsen
Shane Peterson
Cecilee Price-Huish
Stewart Ralphs
Tara Reilly
Spencer Ricks
Brent Salazar-Hall
Alison Satterlee
Milda Shibonis
Rachel Skeys
Paul Smith
Doug Stowell
Virginia Sudbury
Sheri Throop
Elena Vettor
Trevor Vincent

Staci Visser
Cory R. Wall
Leilani Whitmer
Adrenne Wiseman
Mark Wiser
Kyle Witherspoon
Ashley Wood
Russell Yauney

Timpanogos Legal Center

Gediy Achechar
Clark Allred
Steve Averett
Linday Barclay
Ali Barker
Bryan Baron
Brad Brotherson
Marco Brown
Cleve Burns
Trent Cahill
Mike Chidester
Elaine Cochran
Jeff Daybell
Rebekah- Anne Gebler
Thomas Gilchrist
Jonathan Grover
Dustin Hardy
Michael Harrison
Shaynie Hunter
Megan Mustoe
Jordan Palmer
Steven James Park
Scott Porter
Zakia Richardson
Marca Tanner- Brewington
Liz Thompson
Paul Waldren

Tuesday Night Bar – Salt Lake

Parker Allred
Michael Anderson
Dean Andreasen
Ryan Beckstrom
Mike Black
Doug Cannon
Dani Cepernich
Kody Condos
Rita Cornish
Olivia Curley
Adam Dayton
Rosemary Hollinger
Parker Jenkins
Ryan Johansen
April Medley
John Miller
Nathanael Mitchell
Ben Onofrio
McKay Ozuna
Chris Sanders
Ruth Shapiro
LaShel Shaw
Greg Sonnenberg
Jake Taylor
Jeff Tuttle
Sarah Vaughn
Margaret Vu

ULS Adoption Case

Erin Byington
Linda F. Smith

ULS Advanced Medical Directive Case

William L. Reynolds

ULS Bankruptcy Case

John Diaz
Ryan Simpson

ULS Custody Case

Kathryn Bleazard
Justin Bond

ULS Expungement Case

Kathryn Bleazard
Renee Harrison Blocher
Marca Tanner Brewington
Kelly Cardon
Roberto Culas
Jonathan Good
Lorena Riffo-Jenson

ULS Family Law Case

Dominique Kiahtipes
Bradley W. Meads
M'Leah Woodard
DeAnn Wright
Ashley Bown
Paul Waldron

ULS Guardianship Case

Stephen Buhler
Paul Waldron

ULS Power of Attorney Case

Langdon T. Owen
Nicholas Angelides

ULS Protective Order Case

Tamara Rasch

ULS Stalking Injunction Case

M'Leah Woodard

ULS Wills/Estates Case

Nicholas Angelides

Veterans Legal Clinic

Thomas Gunter
Brent Huff
Jonathan Rupp
Joseph Rupp
Katy Strand

YCC Family Crisis Center

Jonathan Batchinson
Michelle Lesue
Bryan Baron
Amirali Barker

Brown Law

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Attorney Discipline

The Office of Professional Conduct is pleased to announce the launch of its new website at opcutah.org. Please visit the new site for information about the OPC, the disciplinary system, and links to court rules governing attorneys and licensed paralegal practitioners in Utah. You will also find information about how to file information with the OPC, and the forms necessary to obtain your discipline history records or request an OPC attorney presenter at your next CLE event.

INTERIM SUSPENSION

On January 7, 2020, the Honorable Patrick W. Corum, Third Judicial District Court, entered an Order of Interim Suspension, pursuant to Rule 14-519 of the Rules of Lawyer Discipline and Disability, against Ryan M. Springer, pending resolution of the disciplinary matter against him.

