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*DAN ANDERSON is a member of the Utah State Bar and serves as General Counsel at Beluga Ventures, LLC. About the photo, Dan says "If you have lived in Utah for any amount of time, you'll know that spring can bring warm days and winter storms. This picture is the result of one of those days. It captures the color of new growth against the backdrop of a fleeting winter storm."*



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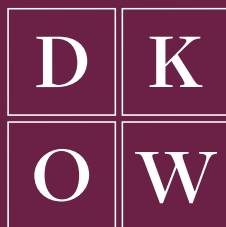




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**CITATION FORMAT:** All citations must follow *The Bluebook* format, and must be included in the body of the article.

**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.

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### *Fear, Faith, and Forecasters*

by Herm Olsen

When I was a young man (roughly the 1860s), I was intensely curious about people who could predict the future – or thought they could. I read Jeanne Dixon's *A Gift of Prophecy* and Edgar Cayce's *The Sleeping Prophet*. Yes, I was told, they're wrong about a lot of things, but my young mind countered that they were also right about some things too. Even mere mortals like Sylvia Brown seemingly had insights beyond most of us and wrote in 2008:

In around 2020 a severe pneumonia-like illness will spread throughout the globe, attacking the lungs and the bronchial tubes and resisting all known treatments. Almost more baffling than the illness itself will be the fact that it will suddenly vanish as quickly as it arrived, attacking again ten years later, and then disappear completely.

Sylvia Brown & Lindsay Harrison, *END OF DAYS: PREDICTIONS AND PROPHECIES ABOUT THE END OF THE WORLD* 312 (2008).

So I admit and confess that my current crystal ball is rather clouded, and the realities of even this week will be hopelessly dated by the time you actually read these thoughts. But as of the moment:

- One of every three Americans is in official lock-down.
- Schools aren't expected to re-open for the balance of the school year.
- Universities are closed, and graduations canceled.
- Tens of thousands of COVID-19 cases are detected, with thousands of Americans succumbing to the pestilence.
- Restaurants, bars, temples, churches, and conventions are shuttered, and unemployment numbers have skyrocketed.
- Dow-Jones fell to pre-2016 levels.

- 2020 Olympic Games in Tokyo have been postponed.
- Michigan and Pennsylvania have determined that law firms are not considered an essential service, and in New York, attorneys can only use their offices when supporting essential services.
- The economic impact is immense. It went from a ripple to a tidal wave to a tsunami.

There are a few precedents for our current plight. Few places in history have been more deadly than London in the Sixteenth Century. Newly arriving sailors and other travelers continually refreshed the city's stock of infectious maladies.

Plague, virtually always present somewhere in the city, flared murderously every ten years or so. Those who could afford to flee the city during an outbreak did so, which explains the number of royal palaces outside of London: at Richmond, Greenwich, Hampton Court, etc. Public gatherings (except for churchgoing) were banned within seven miles of London each time the death toll in the city reached forty – which happened a great deal.

Europe of the Fourteenth Century was even worse. In October of 1348, Philip VI asked the medical faculty of the University of Paris for a cause of the plague, which was sweeping his country. After careful deliberation, the doctors ascribed it to a triple conjunction of Saturn, Jupiter, and Mars in the fortieth degree of Aquarius, which had occurred on March 20, 1345. Paris lost over 50,000 (half its population in 1349). Florence lost four-fifths of its population, while Venice, Hamburg, and Bremen each lost two-thirds of its people. Every inmate of some prisons without exception died. A chronicler of the time wrote: "And in these days was burying without sorrow and wedding without friendschippe." Thomas Walsingham predicted in 1359: "The world could never again regain its former prosperity."



But in 2020, what are we to think? Do we

accept the paraphrase of Queen Elizabeth: "It is an Annus Horribilis?" I don't think so.

Sometimes fear shouts so loudly in our ear that we cannot hear the hope that whispers of better times. I believe there is reason for hope if we, as a profession, exercise both prudent caution and ultimate optimism. How should the profession of law deal with this unparalleled social circumstance? People look to us as community leaders. They rely on us to meet their most fundamental legal needs. Society depends on the smooth flow of life – which reliance on the stable base of law provides. It is an increasingly difficult task as most of us are working from home, dispensing counsel through teleconferencing and Zoom.

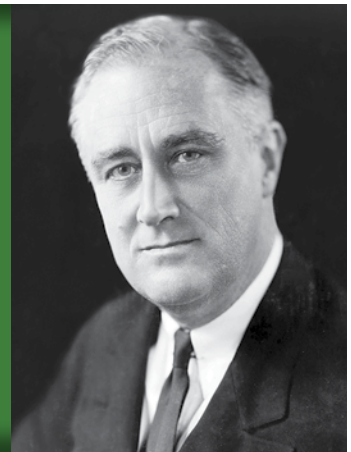
little return. Only a foolish optimist can deny the dark realities of the moment.

Compared with the perils which our forefathers conquered because they believed and were not afraid, we have still much to be thankful for. [We are] a stricken nation in the midst of a stricken world. [But] the only thing we have to fear is fear itself.

Seven years later, Winston Churchill recounted similar struggles. His nation stood alone against the might of the Nazi blitzkrieg, which had bulldozed nation after nation throughout all Europe. He boldly announced to his fellow citizens:

*Only a foolish optimist can deny the dark realities of the moment.*

*Compared with the perils which our forefathers conquered because they believed and were not afraid, we have still much to be thankful for. [We are] a stricken nation in the midst of a stricken world. [But] the only thing we have to fear is fear itself.*



Let us take heart. Bright souls have faced dark times and prevailed!

Our country faced a massive financial meltdown in 1929, people were starving, thrown out of their homes with no end in sight. In 1933, Franklin Roosevelt spoke to a broken nation in his first inaugural address. He pulled no punches:

This is pre-eminently the time to speak the truth, the whole truth, frankly and boldly. Nor need we shrink from honestly facing conditions in our country today. This great nation will endure as it has endured, will revive and will prosper.

... Government of all kinds is faced by serious curtailment of income, the withered leaves of industrial enterprise lie on every side, farmers find no markets for their produce, the savings of many years in thousands of families are gone.

Unemployed citizens face the grim problem of existence, and an equally great number toil with

I have nothing to offer but blood, toil, tears and sweat. We have before us an ordeal of the most grievous kind. We have before us many, many months of struggle and suffering.

I take up my task in buoyancy and hope. I feel sure that our cause will not be suffered to fail among men. Come then, let us go forward together with our united strength.

Let us therefore brace ourselves to our duties, and so bear ourselves that if the British Empire... last for a thousand years, men will still say, This was their finest hour.

These are bold words from a dark time. Let us ourselves shine some light on the fear which still abounds. Let us go forward with decency, with kindness, and with firm confidence that we shall not only survive this little setback in history but that we shall thrive throughout.





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# *An Introduction to the Utah Judicial Council Justice Court Reform Task Force*

*by The Honorable Paul Curtis Farr*

### INTRODUCTION

In December 2019 the Utah Supreme Court and Utah Judicial Council created a task force that will be evaluating potential improvements and reforms to the justice court system. The task force will move forward under the direction of the Judicial Council, which has asked that I serve as chair. The purpose of this article is to orient the Bar to the background, creation, and work of the task force.

### A BRIEF HISTORY OF JUSTICE COURTS

Justices of the peace existed in England since the mid-1300s. They were locally appointed or elected judicial officers, often without formal legal training. This institution was brought to America with the English settlers and continued through the twentieth century in the states. While large cities, primarily in the east, gave rise to law schools and organized judicial systems, the justice of the peace was the only judicial officer some settlers in the American West would know.

Justices of the peace were first recognized in Utah in 1850 when the United States Congress authorized the Utah Territory. This included the creation of federal courts, as well as local justices of the peace. Later, in 1896, when Utah was admitted to statehood, the Utah Constitution included a provision that required, “Courts not of record shall be established by statute.” Utah Const. Art. VIII, § 1. The justice of the peace institution continued and fulfilled this requirement for courts not of record.

The justice of the peace system suffered from some defects. As an example, one of the most famous (or infamous) justices of the peace was Judge Roy Bean. He was appointed in 1882 in Pecos County, Texas. Judge Bean had no legal training other than perhaps his escape from jail following a duel with a man in California. Judge Bean opened a saloon that also doubled as the courtroom. It has been reported that a beer in that saloon cost \$0.25. If a patron paid with \$1, they didn’t get any change. If the person complained, Judge Bean charged them with disturbing

the peace, which carried an associated fine of \$0.75. Of course Judge Bean kept the fine proceeds.

The justice of the peace system has evolved since the time of Judge Roy Bean. Some states have abandoned the justice of the peace system while some have modified it. In Utah the system has evolved significantly over time, with the largest changes beginning in 1989.

In 1989, legislation was passed that officially did away with the “justice of the peace” in Utah. In its place, the state created “Justice Courts.” Justice courts continued to satisfy the constitutional mandate for “courts not of record.” These were courts sponsored by counties and municipalities that would be presided over by a “judge.” Shortly after, in 1996, the circuit courts were dissolved with their caseload being split, with some cases going to the district courts and others being sent to the justice courts.

Ten years later, in 2006, the Utah Judicial Council created a committee tasked with looking at justice court improvement and reform. The committee was chaired by future Utah Supreme Court Justice Ronald Nehring and has subsequently been labeled as the “Nehring Commission.” Following an eighteen-month process the commission made recommendations to the Judicial Council, which pursued statutory and rule changes to implement some of the recommendations. Not all of the recommendations were pursued or adopted.

*JUDGE PAUL C. FARR is a justice court judge in the Third District and has been since 2010. He has served on the Utah Judicial Council for the past five years and has been asked by the Council to chair a newly created Justice Court Reform Task Force.*





The recommendations that were pursued and ultimately passed into rule or law included uncoupling judges from financial considerations by establishing a formula for judicial salaries. Judicial selection was changed to mirror the selection process for judges at other court levels. Other recommendations that were not successful dealt with educational requirements for judges; making judges state, rather than local employees; and gradually eliminating part-time judicial positions.

Additional adjustments followed in a piecemeal fashion. In 2011, the legislature amended Section 78A-7-103 of the Utah Code to require that all justice court proceedings be audio recorded. This requirement was an effort to provide more transparency in the proceedings. However, having a “recording” did not transform justice courts into courts of record. Appeals from justice courts continued to be de novo and not an on-the-record review. In 2016, Section 78A-7-201 of the Utah Code was amended to require that applicants for justice court judge positions in first and second class counties have a law degree. (Counties are classified by population, with Salt Lake being first class and Weber, Davis, Utah, and Washington being second class.) In 2018, Rule 9-109 of the Utah Code of Judicial Administration was enacted, which created presiding judges at the district level for justice courts. Other reforms have been proposed over the years by legislation and rule change that ultimately were not enacted.