In summary:
Mr. Springer was placed on interim suspension based upon the following criminal convictions:

Interference with Arresting Officer, a Class B Misdemeanor;

Criminal Mischief, a Class B Misdemeanor, Interrupt Communication Device, a Class B Misdemeanor;

Driving Under the Influence of Alcohol/Drugs, A Third Degree Felony;

Driving Under the Influence of Alcohol/Drugs, a Class A Misdemeanor; and

Disorderly Conduct, a Class C Misdemeanor.

SUSPENSION

On December 23, 2019, the Honorable Richard E. Mrazik, Third Judicial District, entered an Order of Suspension against Terry R. Spencer, suspending his license to practice law for a period of six months and one day. The court determined that Mr. Spencer violated Rule 1.5 (a) (Fees), Rule 1.8 (e) (Conflicts of Interest), and 8.4(c) (Misconduct) of the Rules of Professional Conduct.

In summary:
A client retained Mr. Spencer to represent her in the property distribution portion of her divorce case with her first husband. The client met Mr. Spencer through her second husband, a business partner and friend of Mr. Spencer. Mr. Spencer presented the client with a proposed fee agreement but did not explain the terms to her or ask her to sign it at that time. A few months later, Mr. Spencer also began representing the client in an on-going real estate case (real estate case) against her former brother-in-law involving properties. Mr. Spencer sent billings for the client to her second husband's email.

Among the real property at issue in the divorce case were building lots that were held by a development company formed by the client and her first husband. The lots were encumbered by a promissory note and trust deed by a bank, which had threatened to foreclose upon them. In an effort to prevent the lots from being lost to foreclosure, the client's father purchased the promissory note held by the bank. Mr. Spencer and a mortgage foreclosure consultant assisted the father with the purchase by providing capital and overseeing the purchase. Under the payment and service agreement, the father agreed to pay back the amount of capital and a fee for the mortgage consultant's services. The client was not a party to the payment and service agreement.

Mr. Spencer spent time addressing a title issue related to the building lots that were encumbered by the note. The title issue was a simple one: in the property description for the lots, a reference to "east" needed to be changed to "west." Mr. Spencer charged the client several thousand dollars for the time he spent addressing the issues which involved attending one meeting with a surveyor and preparing "some documents."

The client and second husband approached Mr. Spencer concerning a tax sale notice she had received from the county assessor on one of the building lots. The sale was scheduled for two days later. The client was concerned she would lose the lot, which had substantial market value. The client asked Mr.

Spencer for financial assistance to save the lot from the tax sale. Mr. Spencer agreed to pay the outstanding property taxes to the county on the client's behalf, subject to the terms of repayment agreement drafted by Mr. Spencer. When Mr. Spencer presented the repayment agreement he did not explain that the attorney/client agreement would cover the repayment terms and interest due on his loan.

During a client meeting, the client informed Mr. Spencer that she and second husband had separated. Mr. Spencer presented the client with an attorney/client agreement for services that had already taken place but did not explain the terms of the agreement to her. Mr. Spencer also presented the client with a notice of attorney's lien for work performed in the real estate case. The client signed the attorney/client agreement and notice of lien but did not agree to be liable for the money Mr. Spencer loaned to father or for the mortgage consultant's services. Mr. Spencer's billing statements show he billed for nineteen hours of work for the client on this day.

Mr. Spencer recorded a notice of lien bearing the caption of the divorce matter against a lot held by a company formed by the client and first husband. Mr. Spencer also filed a notice of lien on each of the building lots that were associated with the former bank note. The notice, which was not signed by the client, included the amount that Mr. Spencer had loaned to father and the amount for the mortgage consultant's services.

Mr. Spencer terminated his attorney-client relationship by filing a withdrawal of counsel in the divorce matter. Mr. Spencer continued to bill the client for services and attempted to collect from the client substantial sums for which she was not liable. Mr. Spencer misrepresented that the amount of money stated in his notices of lien represented the total for work he performed on behalf of his client and failed to disclose that the amount of money stated in his notices of lien included amounts for which the client was not liable. Mr. Spencer repeatedly misrepresented to his client, her subsequent counsel, and opposing counsel in related matters that the total amount owed by the client included amounts that father owned to Mr. Spencer and the mortgage consultant. Taken together, this course of conduct showed a concerted effort by Mr. Spencer to misrepresent the amounts owned to him by the client in order to collect from her amounts that she did not owe.

In a second matter, Mr. Spencer represented a client (client) in a divorce matter (divorce matter) and a protective order matter (protective order) in the Eighth District Court. The court entered a temporary protective order providing the client's spouse (wife) the use and control of the parties home. At a hearing on temporary orders in the divorce matter, the court ruled that that temporary use and possession of the home was awarded to wife.

Mr. Spencer filed a contract action in the Third District Court (contract case) on behalf of his client's mother (mother) and against wife and his client. Mr. Spencer had presented mother and client with a waiver of conflict of interest document before filing the contract case. In the contract case, Mr. Spencer alleged mother had loaned wife and client money to purchase the home but they had defaulted on their loan agreement. Mr. Spencer filed a motion to list home and escrow the proceeds. The motion failed to inform the court that the home was subject to a temporary order in the divorce matter or that the court had ordered four months earlier that any proceeds from the sale of the property were to be placed in a trust account pending an order of the court as to their disposition.

Mr. Spencer's conduct showed a deceitful effort to subvert the Eighth District Court's order by withholding from the Third District Court material information regarding the Eighth District proceedings.

While the divorce matter was pending, client executed a quit-claim deed transferring the home to Mr. Spencer. Mr. Spencer recorded the deed.

In the divorce matter, the court determined that the home was martial property and that mother had no interest in the equity and that the equity should be divided equally between wife and client.

Aggravating circumstances:
Prior record of discipline; dishonest or selfish motive; multiple offenses; refusal to acknowledge the wrongful nature of the misconduct involved, either to the client or to the disciplinary authority; vulnerability of victim; substantial experience in the practice of law.

Mitigating circumstances:
Unreasonable delay in disciplinary proceedings; remoteness of prior offenses.

SUSPENSION

On January 27, 2020, the Honorable David J. Williams, Second Judicial District, entered an Order of Suspension against Tony B. Miles, suspending his license to practice law for a period of three years. The court determined that Mr. Miles violated Rule 1.3 (Diligence), Rule 1.4 (a) (Communication), Rule 1.5 (a) (Fees), Rule 3.2 (Expediting Litigation), Rule 8.1 (b) (Bar Admission and Disciplinary Matters), Rule 8.4 (b) (Misconduct), and Rule 8.4(c) (Misconduct) of the Rules of Professional Conduct.

In summary:

Client Matter #1

A client retained Mr. Miles to represent her in obtaining an expungement. Mr. Miles filed a motion to reduce the client's two misdemeanors. The client contacted Mr. Miles multiple times to request a status update on her case but received no response or a response saying he was working on the matter. Mr. Miles told the client he was preparing the expungement petition to file with the court. Eventually, Mr. Miles told the client that the petition had been filed with the court when it had not been filed. Mr. Miles told the client that the clerk had put the matter on the calendar and that he appeared on the date set by the clerk but that a procedural issue caused the matter to be continued. There was no hearing scheduled on that date. The client requested that Mr. Miles finish the matter or return her money. Mr. Miles confessed to the client that he had missed the deadline to file the petition. The OPC sent a Notice of Informal Complaint (NOIC) requesting Mr. Miles' response to the allegations. Mr. Miles did not provide a response.

Client Matter #2

Mr. Miles was retained to represent a defendant in a justice court matter. The clerk for the judge attempted for two months to contact Mr. Miles to schedule a hearing in the client's case, but Mr. Miles did not respond. The court scheduled a pretrial conference and sent notice to Mr. Miles. Mr. Miles did not appear at the hearing and the judge removed him as the client's attorney. The OPC sent a NOIC requesting Mr. Miles' response to the allegations. Mr. Miles did not provide a response.