Justice courts have now been in existence for just over thirty years. As can be seen, these courts were not a finished product when created. They have continued to evolve over time. It has now been fourteen years since the Nehring Commission, which was the first attempt at a comprehensive review of the structure and operation of these courts. Believing that the time had come for another comprehensive review, the Utah Supreme Court and Judicial Council created a task force to evaluate justice court structure and operations and propose potential improvements and reforms.

### GENESIS OF THE TASK FORCE

In June 2016, the Utah Supreme Court issued its decision in *Simler v. Chiles*, 2016 UT 23, 379 P.3d 1195. The court stated, “We conclude that the Utah Constitution guarantees the right to a jury trial in small claims cases in a trial de novo in district court.” *Id.* ¶2. In the months that followed, and with the assistance of an ad hoc committee, the court promulgated rules and forms (Rule 4A, Utah Rules of Small Claims Procedure, for example) necessary to implement the court’s decision.

In the wake of these changes, the court established a second ad hoc committee, chaired by Judge Kate Appleby of the Utah Court of Appeals. Judge Heather Brereton (Third District Court) and I also served on that ad hoc committee. That committee was tasked with studying the de novo appeals process and making recommendations to the court. While the court’s primary concern had been with de novo appeals in small claims cases, the committee was invited to explore the de novo appeal process in criminal and traffic cases as well. That committee concluded its work and made recommendations to the Utah Supreme Court in late 2019. The committee determined that changes to the appellate structure implicated many other areas and issues, and affected so many stakeholders, that further analysis by a broader group would be appropriate. Based on those recommendations, in December 2019, the Utah Judicial Council established a task force on justice court reform. The task force includes representatives from various stakeholders and is tasked with making recommendations to improve not only the appellate process for justice courts, but also to evaluate all areas of justice court structure and operation for potential improvement and reform.

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## COMPOSITION AND WORK OF THE TASK FORCE

It is anticipated that the task force's work will be completed within twelve to eighteen months. It will meet at least monthly during that time period, typically on the second or third Friday of each month. The first meeting was scheduled for April 10, 2020, but has been canceled due to the coronavirus pandemic. The first meeting will now be held on May 15, either in person or via videoconference, depending on conditions. Approximately half of the meetings will be held at the Matheson Courthouse. The other meetings will be held at a courthouse location in each of the state's judicial districts. Task force meetings will be open to the public. A portion of each meeting will be devoted to receiving input and presentations from invited stakeholders.

Currently, task force membership includes the following:

Chair – Judge Paul C. Farr, Third District Justice Court Judge

Utah Supreme Court Representative – Paul C. Burke, Ray Quinney & Nebeker and chair of the Appellate Rules Committee.

Utah Court of Appeals Representative – Judge Ryan M. Harris

District Court Representative – Judge Roger W. Griffin, Fourth District Court

Justice Court Representative – Judge Brian E. Brower, Second District Justice Court Judge

Justice Court Representative – Judge Brent A. Dunlap, Fifth District Justice Court Judge

Defense Representative – Joanna Landau, Director, Indigent Defense Commission

Prosecution Representative – Anna L. Anderson, Salt Lake County District Attorney's Office

Utah League of Cities and Towns Representative, Roger Tew, Senior Policy Advisor

The task force also anticipates representation from the Governor's Office, the House of Representatives, the Senate, and the Utah Association of Counties. As of the writing of this article, which took place during the 2020 legislative session and was immediately followed by the pandemic, these members had not yet been named.

The task force will also be staffed by the following individuals from the Utah Administrative Office of the Courts:

Cathy Dupont – Deputy State Court Administrator

Michael Drechsel – Assistant State Court Administrator

Jim Peters – Justice Court Administrator

Finally, we will also have the assistance of two externs through the summer of 2020. They are Ben Marsden, a law student at BYU, and Heather Robison, a law student at the University of Utah.

## TOPICS TO BE EVALUATED BY THE TASK FORCE

While the specific topics to be addressed by the task force, as well as the ultimate recommendations, will be a work in progress, there are some topics that are anticipated based on input that has already been received. In addition to the de novo appeal process, these topics could include the following:

- Territorial jurisdiction – based on municipal boundaries or district-wide?
- Subject matter jurisdiction – should jurisdiction include Class A misdemeanors?
- Pretrial release and bail decisions – could magistrate functions be better utilized through structural changes?
- Court consolidation
- Standardization of judicial salaries
- Education requirements for judges
- Provision of indigent defense services
- Imposition and enforcement of fines and fees

## APPRECIATION AND AN INVITATION

First, I would like to thank the members of the task force, staff, and stakeholders participating in this process. Without their service and support a project of this magnitude would not be possible.

Second, it will be critical to the success of the task force that its work be open and transparent, and that all voices be heard. Our goal will be to effectively communicate with stakeholders throughout the course of this project. We also want to invite input and insight from those that are interested. If you would like more information about the task force, or if you are a stakeholder that would like to make a presentation or provide input, please email us at [justicecourtaskforce@utcourts.gov](mailto:justicecourtaskforce@utcourts.gov).



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## “To Be or Not to Be?” Your Choice

by Kent B. Scott

### Introduction

Are the legal profession and our legal institutions capable of supporting society's need to be governed by the rule of law? There has never been a better or more important time for all sectors of the legal profession to get serious about addressing the use of controlled substances and mental health challenges among lawyers and judges. This article is a summary of the American Bar Association's National Task Force on Lawyer Well-Being report on lawyer well-being. The National Task Force on Lawyer Well-Being was a collaborative effort among representatives from the American Bar Association (ABA), Commission on Lawyer Assistance Programs, the ABA Standing Committee on Professionalism, the ABA Well-Being Committee, the National Organization of Bar Counsel, Association of Professional Responsibility For Lawyers, National Conference of Chief Justices, the National Conference of Bar Examiners, and the Hazelden Betty Ford Foundation.

This collaborative effort determined that the legal profession is struggling with well-being, specifically finding that younger lawyers in their first ten years of practice and lawyers working in private firms experience the highest rates of problem drinking and depression. See The National Task Force on Lawyer Well-Being, *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change* 7 (Aug. 14, 2017), available at <https://www.americanbar.org/content/dam/aba/images/abanews/ThePathToLawyerWellBeingReportRevFINAL.pdf> [hereinafter *The National Task Force Report*]. In other words, the future generation of lawyers is facing less productive and satisfying careers. To quote a line from *The Music Man*, “Trouble, oh we got trouble, right here in River City!” *THE MUSIC MAN* (Warner Bros. 1962).

### Defining Lawyer Well-Being

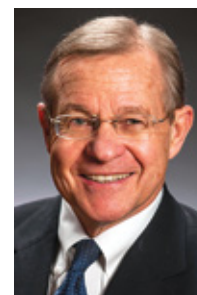
Well-being is defined as a continuous process of developing personal skills in each of the following areas: emotional safety, occupational tasks, creative development, and spiritual, intellectual, physical, and social connections with others.

Lawyer well-being is part of the lawyer's ethical duty of competence and involves the lawyer's ability to make wise, healthy, and positive choices for the lawyer's clients. See ABA Model R. Prof'l Conduct 1.1, 1.3, 4.1, 4.2, 4.3, 4.4, available at [https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct) (last visited March 23, 2020). It is estimated that 40% to 70% of disciplinary matters in malpractice claims against lawyers involve either substance use or depression, or both substance use and depression. The National Task Force Report, *supra*, at 7.

### The Challenge

Studies on lawyer well-being have provided mounting evidence that the legal profession faces challenges in improving lawyer well-being. The results of a survey of 3,300 law students among fifteen law schools indicated that the risk to well-being begins early on. See Jerome M. Organ, et al., *Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Abuse and Mental Health Concerns*, 66 J. LEGAL EDUC. 1, 116–56 (2006). The survey found that 17% of law students experienced some level of depression; 23% of law students reported experiencing mild or moderate anxiety; 6% of law students reported serious suicidal thoughts in the past year; and 43% of law students reported binge drinking at least once in the prior two weeks that the survey was taken. *Id.* at 128, 136–37, 139. And 22% of the law students surveyed reported binge drinking two or more times during the previous two weeks with one-quarter of these law students screening positive on an assessment suggesting that

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further screening for alcoholism would be appropriate. *Id.* at 145.

But these same challenges persist beyond law school, as:

- 21% to 36% of attorneys qualify as problem drinkers, with a higher rate of problematic drinking among junior associates in law firms and new attorneys who are under the age of 40;
- 28% of attorneys reported experiencing depression, with higher levels of depression among lawyers who screened positive for alcohol use;
- 23% of lawyers reported mild or high stress symptoms; and
- 19% of lawyers reported mild or higher anxiety symptoms.

Patrick R. Krill, et. al., *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICTION. MED., no. 1, 2016, at 46, 46–52. The legal profession ranks eighth for suicide by occupation, which is 1.33 times the national norm. These studies demonstrate that there is an elevated risk in the legal community for mental health and substance use disorders. For this reason, the National Task Force

on Lawyer Well-Being is urging all local bar associations to act and to act now. The National Task Force Report, *supra*, at 7.

### The Call to Action

The legal profession has many wellness challenges. To begin, our profession confronts a dwindling market share of work that supports the legal infrastructure. This we have done by keeping lawyers fees artificially high and in excess of what rank and file members of the commercial and consumer communities are willing or able to pay. For this reason, the work done by title companies has taken away business from lawyers, and online legal forms for debt collection, divorces, and landlord tenant matters are being used by laypeople on a growing basis. Too many lawyers and law students experience chronic stress and high rates of anxiety and depression as well as substance abuse.

Moreover, lawyers are experiencing more and more secondary traumatic stress. Kiley Tilby & James Holbrook, *Secondary Traumatic Stress Among Lawyers and Judges*, 32 UTAH B.J. 20–22 (May/June 2019). A traumatic event in the life of a person may come in the form of a dispute between businesses or being the victim of a crime or a domestic dispute, all of which may lead

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to post traumatic stress disorder (PTSD). PTSD occurs when a person has been exposed to a life-threatening incident, serious injury, or the threat to the safety and physical integrity of others. A person with PTSD experiences the symptoms of helplessness and hopelessness along with more observable symptoms such as loss of appetite, sleep disturbance, or loss in short-term memory.