Criminal Matter #1

On January 11, 2019 Mr. Miles was found guilty of two counts of Possession of a Controlled Substance Within a Correctional Facility.

Criminal Matter #2

On January 1, 2019 Mr. Miles entered into a plea in abeyance on one count of Possession or Use of a Controlled Substance and was given a Drug Court referral.

Criminal Matter #3

On January 11, 2019, Mr. Miles pled guilty to two counts of Possession or Use of a Controlled Substance.

DISBARMENT

On December 4, 2019, the Honorable Richard E. Mrazik, Third Judicial District, entered an Order of Disbarment against Thomas M. Burton, disbarring him from the practice of law.

In summary:

Mr. Burton was ordered suspended from the practice of law for three years. Mr. Burton continued to practice law and an Order to Show Cause motion was filed with the court to hold Mr. Burton in contempt. The court ultimately determined that Mr. Burton had violated his suspension and ordered that he be disbarred.

During the period of suspension, Mr. Burton filed pleadings in and appeared before the Fourth District Court on behalf of a client. Mr. Burton appeared before the U.S. District Court for Utah for the same client.

A client filed a bar complaint against Mr. Burton asserting that she had hired Mr. Burton after the effective date of the suspension to assist her in a lawsuit. Mr. Burton admitted that he was retained by the client after the effective date of his suspension.

A second client filed a bar complaint against Mr. Burton asserting that he was being represented by Mr. Burton. Mr. Burton admitted that he was representing the client after the effective date of his suspension. Mr. Burton filed documents on behalf of the client in the U.S. District Court for Utah nearly one year after his suspension was entered.

Aggravating circumstances:

A pattern of misconduct; refusal to acknowledge the wrongful nature of the misconduct involved, either to the client or to the disciplinary authority; substantial experience in the practice of law.

Mitigating circumstances:

Absence of a dishonest or selfish motive.

Discipline Process Information Office Update

What should you do if you receive a letter from Office of Professional Conduct explaining you have become the subject of a Bar complaint? Call Jeannine Timothy! In 2019, Jeannine helped over 100 attorneys by answering their questions and concerns about the disciplinary process. Jeannine is happy to be of service to you, so please call her.

801-257-5515 | DisciplineInfo@UtahBar.org

DISCIPLINE PROCESS INFORMATION OFFICE

A Seat at the Table: Civic and Community Involvement for Young Lawyers

by Mike Squires

We are all well-acquainted with the responsibility of attorneys to "zealously assert[] the client's position under the rules of the adversary system." Model R. of Prof'l Conduct, *Preamble: A Lawyer's Responsibilities*, ¶ 2. Of course, preparing for and arguing our client's position in a court of law is *per se* attorney work. Less acknowledged, yet equally important to the practice of law, is the responsibility of lawyers to "seek improvement of the law, access to the legal system, [and] the administration of justice." *Id.* ¶6. Young Lawyers Division (YLD) President Torie Finlinson's timely initiative titled "A Seat at the Table" (ASATT) focuses on the way in which young lawyers can apply themselves outside of the courtroom to further the administration of justice.

Specifically, ASATT's goal is to encourage young lawyers to become civically involved in their communities, including running for political office, serving in leadership capacities on nonprofit boards, and preparing themselves for judgeships. Young lawyers are not only the future of the Utah State Bar, but they will be called upon to assume leadership roles throughout our communities. The talent, legal training, and expertise that our young lawyers possess will be pivotal to solving critical problems that our state and nation will inevitably face. The ASATT initiative recognizes that today is the day for young lawyers to have a seat at the table.

Running for Political Office: Running for political office and changing laws through executive and legislative processes will change the legal landscape just as much as judicial precedent and will have a lasting impact on the improvement of the law and administration of justice. There is no one better qualified to speak to and avert potential legal issues than lawyers. Lawyers have a duty to zealously advocate the position of their clients, but also an ethical responsibility to advocate for change in the political arena.