When lawyers are exposed to the trauma and PTSD of others, secondary traumatic stress (STS) can occur. Lawyers and judges with STS may experience intestinal disorders, sleep disorders, or other PTSD symptoms. Lawyers may particularly experience STS when working with victims of domestic violence, victims of crime, and personal injury claimants. And STS can be exacerbated when the attorney has a high caseload, is overworked, or is overextended with clients. *Id.* at 22. With these symptoms may come extreme fatigue, irritability, or skeptical thinking. Further, STS may cause attorneys or judges to question their own competence or value to the profession and friends within social circles.

Question: Given the current state of lawyers' health and well-being, can our profession remain dedicated to the rule of law and keep the public trust? The time to act is now. Change will require intensive focus on what can be done dealing with

stress and anxiety as well as STS among lawyers who take upon themselves difficult clients, toxic lawyers, demanding judges, and rock-hard law professors.

### Strive to Thrive

To be a good lawyer one needs to be a healthy lawyer. We must strive to thrive. Stakeholders, such as law schools, bar associations, judicial councils, and law firms, are the solution in helping alleviate the difficulties and challenges in practicing law on a day-to-day basis.

The following recommendations for the legal profession, including stakeholders, can assist in establishing a culture of well-being:

#### General recommendations

- Acknowledge the problem and take responsibility;
- Stakeholders should make a personal commitment to well-being;
- Stakeholders should encourage stress reducing activities; and
- Stakeholders should foster collegiality and respectful engagement.

#### Recommendations for Judges

- Discuss and develop policies for recognizing and assisting impaired judges;
- Reduce stigma of mental health and substance use disorders;
- Conduct and participate in judicial well-being surveys;
- Provide well-being programming for judges and staff; and
- Monitor for impaired lawyers.

#### Recommendations for law firms

- Form a lawyer well-being committee;
- Provide assessments for lawyer well-being;
- Assess lawyers' well-being;
- Monitor for signs of work addiction;
- Encourage connectivity within the firm;
- Encourage connectivity through bar related service and activities; and
- Encourage connectivity through pro bono work.

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### Recommendations for law schools

- Create means for detecting and assisting students experiencing anxiety and stress;
- Train faculty members to detect early warning signs of students in crisis;
- Adopt a uniform attendance policy to detect early warning signs of anxiety and stress;
- Empower students to help and give support to fellow students in need;
- Include well-being topics in courses on professional responsibility;
- Commit resources for on-site professional counselors;
- Provide education opportunities on well-being related topics;
- Discourage alcohol-centered social events; and
- Conduct anonymous surveys relating to student well-being.

### Recommendations for bar associations

- Encourage education on well-being topics;
- Sponsor continuing legal education on well-being related topics;
- Create educational materials listing best practices for legal organizations;
- Train staff to be aware of assistance program resources and refer members;
- Establish a mental health committee; and
- Establish a confidential diversionary program for impaired attorneys.

### Top fifteen recommendations for law firm connectivity<sup>1</sup>

- Adopt specific standards of professionalism and civility;
- Form a book club;
- Celebrate birthdays and other personal achievements;
- Attend a mid-day movie matinee;
- Go snowmobiling;
- Encourage community involvement;
- Share your work with others;

- Introduce your clients to other firm members;
- Support trade association activities;
- Support Bar-related opportunities;
- Appoint a Wellness Committee;
- Go to the Hogle Zoo;
- Do service work, then do more service work;
- Try some social axe throwing; or
- Intermingle with staff.

### Utah Standards of Professionalism and Civility

All stakeholders, be it lawyers, judges, law schools, or professional associations, should be proactive in creating a professional environment where they are empowered to practice law. The Utah Standards of Professionalism and Civility are only the beginning of what can be accomplished in a thriving well-being environment.

Chronic instability sucks the energy right out of the profession.

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In a 2007 survey, 72% of the lawyers surveyed named incivility as a serious problem for the legal profession to address. The National Task Force Report, *supra*, at 15. And a survey of over 6,000 lawyers reported that lawyers did not have a positive view of the Standards of Professionalism or Civility. *See id.* Also, in 1992 study, 42% of lawyers and 45% of judges believed that civility and professionalism among bar members were significant problems in general. *See id.* Question: Do we as lawyers talk a good talk when it comes to creating and quoting the Standards of Professionalism and Civility but fall short of the ideal when asked to put our conduct on the line?

Incivility appears to be on the rise. Along with courts and bar associations, it has been recommended that law firms adopt their own standards of professionalism and civility to better connect themselves to the society they serve. The goal for us all is to achieve a general mental and physical level of health, perceived job satisfaction, and organizational commitment to society. Lawyers and judges can and must have a sense of belonging to the legal community. They have been called to serve and in a sense, be the glue that holds the community together.

Lawyers mentoring younger lawyers in the standards of professionalism and civility is highly recommended if well-being is to be achieved. Establishing a connection with others in the legal community and restored enthusiasm in the legal profession will lead to more resilience and a greater sense of well-being. Utah has been a leader among states for implementing such a mentoring procedure.

### A Challenge Whose Time Has Come

Lawyer well-being is a challenge to the profession whose time has come. All of us as stakeholders play a role in reducing professional toxicity and building a thriving profession based upon the rule of law. We should seek to “thrive” and not be content to merely “survive” the rigors of practicing law.

In addition, we need to end the stigma surrounding help-seeking behaviors, such as counseling and mental health services. We all

need to regroup and emphasize that well-being is an indispensable part of a lawyer’s duty of competence. And perhaps the rules of professional conduct should be re-examined and modified to achieve an equal balance between wellness and duty to the profession. But let’s make that a different article for another time.

Finally, we need to expand programming on wellness issues starting with law students. This would include instruction on recognizing mental health challenges in substance use disorders. We can and must do this adventure one step at a time with a willingness to achieve a healthier lawyer population and a vibrant legal system that supports the need of our society. We can no longer take a hands-off policy. It will take dedication and hard work to create a healthier and less toxic profession. I challenge each stakeholder to come up with a list of the top fifteen areas in which the stakeholder can safely thrive and allow others to thrive in a state of well-being in the practice of law.

*“Lawyers have an obligation to society to be mentally capable of following the rule of law throughout the course of their professional lives.”*

Our society, as a free nation and founded upon the rule of law, needs and deserves healthy and productive lawyers.

Lawyers have an obligation to society to be mentally capable of following the rule of law throughout the course of their professional lives. In addition,

lawyers, as a self-regulated and civil body of professionals, need to be competent, capable, and conscientious about the way they relate to each other. Not only is this standard aspirational, but it is required by Rule 1 of the Rules of Professional Conduct.

If we are going to have a healthy society, we need a trade and a profession that looks out for the well-being of enforcing and reinforcing the rule of law. It is imperative that lawyers, as a whole, seek well-being as a core value in the representation of their clients.

It is my hope that our profession tears down the walls of isolation and breathes the fresh air of well-being. It will work if you work at it. May you all find your own well-being in your continued journey in this good and great profession.

1. Some of these activities should not be undertaken until after the current public health orders end.



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# *How Mediators Leverage Technology to Overcome COVID-19 Concerns and Keep Cases Settling*

by Gregory N. Hoole and George M. Haley

Who would have guessed just a few months ago that we would be receiving a general order from the Utah Supreme Court activating the Pandemic Response Plan (Did anyone even know we had one?) to level “red” and suspending all criminal and civil jury trials, required court appearances, and, absent exigent circumstances, all in-person hearings? The U.S. District Court for the District of Utah, citing the National Emergency declared by the President, the state of emergency in Utah declared by the Governor, and the effort by the Centers for Disease Control and Prevention to “combat the spread of disease, and to promote the health and well-being of the nation,” has issued a similar order. Depositions have been canceled, and most law firms are either requiring or strongly urging all lawyers and staff to maintain social separation and work from home.

Yet, the wheels of justice roll on with state district court and appellate judges being authorized to conduct many hearings through remote transmission and the courts utilizing other technology to continue all “mission-critical functions.” So, too, are mediators leveraging technology to continue to bring parties together and resolve disputes through remote transmission.

For example, Miriam Strassberg at Utah Alternative Dispute Resolution (ADR) Services has arranged for her entire mediator panel to be trained in all the features of Zoom, a unified video

communications platform, which allows for mediators to conduct effective mediations remotely using secure online breakout and conference rooms. Each of the panel members has access to a version of Zoom that has been customized for mediation. If you are already a regular user of Zoom, you will notice, for example, that the chat and recording functions that are usually present have been disabled.

The beauty of Zoom and similar online platforms is that all participants can appear remotely. No one has to be in the same room, so it is easy to achieve social distancing. It is also inexpensive. No one needs to buy a plane ticket, book a hotel room, or rent a car. You can participate in an online mediation anywhere you have a computer or mobile device and a Wi-Fi connection. For example, a lawyer could participate from home in Salt Lake City, the client from home in Chicago, and the insurance adjuster from home in New York City, with all participants appearing in the same virtual conference room.

One of the first questions people ask about online mediation is how to communicate confidentially with one’s client, as well as the mediator, outside the presence of other parties to the mediation. Online mediation is actually more secure than the usual conference room setup. Zoom offers secure breakout rooms for each party. The mediator can set up these breakout rooms before the mediation even begins for those mediations

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where an opening joint conference may not be beneficial.

The mediator can also set up any number of other breakout rooms, including what Judge Bohling refers to as the “kitchen,” a separate room that could be used if the mediator wanted to have a private caucus with just the lawyers. Only the mediator can move people between rooms, so the communication within each breakout room remains confidential and secure. The mediator does not enter any breakout room until invited by the participants in that breakout room. As with any traditional mediation, the mediator and the parties can decide whether it would be advantageous to stay in breakout rooms throughout the mediation or whether a joint conference at some point in the mediation might be helpful.

Zoom is easy to use. If you are using one of the Utah ADR Services, Miriam Strassberg will schedule the mediation and send to each lawyer and participant a “cheat sheet” for using Zoom that she has developed. She will also send you a calendar invite that will have a link to the mediation. If you have never used Zoom before, you will be prompted to download the free Zoom application when you click the link. Although this takes just a couple minutes, it is best to have this installed and ready to go before the mediation begins. From there, all you need to do is click the “Join with Computer Audio” button and you are in the meeting.

If the meeting has not yet started by the time you connect, you will be able to check your video and audio settings while you wait by clicking on the “Test Computer Audio” button. You may need to adjust the volume of the microphone by clicking the “up” arrow next to the microphone. Once connected, the mediator will be present and will be able to guide you easily through the rest of the process.