Serving with Non-Profit Organizations: Nonprofit organizations touch the lives of Utahns, including lawyers' current and potential clients. In some cases, the impact of a nonprofit organization could be more profound than that of any lawyer. By rolling up our sleeves and serving in nonprofit organizations, we not only educate ourselves about the needs of our communities, but have the opportunity to advocate on behalf of those needs. No matter the focus of the nonprofit organization, the legal community is better when we give of our time and expertise to a cause greater than ourselves.

Preparing for Judgeships: Young lawyers should begin preparing now to serve the legal community as judges. Though the process is subject to some political influence outside the control of any lawyer, sitting judges can provide critical insights as to how to prepare to assume such an important role. As young lawyers mature in their practice of law, they will gain invaluable experience and knowledge. Utilizing that experience and knowledge as a judge will benefit countless members of our community as well as future generations.

As the year progresses, ASATT is holding various events focused on the three key elements of the initiative: (1) running for political office; (2) serving in leadership capacities in nonprofit organizations; and (3) preparing for judgeships. Please refer to http://younglawyers.utahbar.org/asatt.html for more information on these upcoming events.

Young lawyers are ready, willing, and capable to get in the game and have a seat at the table. We are excited to join President Finlinson and YLD in this bold initiative to better fulfill our professional responsibility to promote the administration of justice within the State of Utah.

MIKE SQUIRES is Co-Chair of A Seat at the Table (SATT) and is presently the Government Affairs Director for the Utah Associated Municipal Systems (UAMPS) a joint action agency comprised of forty-six municipal and community-owned electric utilities.

The First Four Licensed Paralegal Practitioners

by Julie M. Emery

On November 18, 2015, Utah's Supreme Court Task Force to Examine Limited Legal Licensing (Task Force) identified gaps in access to justice in three areas – family law, debt collection, and eviction. These three areas contain the highest concentration of self-represented parties in the state. Indeed, Utah's 2017 court records show 56% of petitioners and 69% of respondents were self-represented in family law matters, while 98% and 95% of respondents in debt collection and eviction matters are self-represented respectively. Alternatively, nearly all petitioners in these practice areas had legal representation. Following the Task Force's recommendation, the Utah Supreme Court created a limited legal license to help fill the gaps in access to justice in the following areas:

- Specific family law matters, such as temporary separation, divorce, parentage, cohabitant abuse, civil stalking, custody and support, or name change;
- Debt collection matters in which the dollar amount at issue does not exceed the statutory limit for small claims cases; and
- Forcible entry and unlawful detainer.

A steering committee was formed to identify and affect the details necessary for making Utah's Licensed Paralegal Practitioner (LPP) profession a reality. The LPP Steering Committee created subcommittees to complete tasks related to education, admissions and administration, as well as professional conduct and discipline. Since February 2016, the LPP Steering Committee has met regularly to review and discuss work completed by the subcommittees. Committee members spent countless hours thoughtfully developing criteria and drafting rules, all of which were subject to approval by the Utah Supreme Court and the Judicial Council. The rules governing Licensed Paralegal Practitioners went into effect on November 1, 2018, and the first LPP licensure exams were given in August 2019.

What is the scope of the LPP practice?

An LPP performs some of the same services as an attorney at a lower cost. Since the services performed by an LPP are limited, clients may be referred to a lawyer for certain aspects of their cases.

Rule 14-801 of the Rules Governing the Utah State Bar contains an exception that authorizes LPPs to practice law in the area(s) in which they are licensed. The narrow scope of LPP practice is based on the use of court-approved forms. If there is a court-approved form related to the client's needs, the LPP can assist the client.

Within the limits of Rule 14-802, the LPP may enter into a contractual relationship with an individual to provide legal services, interview the client, review documents of another individual and explain those documents to the client, review a court's order and explain the order to the client, select appropriate court-approved forms, advise the client about the forms, gather facts and information related to the completion of the forms, sign, file and serve the forms, communicate with an opposing lawyer on behalf of the client, advocate for the client in mediation, and assist with settlement of claims, including completing a settlement agreement form.

Will LPPs be qualified to provide limited legal advice?

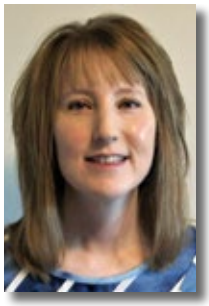
The LPP Steering Committee established high standards for qualifying applicants, including the requisite educational and experience requirements. Applicants who do not have a law degree must also obtain a national certification and have experience working as a paralegal, and in their chosen practice area, under the supervision of a licensed lawyer or LPP. Applicants must also receive additional training through online courses offered by Utah Valley University, with ethics, family law, debt collection, and eviction coursework. Each course was deliberately developed to teach the scope of the LPP practice in addition to the subject matter for each practice area. See Rule 15-703 of the Utah Supreme Court Rules of Professional Practice for a complete explanation of the requirements.

JULIE EMERY is a Litigation Paralegal at Parsons Behle & Latimer and currently serves on the Utah Supreme Court's LPP Steering Committee and is the Chair of the LPP Admissions Committee for the Utah State Bar.

On October 15, 2019 the first four LPPs were sworn in to practice law in Utah. Here is your chance to meet them.

After being sworn in, the first four LPPs met with Justice Deno Himonas, of the Utah Supreme Court. Left to right: Susan Morandy, Laura Pennock, Justice Himonas, Amber Alleman, and Angie Allen

Amber Alleman, LPP, CP – Family Law



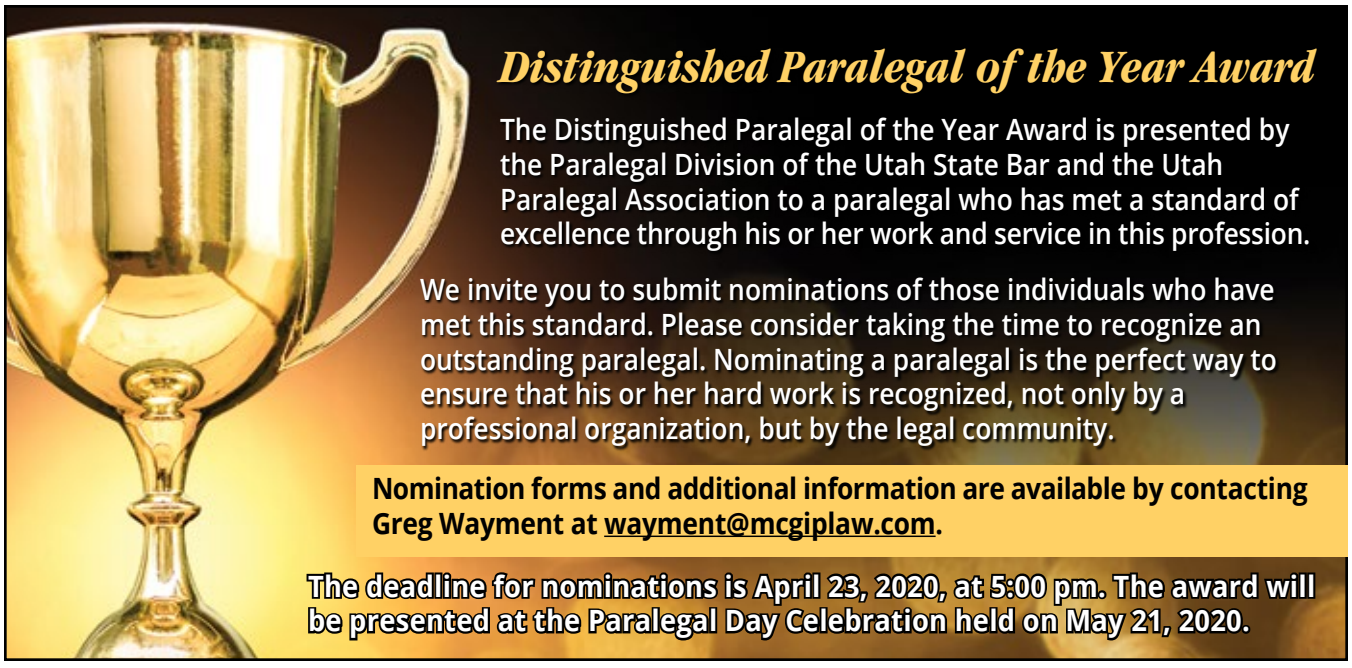
Amber Alleman has been a family law paralegal since shortly after graduating from college in 1995. She worked with Sally McMinimee for four years and then spent sixteen years with Ellen Maycock, who retired in May 2019. Ms. Alleman currently works with Dean Andreasen and Diana Telfer at the law firm Clyde Snow & Sessions, where she has started her LPP practice.