If you are participating with either a desktop or laptop computer, you will want to make sure that it is equipped with a camera, speaker, and microphone, which almost all laptops are. All mobile devices are so equipped. You will also want to make sure you are in a good Wi-Fi area. We have also found that if one of the parties is using a speaker phone instead of the computer audio, it can create feedback if the phone is too close to the computer. One other tip is to make sure that the mediator has all the participants’ cell numbers. This provides a good alternative means of communication if necessary.

As with all mediations, any agreement reached in an online mediation must be reduced to writing with plain and unambiguous terms that are sufficiently definite to be enforced. *See Reese v. Tingey Constr.*, 2008 UT 7, ¶ 15, 177 P.3d 605; *ACC Capital Corp. v. Ace W. Foam Inc.*, 2018 UT App 36, 420 P.3d 44.

It is good practice to have one party be responsible for an initial draft of the writing. The draft can be circulated via email or counsel can be invited into the “kitchen” to collaborate on the draft by clicking on the “Share Screen” button in Zoom. Zoom is equipped with annotation features that each party can use to facilitate this process. Once the document is final, it can be saved as a PDF file and sent to all the participants for a secure, digital signature using tools built into Adobe Acrobat or other applications such as DocuSign.

Lawsuits are not going away, and we, as lawyers, still have a duty to our clients to try and get their disputes resolved as favorably, expeditiously, and inexpensively as possible. Online mediation offers a safe, secure, effective, and inexpensive way of resolving disputes, especially during this uncertain time.



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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

#### **McDonald v. Fidelity & Deposit Co. of Maryland** **2020 UT 11 (Feb. 28, 2020)**

When a subcontractor failed to make contributions to various trust funds for its employees' work on a state construction project and then declared bankruptcy, the trusts sued to recover the unpaid contributions from a public payment bond associated with the project. On appeal from summary judgment in favor of the trusts, the supreme court **adopted the reasoning of *Forsberg v. Bovis Lend Lease, Inc.*, 2008 UT App 146**, to conclude that the trusts had a general right to sue on behalf of beneficiary employees under Utah's public payment bond statute, Utah Code § 63G-6-505(4) (2010). The court also held that the trusts (and individual employees) could pursue only those "traceable amounts that are ultimately 'due' an individual employee" under the statute. Thus, individual wages or contributions to a 401(k) are recoverable under the statute, but other contributions that benefit employees only as a collective are not.

#### **Utah Dep't of Transportation v. Target Corp.** **2020 UT 10 (Feb. 28, 2020)**

In this eminent domain case, the supreme court **clarified the standard for severance damages in cases involving partially condemned property by grounding the operative test in the terms of the statute as originally understood**. In doing so, the court discussed interplay between judicial gloss in case law and "the importance of sticking to the text of governing rules and statutes."

#### **Hand v. State,** **2020 UT 8 (Feb. 19, 2019)**

The supreme court **reversed the dismissal of the petitioner's petition under the Post-Conviction Remedies Act, holding his prior petition that he had voluntarily dismissed did not constitute a "previous request for post-conviction relief."** The court applied the "settled view of the effect of a voluntary dismissal under civil rule 41(a)(1)(A)"; that "such a dismissal renders the proceedings a nullity and leaves the parties as if the action had never been brought."

#### **Bright v. Sorensen,** **2020 UT 7 (Feb. 18, 2020)**

In this consolidated interlocutory appeal of three district court orders denying motions to dismiss medical malpractice lawsuits, **the court held: 1) that the fraudulent concealment and foreign object tolling exceptions in Utah Code § 78B-3-404 can extend either the limitations or repose periods; 2) that when a plaintiff pleads fraudulent concealment as a response to an anticipated affirmative defense, he or she is not required to plead with particularity under Utah R. Civ. P. 9(c); 3) that the foreign object exception applies in cases in which "foreign" material is wrongfully left in a patient, not where the material left is what was intended by a surgery; and 4) that the Act did not retroactively bar one of the plaintiff's negligent credentialing claims.**

#### **State v. Lujan,** **2020 UT 5 (Feb. 11, 2020)**

Abrogating *State v. Ramirez*, 817 P.2d 774 (Utah 1991), the supreme court held that the admissibility of eyewitness identification testimony should be analyzed first under the rules of evidence, but noted that the state

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



and federal due process clauses may operate as a backstop in cases of suggestive police activity.

***In re GJP,*  
2020 UT 4 (Feb. 5, 2020)**

The juvenile court appointed a Guardian Ad Litem (“GAL”) for a mother defending against termination of parental rights proceedings. The Office of Public Guardian (“OPG”) objected to the appointment arguing that the court had no authority to appoint a GAL for the mother, or that the court abused its discretion in doing so. The supreme court held that **the juvenile court has inherent authority to appoint a GAL, but the OPG cannot be compelled to assign a GAL for the mother without OPG’s consent as required by statute.**

***State v. Badikyan,*  
2020 UT 3 (Jan. 30, 2020)  
and**

***State v. Flora,*  
2020 UT 2 (Jan. 30, 2020)**

In these concurrently issued opinions the supreme court held that **the plea withdrawal statute, Utah Code § 77-13-6, creates its own preservation rule that is not subject to the common-law preservation exceptions, and it bars appellate review of unpreserved claims raised as part of an appeal of a timely motion to withdraw a guilty plea.** Defendants seeking to raise such claims much do so under the Post-Conviction Remedies Act.

***State v. Hatfield,* 2020 UT 1 (Jan. 9, 2020)**

Defendant entered a *Sery* plea in the trial court to four counts under Utah’s Sexual Exploitation Act. The court of appeals affirmed two counts but dismissed two finding that as to the dismissed counts, the materials in defendant’s possession did not amount to “simulated” sexual acts. In doing so, the court interpreted “simulated” under Section 103(11) of the Act holding: **“Simulated conduct requires the duplication of an actual act such that the average person would believe that the activity appears to have occurred.”** Moreover, while the Court previously cited the Dost factors as instructive in determining whether a depiction was designed “for the purpose of sexual arousal of any person,” **the court noted that its prior reliance on Dost was “with a healthy dose of caveat” explaining the “inquiry will always be case-specific” and that there “may be other factors that are equally if not more important” in determining whether an image violates the Act.**

## UTAH COURT OF APPEALS

***Robertson v. Stevens,*  
2020 UT App 29 (Feb. 21, 2020)**

In affirming the denial of a petition to modify a divorce decree, **the court of appeals held that the district court lacked continuing jurisdiction to modify or expand a stipulated non-child-related nondisparagement clause contained in a final decree of divorce.**

***State v. Richins,*  
2020 UT App 27 (Feb. 21, 2020)**

After the defendant asserted that the victim mistakenly accused him of public lewdness at trial, the prosecution introduced evidence of four strikingly similar prior instances of lewdness perpetrated by the defendant under the doctrine of chances. That doctrine permits the introduction of previous comparable misconduct by a defendant to show that a witness has not made a mistake or fabricated an accusation based on “the objective improbability of the same misfortune” – repeated false accusations – “befalling one individual over and over.” **Although the court of appeals unanimously upheld the defendant’s conviction on public lewdness, two judges on the panel**

## MEDIATOR & ARBITRATOR

### Greg Hoole

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echoed concern expressed in prior opinions that the doctrine of chances permits introduction of evidence that is ultimately indistinguishable from “straight-up propensity evidence.” In a special concurrence, Judge Orme rejected his colleagues’ concern and defended “established jurisprudence concerning the doctrine of chances.”

***Redden v. Redden,***  
**2020 UT App 22 (Feb. 13, 2020)**

The trial court made the payor spouse responsible for student and vehicle loans, but then disallowed the loan obligations when considering the payor spouse’s ability to pay alimony. Reversing and remanding for further consideration, the court of appeals held that **the trial court exceeded its discretion by declining to disallow loans allocated to the payor spouse for alimony purposes, primarily because its decision failed to explain the bases for its decision.**

***Heartwood Home Health & Hospice, LLC v. Huber***  
**2020 UT App 13 (Jan. 24, 2020)**

In affirming the district court’s grant of summary judgment to the defendants in this case involving alleged breaches of a confidentiality agreement and fiduciary duties, **the court of appeals addressed the effect of a Rule 30(b)(6)’s representative’s position testimony at the summary judgment stage.** “[T]he organization is generally bound by its representative’s testimony at the summary judgment stage of litigation.” “The binding nature of the representative’s deposition, however, is limited to the summary judgment stage and, even then, the evidentiary limitation does not extend to the representative’s legal conclusions; to answers to questions that do not fall within the noticed scope of the deposition; or to facts that supplement, correct, or explain the representative’s testimony.”

***Peck v. Peck,***  
**2020 UT App 14 (Jan. 24, 2020)**

In this divorce action, husband’s attorney in the trial court did not object to a proposed order that incorrectly identified the length of the marriage for a QDRO calculation. Husband filed a Rule 60(b) motion relying on the residual clause, which the district court denied. The court of appeals reversed. As the court explained: **“Gross attorney negligence that is ‘too egregious and exceptional to be encompassed by Rule 60(b)(1)’ may be assessed under the residuary clause.”** The court remanded the case to allow the district court to determine in the first instance whether the mistake fit within the court’s stated standard.

***Wallingford v. Moab City***  
**2020 UT App 12 (Jan. 24, 2020)**

This appeal arose from a lawsuit filed by a group of citizens challenging Moab City’s modification of a previously approved land development project. The City initially classified the modification as “major changes” which required a public hearing under a local ordinance, but later entered into a contract with the developer and SITLA whereby the City agreed to treat the modifications as “minor changes” that would not require a public hearing. **The court of appeals held that this was unlawful “contract zoning,” and that the City could not enter into this contract without first holding a public hearing.** Accordingly, the court reversed the district court’s order granting summary judgment to the City and remanded the matter for further proceedings.

***State v. Hutchinson,***  
**2020 UT App 10 (Jan. 9, 2020)**

Citing efforts to reform probation statutes in recent years, the defendant argued the trial court lacked authority to revoke his probation. **While the legislature’s adoption of the Justice Reinvestment Initiative changed the probation landscape in 2015, district courts retain statutory authority to revoke probation and impose the original sentence in certain cases.** Because the defendant had 24 probation violations, committed new offenses while on probation, and had been given several opportunities to address his drug addiction but failed to do so, the court did not abuse its discretion in revoking probation and imposing the original sentence.