Ms. Alleman's interest in becoming an LPP peaked when her mentor, Ellen Maycock, told her about the program while she served on the LPP Steering Committee. The fact that Ellen Maycock was one of the first women lawyers in Utah inspired her to become one of the first LPP's in Utah. Another important point of inspiration leading her to become an LPP is that she wants to help provide affordable legal services to the public. During her years working as a family law paralegal, she took many telephone calls where people were seeking affordable legal representation, only to become deflated once they heard about the hourly rates. She never spoke to many of them again because they could not afford to hire an attorney.

Ms. Alleman has been a member of the Paralegal Division of the Utah State Bar since 2003. She achieved her Certified Paralegal credential from NALA in July 2019, and currently serves on the LPP Forms Committee.

Angie Allen, LPP, PP – Family Law and Debt Collection

Angie Allen has been a paralegal for nearly twenty years. She was introduced to the law by her sister who is a paralegal and got her a job as a receptionist for her law firm. She fell in love with the law and never looked back. Ms. Allen has broad legal experience, including criminal prosecution, family law, bankruptcy, criminal defense and debt collection. She received her Professional Paralegal credential from NALS, and she has been with the firm of Helgesen, Houtz and Jones since 2009, where she is establishing her LPP practice.



Ms. Allen heard about the LPP program three years ago and has anxiously awaited its arrival. During that time she followed updates from members of the LPP Steering Committee to make sure she met the LPP requirements. Her inspiration for becoming an LPP is to help provide affordable legal representation in family law and debt collection cases. As a paralegal she experienced heart-breaking situations with people who could not afford to hire an attorney. As a new LPP, she is excited to help fill some of the gaps in access to justice in Utah.

Susan Morandy, LPP, PP – Family Law

Susan Morandy heard about the LPP program through her law firm, Dart Adamson & Donovan, where she works with several attorneys. She thought it sounded like an amazing opportunity to expand her legal practice skills without the expense and time of having to go back to school. She also thought it would be great a way for her to give back to the community. Ms. Morandy feels strongly about the lack in access to justice in Utah and believes the LPP program is important to assist people with legal services at a lower cost. She is excited about the opportunities this new profession brings to paralegals and to help with access to justice for the public.

Ms. Morandy never actually wanted a career – just a job that would pay the bills. Her career as a paralegal found her anyway, and she loves it. One of her favorite things about working as a paralegal is that it is never boring. She has worked in family law since 1989, and she is excited to establish her LPP practice.

Laura Pennock, LPP, CP – Family Law

Laura Pennock was drawn to the idea of independently practicing law and to expand her horizons. She did not have the time and resources required for law school, so becoming an LPP is just what she was looking for. She loves the idea of providing lower cost and more flexible options for people who are facing divorce, custody and other family law issues. Like her colleagues, she heard about the LPP program very early on and watched with huge anticipation as it was created. She is excited about the opportunities and the possibilities that this new profession offers to those who wish to work as legal professionals and to the public.