***Keaty LLC v. Blueprint Summer Programs, Inc.***  
**2020 UT App 9 (Jan. 9, 2020)**

On appeal from the lower court’s dismissal for lack of personal jurisdiction, the court of appeals held that the district court properly concluded that it lacked personal jurisdiction over a North Carolina corporation, Blueprint. The plaintiffs, including a consulting company headquartered in Nevada and Utah, asserted that the court could exercise specific personal jurisdiction over Blueprint because Blueprint allegedly enticed a Utah-based employee away from a Utah-based company in violation of the parties’ contract. **The court disagreed, holding that, under *Walden v. Fiore*, 571 U.S. 277 (2014), grounding personal jurisdiction over Blueprint based upon the plaintiffs’ connections to Utah would “impermissibly allow[] a plaintiff’s contacts with the defendant and the forum to drive the jurisdictional analysis.”** Although the court could “imagine specific acts

directed at Utah that Blueprint might have taken to recruit the employee,” the plaintiff failed to make any such allegations.

## 10TH CIRCUIT

### *United States v. Lovato*

**950 F.3d 1337 (10th Cir. Feb. 27, 2020)**

In affirming the defendant’s convictions for being a felon in possession of a firearm, **the Tenth Circuit upheld the district court’s admission of a 13-minute 911 call under the present sense impression exception to the rule against hearsay.** The court concluded that it was not necessary to examine each statement within the call to address credibility concerns because the caller was a disinterested observer; no substantial change in circumstances occurred during the call; and the caller provided his full name, phone number, and address during the call. The court further concluded that the statement was sufficiently contemporaneous to qualify as a present sense impression.

### *United States v. Bacon*

**950 F.3d 1286 (10th Cir. Feb. 21, 2020)**

**In this criminal appeal, the Tenth Circuit held that the district court’s denial of the criminal defendant’s challenge to filing the supplement to his plea agreement under seal was plain error.** The court detailed the burden that a party seeking to have a court record sealed must carry to overcome the presumption that court records are available to the public. It was plain error for the district court not to apply these requirements. The court refused to modify the common law to create an exception for plea supplements and held that the District of Utah’s local rule providing for such documents to be sealed as a matter of course could not supplant the common law.

### *United States v. Gonzalez-Fierro*

**949 F.3d 512 (10th Cir. Feb. 4, 2020)**

**As a matter of first impression, the Tenth Circuit held that 8 U.S.C. § 1222(b)(1)(D) unconstitutionally deprives a defendant who had a previous expedited removal under 8 U.S.C. § 1225(b)(1) and is charged with unlawful reentry under 8 U.S.C. § 1326(a) of due process because it allows the government to use that unreviewed expedited removal order to convict the defendant of the § 1326(a) criminal offense.** In doing so, the court relied on the Supreme Court’s decision in *United States v. Mendoza-Lopez*, 481 U.S. 828 (1987), which,

although involving different circumstances, “applies here with equal force.”

### *Aguilar v. Mgmt. & Training Corp.*

**948 F.3d 1270 (10th Cir. Feb. 4, 2020)**

The lawsuit underlying this appeal was filed by 122 detention officers who claimed that their employer violated the Fair Labor Standards Act and state law by failing to pay them for certain activities that they engaged in before they arrived at, when they arrived at, and after they left their posts within the prison. **The Tenth Circuit held that the alleged pre- and post-shift activity is compensable work under the FLSA,** and therefore reversed the district court’s order granting summary judgment to the prison.

### *United States v. Tony,*

**948 F.3d 1259 (10th Cir. 2020)**

The Tenth Circuit held that the district court abused its discretion in excluding evidence of the victim’s use of drugs, because it had been offered for a permissible purpose – namely, to show that the victim was the first aggressor and self-defense. **Rather than remand to the trial court for consideration of an alternative basis for excluding the evidence, the Tenth Circuit vacated the first-degree murder conviction in its entirety, citing the fact that the trial occurred two years earlier, as well as concerns that remand would create a dilemma for the trial court, which would face the temptation to rationalize the exclusion of the evidence on other grounds.**

### *Walker v. Corizon Health*

**947 F.3d 1244 (10th Cir. Jan. 14, 2020)**

In this 42 U.S.C. § 1983 action, the plaintiff, the estate of a deceased inmate, sued Corizon, which was the medical entity providing care to the institution, along with numerous healthcare professionals. One defendant, Dr. Mohiuddin, filed a motion to dismiss based on qualified immunity arguing that the complaint only made collective allegations against all defendants and nothing particular as to him. The district court denied the motion. **The Tenth Circuit reversed noting that the allegations in the complaint, if true, were “disturbing and reprehensible,” but “[m]erely lumping Mohiuddin in with fifteen other medical professionals under the generic label ‘defendants’ or ‘Corizon healthcare providers’ does not adequately plead a § 1983 claim against him.”**



## Debunking the Myths of a Juvenile Record

by Monica Diaz and Marina Peña

We need to stop perpetuating the lie. Juvenile records do matter.

### MYTH OR FACT?

#### Juvenile records are confidential.

**Myth.** Juvenile records may be accessed by the public. Juvenile records contain sensitive information such as the individual's legal files, law enforcement records, their delinquency history, their school and mental health history, as well as personal family and social history. While juvenile records are not considered public, there are methods by which the public can easily access those records. *See* Utah Code Ann. § 78A-6-209(3); Utah Code Jud. Admin. 4-202.2, 202.3. Furthermore, depending on the age of the youth, some records are not protected by provisions of the Juvenile Court Act and Rules of Juvenile Procedure. In instances when a youth is fourteen years old or older and charged

with an offense that would be a felony if committed by an adult, the court shall make available to any person upon request the petition, any adjudication or disposition orders, and the delinquency history summary of the minor charged unless the records are closed by the court upon findings on the record for good cause.

Utah Code Ann. § 78A-6-209(4).

MONICA DIAZ is a managing attorney at Utah Juvenile Defender Attorneys.



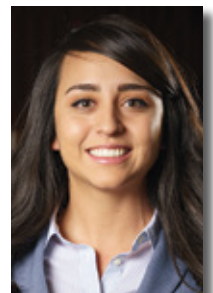
#### Juvenile records do not show up on a background checks.

**Myth.** An individual's juvenile record may not show up on a background check through the Utah Bureau of Criminal Identification but could show up through a private background check. *See* Riya Saha Shah & Jean Strout, *Future Interrupted: The Collateral Damage Caused by Proliferation of Juvenile Records*, JUV. LAW CENTER, at 12–18 (Feb. 2016), *available at* <https://juvenilerecords.jlc.org/juvenilerecords/documents/publications/future-interrupted.pdf> (hereinafter *Collateral Damages*) (discussing when and how juvenile records are included in background checks). Employers and universities are increasingly using private background check companies and gaining access to juvenile records. *See id.* at 13. For example, one of our expungement clients had just finished medical school when she was almost removed from her residency based on an assault adjudication when she was fifteen. This client had successfully completed all of her juvenile court obligations, was terminated from juvenile court jurisdiction over twelve years prior, and did not have an adult record. Nonetheless, her juvenile record significantly impacted her education and employment prospects.

#### Colleges don't care about juvenile records.

**Myth.** Some college applications ask about school discipline, juvenile adjudication, crimes, or convictions. *See* Joy Radice, *The Juvenile Records Myth*, 106 GEO. L.J. 365 (2018); *see also Collateral Damages* at 10. While most colleges do not disqualify applicants from eligibility, exposing the conduct or mistakes from their youth can be unnerving for individuals.

MARINA PEÑA is an appellate attorney at Utah Juvenile Defender Attorneys.



### A juvenile record does not impact an individual's ability to join the military.

**Myth.** A juvenile delinquency record can impede an individual's ability to join the military. The military requires "moral fitness" of its soldiers and certain adjudications will cause the military to conclude that an individual is unfit for service. *See Collateral Damages* at 9. While the military may still see a juvenile record even after it's been expunged, an expungement may convince a branch of the military that a person is "morally fit" to serve based on a court's determination that expungement is appropriate because the individual has been rehabilitated.

### Juvenile records impact adult sentencing.

**Fact.** The adult sentencing guidelines allow consideration of juvenile records in adult sentencing. *See* 2017 Adult Sentencing & Release Guidelines, Utah Sentencing Comm'n, *available at* <https://justice.utah.gov/Sentencing/Guidelines/Adult/2017%20Adult%20Sentencing%20and%20Release%20Guidelines.pdf>. As minor as the adult charge is, a juvenile record could potentially result in more serious consequences in district court.

### Juvenile records impact gun rights.

**Fact.** A felony adjudication on an individual's record could restrict them from lawfully owning and possessing a firearm for seven to ten years. *See* Utah Code Ann. § 76-10-503(1)(a)(iv); *see also id.* § 76-10-503(1)(b)(ii). For example, a juvenile could be charged with a felony for taking their parents' car for

longer than twenty-four hours without permission. If adjudicated on an unlawful possession of a motor vehicle allegation, they would be restricted from purchasing, transferring, possessing, or using a firearm or having one under their custody or control for seven years. *See id.* § 76-10-503(3).

### Juvenile records impact religious missions.

**Fact.** Utah does not generally require youth adjudicated of a sexual offense to register as a sex offender. *See* Utah Code Ann. § 62A-7-104(12)(a–c) (providing that juveniles who have been adjudicated for certain sexual offenses, have been committed to secure confinement, and are still being held in secure confinement thirty days before their twenty-first birthday will be required to register as a sex offender). However, an adjudication can impact whether a youth has to register in other states. *See Raised on the Registry: The Irreparable Harms of Placing Children on Sex Offender Registries in the US*, Human Rights Watch (May 1, 2013) (hereafter *Raised on the Registry*). For example, consider a Utah youth who chooses to go on a religious mission to another state. If that youth were adjudicated for a sex offense in Utah, they may be required to register in the new state even though they successfully completed treatment and had no other new offenses. Furthermore, once that youth has registered in a different state they are required to register when they return home to Utah. *See* Utah Code Ann. § 77-41-102(17)(c)(i) (stating that the definition of a sex offender in Utah includes any individual "who



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is required to register as a sex offender by any state”). To date, over thirty states have juvenile sex offender registries, including our neighboring states of Arizona, Colorado, Idaho, Nevada, and Wyoming. *See Raised on the Registry*; see also Nicole Pittman & Quyen Nguyen, *A Snapshot of Juvenile Sex Offender Registration and Notification Laws, A Survey of the United States*, p.56–106 (2011), available by contacting Nicole Pittman at [NPittaman@Philadefnder.org](mailto:NPittaman@Philadefnder.org).