Ms. Pennock is a self-appointed, unofficial cheerleader of the LPP program and is happy to speak to anyone who has questions about what it is like to become an LPP. She is the first LPP to launch a solo practice. She is especially excited to help recruit potential LPPs in Utah's minority and immigrant population – she believes they will make a big impact in the efforts to provide access to justice.

CLE Calendar

BAR POLICY: Before attending a seminar/lunch your registration must be paid.

SEMINAR LOCATION: Utah Law & Justice Center, unless otherwise indicated. All content is subject to change.

March 5, 2020 — **1 hr. Ethics Credit pending**

How Well Do You Know Your Courts?
A CLE honoring National Judicial Outreach Week.

March 12–14, 2020

2020 Spring Convention in St. George.
Dixie Convention Center, 1835 S Convention Center Dr., St. George, UT 84790. Save the dates and plan to attend!

March 17, 2020 | 4:00 pm – 6:00 pm — **2 hrs. CLE Credit**

Litigation 101 Series – Opening Statements.
Presented by Patrick Burt and Gabriel White. Pricing per session: $25 for Young Lawyers, $50 for all others.

March 18, 2020

OPC Ethics School

April 21, 2020 | 4:00 pm – 6:00 pm — **2 hrs. CLE Credit**

Litigation 101 Series – Closing Arguments.
Presented by Patrick Burt and Gabriel White. Pricing per session: $25 for Young Lawyers, $50 for all others.

April 22, 2020

Annual Collction Law Section CLE

April 23, 2020 | 2:30 pm – 3:30 pm

Annual Spring Corporate Counsel Seminar.
Details coming soon!

April 28, 2020 — **1 hr. Prof./Civ. Credit pending**

Annual Law Day CLE

April 30, 2020

Cyberlaw Section annual iSymposium CLE event.
Adobe in Lehi.

May 7, 2020

Real Property Annual Section Meeting.
Little America Hotel.

May 19, 2020 | 4:00 pm – 6:00 pm
1 hr. Ethics CLE Credit, 1 hr. Prof./Civ. Credit

Litigation 101 Series – Ethics & Civility.
Presented by Patrick Burt and Gabriel White. Pricing per session: $25 for Young Lawyers, $50 for all others.

May 20. 2020 — **1 hr. Prof./Civ. Credit**

Annual LRE Judges' Panel Discussion on Civility

May 21, 2020

Annual Paralegal Day Luncheon event.
Marriott Hotel.

June 5, 2020

2020 Annual Family Law Seminar.
S.J. Quinney College of Law. Save the date – details coming!

June 19, 2020

Annual Paralegal Division CLE.
A full day of events.

July 16–18, 2020

Summer Convention in Park City.
Save the dates and plan to attend!

August 20, 2020 — **4 hrs. CLE Credit pending**

Third Annual Innovation in Law Practice Symposium.

September 4–6, 2020

Litigation Section Annual Shenanigans CLE in Moab.

September 16, 2020

OPC Ethics School

November 20, 2020

Fall Forum 2020.
Little America Hotel.

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Utah Bar Journal and the Utah State Bar do not assume any responsibility for an ad, including errors or omissions, beyond the cost of the ad itself. Claims for error adjustment must be made within a reasonable time after the ad is published.

CAVEAT – The deadline for classified advertisements is the first day of each month prior to the month of publication. (Example: April 1 deadline for May/June publication.) If advertisements are received later than the first, they will be published in the next available issue. In addition, payment must be received with the advertisement.

FOR RENT

Conference room for rent. Half day or full day. Flat rates. 845 South Main Street #C8, Bountiful, Utah 84010. Please call 801-299-9999 for rates and availability.

JOBS/POSITIONS AVAILABLE

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Fetzer Simonsen Booth & Jenkins, an AV-rated small Salt Lake firm with real estate, construction, commercial litigation, corporate/transactional and estate planning practice, seeks one or more shareholders with compatible practice and client base. We offer low overhead and attractive offices, conference rooms, and downtown location convenient to state and federal courts. Please send resume and inquiries to Clark Fetzer at clark@mountainwestlaw.com.

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