## THE IMPORTANCE OF EXPUNGEMENT

Scientific research, the United States Supreme Court, and society as a whole acknowledge that juveniles are significantly different than adults and thus should be treated differently in the justice system. Due to their lack of impulse control, maturity, decision-making, and brain development, a separate system was created to provide youth an opportunity to grow, develop, and mature. Delinquent behavior is a stage that most youth will outgrow.

And, rather than punish kids for youthful mistakes, one of the core principles of the juvenile justice system is rehabilitation. Youth are more susceptible to change than adults and the juvenile system serves as a resource for helping troubled youth get back on track so they can become productive, responsible members of the community.

*“Delinquent behavior is a stage that most youth will outgrow. And, rather than punish kids for youthful mistakes, one of the core principles of the juvenile justice system is rehabilitation.”*

Part of the success of rehabilitating youth is allowing them to put their past behind them and strive towards success without the stigma associated with their adjudications. As discussed above, a juvenile record can affect individuals in a number of ways, including education, military, housing, employment prospects, immigration status, gun rights, and adult sentencing decisions. *See Collateral Consequences*, at 9–18 (describing the broad range of collateral consequences that affect individuals with juvenile records); see also Hillela Simpson & Serena Hothe, *Collateral Consequences of Juvenile Court Involvement: An Opportunity for Partnership*, Clearinghouse Community (Apr. 2018), at 2–4, available at [https://www.povertylaw.org/files/docs/article/ClearinghouseCommunity\\_Simpson.pdf](https://www.povertylaw.org/files/docs/article/ClearinghouseCommunity_Simpson.pdf) (discussing the collateral consequences youth face after juvenile adjudications).

It is our responsibility to educate and inform our clients about the lifelong consequences juvenile records can have on their lives.

We furthermore must stress the importance of having their juvenile records expunged as soon as they become eligible. An individual may petition the court for the expungement of their juvenile record, including any related records in the custody of a state agency, if the individual is at least eighteen and one year has passed from the date of: (1) termination of juvenile court jurisdiction or (2) the individual’s unconditional release from the custody of the Division of Juvenile Justice Services. *See* Utah Code Ann. § 78A-6-1503 (effective May 12, 2020). The court may waive the above requirements if the court makes a finding that waiver is appropriate. *See id.* § 78A-6-1503(b). If an individual’s record solely consists of nonjudicial adjustments then they must be eighteen years of age and have completed the terms of their nonjudicial adjustment. *Id.* § 78A-6-1504 (effective May 12, 2020).

In 2018, the Utah Board of Juvenile Justice (UBJJ) was awarded a grant to help those with juvenile records in Utah receive no-cost expungements. In collaboration with Utah Juvenile

Defender Attorneys (UJDA), UBJJ has been hosting clinics throughout the state to assist people in the process. At the clinics, individuals have their fingerprints taken for a background check, meet with volunteer attorneys from UJDA to fill out an expungement petition and a fee waiver

motion, and file all required paperwork.

Since the first expungement clinic in October 2018, 106 individuals have petitioned to have their juvenile records expunged and many more have attended to inquire about their eligibility. UBJJ and UJDA will continue to hold free clinics throughout the state. Clinics are scheduled for Salt Lake County in May, Price in June, Richfield in September, Moab in November, and Vernal before the end of 2020. For further information on the juvenile expungement clinics see <https://sites.google.com/view/utah-juvenile-expungement>. Those unable to attend a clinic can contact UJDA at 801-521-5225 or [inbox@ujda.org](mailto:inbox@ujda.org) for assistance.

We need to stop perpetuating that myth that juvenile records don’t matter. The fact is juvenile records can have profound long-term effects even after an individual has been rehabilitated and moved on. It is important for practitioners to inform their clients about the need for expungement and assist them in the process.



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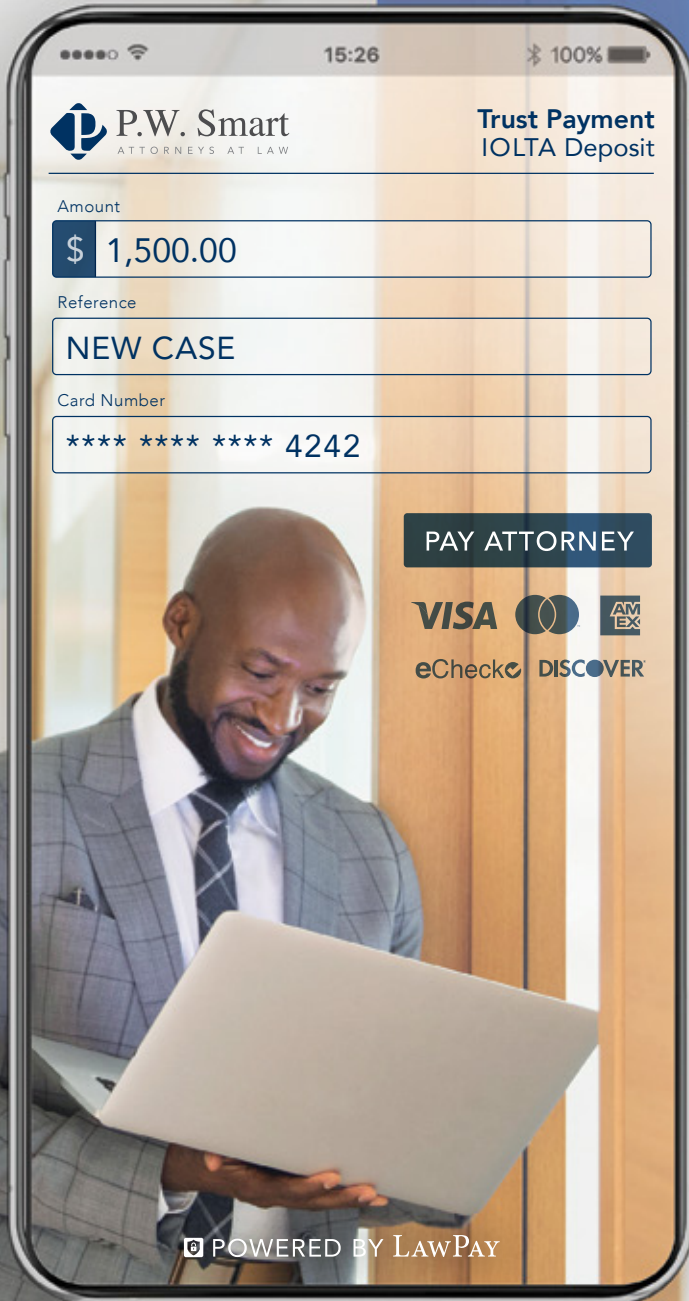
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## Speaking for Newborn Adoptees

by K. Ray Johnson

“The commoditization of children is simply evil.” Utah Attorney General Sean Reyes so declared at a 2019 press conference announcing criminal charges against Paul Petersen arising from an alleged illegal adoption scheme involving child selling. *See State of Utah Attorney General v. Petersen*, 3rd District Court for Salt Lake County, Case No. 191910049. In an older unrelated case, the state is also currently prosecuting the owner of the Adoption Center of Choice, Inc. (ACC) for allegedly taking illegal fees from adoptive parents. *See State v. Webb*, 4th District Court for Utah County, Case No. 171403130. Both defendants are contesting their respective charges. Regardless of the outcome of pending criminal charges, Utah’s adoption industry will still charge for adoptions. Utah will still need laws for separating acceptable fees and legitimate placements from illegal fees and illegal child sales. More than avoiding felony-level harms, Utah needs laws to proactively protect the best interest of the children.

Laws that protect children are found in the Utah Adoption Act (the Act) and Utah Administrative Code R501-7 (the Rules). The Act states that the best interest of the child should be the primary concern in every adoption. *See Utah Code Ann. § 78B-6-102*. The Rules require licensees to always act in the best interest of a child. Utah Admin. Code R501-7-4(1)(b). Hopefully, this system regularly improves adoption ethics for all agencies. Felony charges should be seen as a last resort for extreme cases.

Utah’s adoption laws are violated in all too many cases. Ethical violations often haunt adoptions prior to placement, and litigation comes stalking after. Amid the impassioned voices of case workers, lawyers, adoption agency administration, birth parents, adoptive parents, and clergy, the silent plea of a newborn, “please look after my best interests,” can be easily drowned out. It is the adults who charge fees, pay fees, write online reviews, rely on each other for referrals, and sign all the paperwork. Members of Utah’s legal community can be the voice these children need by enforcing and enhancing Utah’s adoption ethic Rules.

For the sake of newborn adoptees, this article (I) summarizes

recent licensing actions, (II) asks attorneys to report violations, (III) asks judges to review expense affidavit filings, and (IV) asks legislators to close a reprehensible licensing loophole.

### RECENT LICENSING ACTIONS

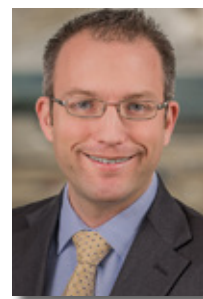
Citing serious ethical violations, Utah’s Office of Licensing (the UOL) has revoked two adoption agency licenses in the last six years.

ACC was cited for numerous violations in 2013. *See* Adoption Center of Choice, Notice of Agency Action (Utah Dep’t of Licensing Sep. 23, 2013), on file with Author (Notice).<sup>1</sup> In early 2014, ACC’s license was revoked.

Heart and Soul Adoptions, Inc. (H&S) lost its child placing license in 2018. *See* Heart and Soul Adoptions, Inc., Notice of Agency Action (Utah Dep’t of Licensing Jan. 31, 2018), *available at* <https://hslic.utah.gov/notices-of-agency-action> (last visited Mar. 26, 2020). On appeal, the revocation was upheld by Sonia Sweeney, an Administrative Law Judge from the Office of Administrative Hearings. *See* Heart and Soul Adoptions, Inc., Final Decision and Order (Dep’t of Human Services Office of Administrative Hearings June 18, 2019), on file with author (Order).

If they had a choice, no newborn would opt to be adopted through an unethical company. In about twelve years of operations before its license was revoked, ACC placed more than 1,300 children. In a similar period, H&S placed more than 700 children. These agencies’ worst violations were of Rules intended to protect newborns from (1) being bought, (2) being sold, and (3) being adopted by criminals.

*K. RAY JOHNSON is a member of Durham Jones & Pinegar’s Estate Planning Section. Mr. Johnson’s practice focuses primarily on wills and trusts, family-owned business formations and operations, estate administration, and tax planning.*



## Newborns Should Not Be Bought.

Agencies should not buy children. This is a human rights issue and a criminal matter. It is a third degree felony to induce a person to sell a child. Utah Code Ann. § 76-7-203(2)(a). Child placing agencies are expressly charged to not buy children. *See* Utah Admin. Code R501-7-3. They must walk a fine line: they may lawfully pay a woman for her adoption related expenses, but they cannot pay her for her child. The Act and Rules require careful documentation of adoption expenses paid. *See* Utah Code Ann. § 78B-6-140; Utah Admin. Code R501-7-11. As Judge Sweeney explained in her Order, “Without itemization, it is impossible to know what the cash given to the birth mothers was for.” Order at \*46. For the adopted children “impossible to know” is unacceptable.

The UOL revoked the licenses of H&S and ACC in part because they both failed to properly account for funds paid to relinquishing parents. The UOL found that in nine separate cases ACC “failed to maintain an itemized accounting of the actual expenditures made on behalf of a birth mother.” Notice at \*8. The UOL also found that the ACC “failed to file copies of the accounting of fees with the [UOL] for at least the past two years.” *Id.*

H&S had similar issues with payments. The Order cited evidence that H&S’s violations of the accounting and affidavit Rules were “repeated and chronic.” Order at \*49. A witness described H&S’s practice of giving birth mothers envelopes with \$4,000 in cash for “final money,” and further claimed that “all of the birth mothers knew they would get paid.” *Id.* at \*13. Reportedly, the overwhelming majority of the birth mothers were very low income and either homeless or transient. *Id.* at \*46. Judge Sweeney lamented that the \$4,000 payment in cash “very well may incentivize their decision to relinquish.” *Id.* at \*47. She concluded that such payments “are acts that appear to be potentially criminal.” *Id.* at \*59. No criminal charges were filed against H&S. The assistant attorney general representing the UOL noted, “We made all of the agency referrals we could; it’s frustrating when [agencies] don’t pick up the case.” E-mail from Laura Thompson, Assistant Attorney General (Aug. 9, 2018, 3:38 PM) (on file with author).

No child should discover that their adoption was rooted in “potentially criminal” actions involving envelopes of cash.

## Newborns Should Not Be Sold.

Agencies should not sell children. It is a third degree felony to sell a child. Utah Code Ann. § 76-7-203. It is a second degree felony to repeat that crime as part of a pattern of unlawful

activity. *Id.* § 76-10-1603.5(1). Child placing agencies are expressly charged to not sell children. *See* Utah Admin. Code R501-7-3. They must walk another fine line: they sell adoption services, but they must not sell children. The UOL’s Rules on collecting adoption fees are a safeguard against child selling.

Unfortunately, both H&S and ACC were cited for charging fees that constituted violations. The UOL found that ACC “failed to charge...adoptive parents the actual costs of expenses of birth mothers” in six separate cases. Notice at \*7.

Judge Sweeney wrote that, in light of H&S’s stance on fees, “essentially all of [H&S’s] actions were fraudulent.” Order at \*51. She cited its owner making “open and unabashed statements that for the last decade [H&S] has been charging adoptive parents fees that are not for actual and reasonable expenses.” *Id.* at \*59. The owner also admitted to the UOL that “she always charges adoptive parents for medical expenses regardless of Medicaid coverage.” *Id.* at \*45–46. Judge Sweeney wrote that such fee-charging practices, “are acts that appear to be potentially criminal.” *Id.* at \*59. She concluded, “[H&S’s] past practice was not only illegal, but it wholly deprived the adoptive parents from the opportunity to make a knowing decision that they were paying fees that were not actually incurred.” *Id.* at \*56.

Legally, there may be a distinction between the crime of child selling versus merely charging illegal adoption fees. That technicality is of little comfort to the children. A child could easily conclude that they were exploited as a commodity.

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## Newborns Should Be Safe from Criminals.

Newborns should never be placed with questionable adoptive parents. The Act and the Rules include specific requirements for background checks. *See* Utah Code Ann. § 78B-6-128(2)(a); Utah Admin Code R501-7-9(3)(c). This protects children from adoptive parents who are poorly suited or dangerous. The UOL found that “[ACC] placed three babies in homes before a home study and each adult’s criminal and abuse background screenings had been approved.” Notice at \*3. These shocking violations illustrate how adults can completely neglect the best interests of a newborn adoptee. The Notice does not disclose if background checks were completed subsequently, or what the results were.

Given the potential for rotten adoption services, attorneys, judges, and legislators should speak up for newborn adoptees and help secure their best interests.

## ATTORNEYS: REPORT VIOLATIONS.

All attorneys should watch for violations of adoption ethical Rules as they observe friends, family members, and clients affected by adoption. The UOL’s Rules are easy to access online. *See* Utah Dep’t Human Services Licensing, <https://rules.utah.gov/publicat/code/r501/r501-07.htm>. Any violations should be reported to the UOL. An online form is available at [hslic.utah.gov/submit-a-concern](https://hslic.utah.gov/submit-a-concern).

## Support your Local Investigators.

The UOL investigators watch over 1,500 licensees or facilities of different types. Unless complaints are submitted, investigators cannot focus on the fourteen child placing adoption agencies. In responding to a UOL inquiry, an adoption company will likely pay its attorney an hourly rate more than ten times what the UOL pays its investigating staff. Of three UOL staff members mentioned in the Order, none earned an hourly wage of more than \$25 per hour. *See* Employee Pay Summary, Utah Office of the State Auditor, available at <https://utahprod.ogopendata.com/> (last visited Mar. 27, 2020). Well-framed complaints drafted by attorneys would alert investigators to the issues and help level the playing field.

## Take a Baby Step.

A complaint to the UOL is a very small step. Even if the violation is confirmed, a single complaint is not likely to jeopardize an agency’s license. The UOL often uses a “corrective action plan,” which the UOL does not classify as a penalty or announce on its website. *See* Utah Code Ann. 62A-2-106(1)(m); Utah Admin. Code R501-1-10(1)(e). For example, the Notice against ACC mentions three prior corrective action plans. *See* Notice at \*2. The UOL also gave H&S corrective action plans and “a chance to correct.”

*See* Order at \*6. Thus, submitting complaints helps improve compliant companies and helps build the file against defiant companies.

## Let the Sunshine in on Adoptions.

The UOL plays a critical role in protecting the public, including newborns, by raising public awareness. For example, the UOL posts sanctions online at [hslic.utah.gov/notices-of-agency-action](https://hslic.utah.gov/notices-of-agency-action). Occasionally there are civil suits against adoption companies, but they generally tend to settle under confidential terms. Licensed companies may not be perfect, but at least when the UOL has oversight, we learn about the most serious offenses publicly. Through reporting, attorneys can show adoption companies that ethical violations will not be tolerated.

## JUDGES: REVIEW EXPENSE AFFIDAVITS.

It is truly wonderful that Utah judges, after finalizing an adoption, will come down from the bench for a photo with the new family. It is a time to celebrate. For the sake of the newborn adoptees, judges should carefully review the expense affidavit filed with the court. *See* Utah Code Ann. § 78B-6-140. This expense affidavit provides details on fees charged and expenses paid. This affidavit is evidence that the child is being adopted, as opposed to being bought or sold.

The Order mentions that the owner of H&S “repeatedly stated that she has ‘been doing this for ten years,’ and that she had been ‘turning this into judges and they don’t do anything about it.’” Order at \*12.

Judges should not be blamed for any company’s conduct. But judges can help. Courts have authority to require clarifications if there are questions about the child’s best interests. *See* Utah Code Ann. § 78B-6-137. Adoption cases are sealed, but each affidavit is also submitted to the UOL. Utah Code Ann. § 78B-6-140(3). Thus, a judge could make a report or submit an inquiry to the UOL without disclosing any information to which the UOL is not already entitled. Thanks to that built-in transparency, a judge should not be prohibited from making a report. *See* Code of Judicial Conduct and Annotations & Ethics Advisory Opinions, Informal Op. 00-03.

Judges are probably the only adults at adoption hearings who can realistically speak for children or question the affidavit. The child is generally unrepresented. Adoptive parents generally invest tens of thousands of dollars just to reach the hearing. After having the baby in their home for six months, why would they want any trouble at the hearing? The attorney for the

adoptive parents has a duty to the adoptive parents, not the child. Raising a technical issue could hurt both the clients' interests, and the attorney's ability to collect referrals. Judges should appreciate how important their review is for the child, even in ostensibly "friendly" adoption cases.

### LEGISLATORS: CLOSE THE LICENSING LOOPHOLE.

Child placing agencies have a duty to "always act in the best interest of a child." Utah Admin. Code R501-7-4(1)(b). But there is an ironic loophole. Most of the same services may continue post-revocation, but the licensing Rules disappear. For example, the UOL found that H&S or its owner continued after revocation to generate adoption referrals, care for clients, and maintain a website. Brighter Adoptions, Notice of Agency Action (Utah Dep't of Licensing Jun. 12, 2019), *available at* <https://hslic.utah.gov/notices-of-agency-action> (last visited Mar. 26, 2020). But none of that produced any additional *licensing* violations for H&S. This absurdity must be reversed. Companies that break the rules need increased oversight, not less.

The issue for children is that unlicensed companies (whether

they lost it or never had it) bypass the duty to act in the best interest of the child. The National Council for adoption recently raised this very concern: "Because unlicensed facilitators and consultants are not supervised by the state, their education, experience, record keeping, and policies are not regulated or evaluated to ensure their services are ethical, transparent, and in the best interests of the children." *See* Kristen Hamilton & Ryan Hanlon, *Choosing an Adoption Professional*, 140 ADOPTION ADVOCATE 1, 5–6 (2020) (commenting on the increasing national trend of avoiding licensure).

### Anatomy of a Loophole.

The UOL is authorized to establish Rules for an adoption company "that is licensed." *See* Utah Code Ann. § 62A-2-106(1)(a)(vi). The Rules are mere "standards for licensing agencies." Utah Admin. Code R501-7-1(1). Agencies without a license are apparently untouchable under this rulemaking authority. There is a statute, that at first blush, requires licensing. *See* Utah Code Ann. § 62A-4a-602 (Section 602). However, Section 602 is not an outright ban on unlicensed adoption services. Instead, it contemplates the offering of unlicensed services as long as certain disclosures are made. *See id.* § 62A-4a-602(3)(c). Additionally, Section 602 expressly

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states that adoption matching – for which there is incredible demand – can be offered by any person with or without a license. *See id.* § 62A-4a-602(3)(a)(i). Section 602 ostensibly imposes a few barriers against making a full-time business by offering unlicensed services; violators could face a \$10,000 fine. *See id.* § 62A-4a-603(4)(a). Unlicensed companies can, however, easily bypass these barriers and fines. For example:

- They could be fined if they advertise adoption matching without a license. *See id.* § 62A-4a-602(3)(b), (4)(a). But Section 602 does not expressly prohibit unlicensed companies from advertising adoption consulting, adoption casework, adoption home studies, or using a trade name that includes the term “adoption.”
- They could be fined if they charge a fee for adoption matching without a license. *See id.* § 62A-4a-602(3)(b), (4)(a). But Section 602 does not expressly prohibit the use of matching as a promotional item that (without any advertising) gains attention through word of mouth and attracts clients who pay for other services.
- They could be fined if they engage in child placing without a license. *See id.* § 62A-4a-602(2)(a), (4)(a). But they can avoid that technical term by disclaiming any custody of the child and refusing to offer any care for the child. *See id.*

These Rules have no reach, and Section 602 has no teeth. As a result, revoking a license does very little to protect Utah’s children.

### The Unlicensed Industry.

An unlicensed business model is taking root. These companies often refer to their work as a “private adoption” or “consulting” pathway to adoption. It may be good for business, but it’s bad for babies. The duty to always act in the best interest of a child no longer applies.

Thanks to the loophole, unlicensed companies are apparently free to write home studies, counsel birth parents, offer casework services, manage adoption expenses, host waiting couple profiles, match adoptive couples with babies, give training to adoptive parents, hire caseworkers, maintain websites, post to social media, host events, and collect relinquishments when appointed by the court. It is not that the UOL lacks Rules governing these specific services. For example, the UOL has a Rule on matching babies. Utah Admin. Code R501-7-8(3). The loophole is that unlicensed companies bypass all of the Rules.

This business model exposes children to a capitalized world of

adoption where their best interests are no longer protected. The occasional involvement of a doctor, attorney, or clergyman is not the concern. The concern for children is for-profit, fee-charging companies regularly operating in a competitive market. They have an inherent need to turn a profit, but no legal duty to always act in the best interest of a child.

### Legislative Efforts.

Legislators should close this loophole right away. All adoption companies should owe the same duty to always act in the best interest of the child. They should all face UOL oversight to ensure compliance. Delaware, for example, does not allow a fee-charging company to act as a link in any way between a birth parent and an adoptive family unless it is a licensed agency. *See* 13 Del. C. §§ 901, 904, & 931.

In 2019, SB 215 challenged Utah’s licensing loophole. *See* S.B. 215, 2019 Gen. Sess. As first drafted, the bill sought to bring more service providers under UOL regulation. *See id.* However, the pro-company response prevailed. Senator Weiler, for example, stated that he received “about 800 e-mails” opposed to the bill by persons claiming that it would ban private adoptions in Utah. *See* S.B. 215, Committee Streaming (Senate Judiciary, Law Enforcement, and Criminal Justice Committee Mar. 7, 2019), *available at* <https://le.utah.gov/av/committeeArchive.jsp?timelineID=138799> (last visited Mar. 27, 2020). The bill was amended to drop any change to the licensing threshold. *See* S.B. 215, 2019 Gen. Sess. 2nd substitute. In the 2020 general session, no Utah bill attempted to address the loophole.

Given Utah’s long history with adoption scandals and recent developments, our legislature should take action and close the loophole. The fact remains that any for-profit company in the business of working with adoptions should have the same duty: to always act in the best interest of the child.

Far too many children have been harmed by Utah’s adoption industry. Licensing scandals, adoption lawsuits, and licensing loopholes reflect this tragic trend. Utah’s legal community should step forward and speak for these vulnerable children who otherwise have no voice against the adoption industry. Attorneys should advocate for a system that truly puts priority on the child’s best interests first and relegates profits to second place.

1. Notices of Agency Action issued by the UOL are available on its website for a period of five years. Utah Dep’t of Human Services Licensing, <https://hslic.utah.gov/notices-of-agency-action> (last visited Mar. 26, 2020).



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## *My Year In Paradise*

by Eli McCann



A court marshal stood at the front of the airport holding a sign that said, “McCann counsel.” That was referring to me. It was 10:00 p.m.; it had been dark for four hours already – the sun sets on the equator at 6:00 p.m. year round. I had just discovered all of my baggage had been lost by China Air. Looking back, I can see it was foolish to pack all of my clothes for an entire year in two large bags and check them through an itinerary that consisted of three tight connections across Asia.

It took me four flights to get to Palau, a country of 22,000 people spread out over hundreds of islands in the Equatorial Pacific. I had applied for a job with the Supreme Court of Palau nine months earlier when my co-clerk at the Utah Court of Appeals, Shea, forwarded the job listing to me. “You’re always complaining about winter,” she wrote. At that January moment, it was snowing outside. I had, in fact, been complaining about winter often enough in recent weeks that someone might accuse me of “always” doing it. Shea’s email forward read more like a dare than a referral. “If you really think coconuts and palm trees are your jam, then you shouldn’t have a problem moving to this small dot in the middle of the Pacific,” she seemed to challenge me.

I applied for the job. The Supreme Court was looking for three attorneys from the United States to come spend a year in Palau, a country I had never heard of, and act as counsel for the judiciary. The court functioned mostly in English, and the country had patterned its legal system after the United States. I was mostly unqualified per the job listing that required more experience than I had as a recent law school graduate who was only four months into a judicial clerkship. I figured I would never even hear about an interview. There was no way this would work out. But somehow it did, and that’s how I ended up looking into the eyes of a court marshal holding a sign with my name on it at 10:00 p.m., 7,069 miles from home.

*ELI MCCANN is a shareholder at Kirton McConkie. His practice area is litigation.*





I was already sweating, standing in the barn-like airport on this tiny jungled island. I had over my right shoulder a backpack with a laptop and my passport – nothing else. “That’s me,” I told the court marshal. He spit a stream of red betel nut<sup>1</sup> saliva out of the side of his mouth, something akin to islander chewing tobacco, and directed me to his van just a few feet away. We drove through the islands connected by causeways and bridges. The dense jungle hugged and threatened to overtake the roads. Occasionally small huts or dim store fronts poked through the trees and vines. After twenty minutes we reached the island I would call home. It was one square mile. Atop the hill at the center of the island sat a white-bricked apartment complex.

The court marshal walked me to the apartment door, deposited me inside, wished me luck, and walked away. There I stood, on laminate flooring, a few flickering lamps and some basic furniture in front of me, a refrigerator humming at the volume of a running diesel engine. Two geckos were skirmishing across the wall above a moldy couch. A pile of boxes sat in the kitchen, looking worse for the wear. I had shipped these boxes to Palau a month or two before. They were full of dented pots and pans and silverware that barely survived the journey. “And not a scrap of clothing in a single one of them,” I thought to myself. *Why had I not shipped a box of clothes?*

It was about eighty degrees inside, and so humid that every surface felt damp. I had been traveling for over thirty hours by this point, hardly catching a minute of sleep during that time, and I was supposed to report to work in about eight hours. “I should shower,” I thought. A minute later the shower head flew off and hit me square in the chest. Ice cold water sprayed me from a hose. I had no hot water. And the shower was obviously broken.

One thing no one told me about tropical islands is how dark and remote they sometimes feel. On top of that hill on the one square mile of land and far away from any reasonable amount of civilization, I shivered in an icy shower and staved off a panic attack. “I have made a massive mistake,” I thought to myself. “*Massive.*” Just then the power went out. When I climbed out of the shower I located a candle and lit it, and then noticed a note left by the apartment’s prior occupant, Megan. She was counsel for the supreme court until just a week before when she relocated back to the United States. I had moved into her old apartment. I had taken her old job. I had bought her old car. “Welcome!” Megan’s note said. “I hope Palau, and this place I called home, treat you how they treated me.” It ended, ominously, without further exposition.

The power came back on just as I climbed into bed, nothing more than a ceiling fan to cool me. I slept on top of the sheets. There were no blankets. I would never need blankets. The skittering of animals I couldn’t see wooed me to sleep.


The next morning I woke up to a sunny nation. My front door looked out over dozens of islands and tropical bays. I walked down to the street below, passed packs of street dogs and shirtless men lounging in front of their houses, already spent from the day’s heat. It was 6:30 in the morning.

Thirty minutes later, I found myself at the courthouse in the clothes that I had been wearing for two days – the only clothes I had – and I was introduced to my office. There sat a stack of blue and red appellate briefs. “If you can find Palauan case law, use it,” the chief justice told me. His name is Arthur Ngiraklsong, but everyone in the country calls him CJ. His brilliant mind and diligent care in building and protecting the integrity of his small nation’s legal system have made a difference few lawyers ever realize in their careers.

“If you *can’t* find Palauan case law, try the Ninth Circuit.”

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Palau gained its independence in 1981, just three years before I was born. Prior to that, it was a United States territory. When it became an autonomous nation it was suddenly required to adopt a constitution. It did so, drafting a document very similar to ours in the United States, and formed three branches of government, including a fully functioning judiciary with district judges and a court of last resort.

CJ was appointed to his position. Three others filled the remaining spots – all lifetime appointments. The four function as both trial and appellate court judges. They sit in alternating panels of three on appeal, reviewing the decision of the fourth judge who had handled the trial matter.

One of the challenges in a country with the population of a small town is adequately clearing judicial conflicts of interest. Everyone in Palau knows everyone else in Palau, and most people are related in some way or another. Relationships must be extremely close to merit recusal; otherwise the judiciary would cease to function.

The court counsel, of whom I was one of three, were there to attend hearings and arguments, and draft decisions and opinions from the court for the relevant judges to review and sign. Lawyers are recruited from the United States year after year to staff the position because the country is unable to fill the roles from its permanent population. The matters I was assigned were varied: land disputes, contract claims, a machete murder that caught the usually-quiet island nation by surprise.

Day after day, often in borrowed clothes, at least at the beginning, I sat in that humid office, flipping through damp litigation briefs, and trying not to doubt my decision to move there. “My biggest fear,” CJ had told me when he came to Los Angeles to interview candidates six months earlier, “is that we’ll hire someone, they’ll come to Palau, and they’ll discover that paradise is not what they expected. My biggest fear is *hiring someone who will abandon us*.” “I would never do that,” I assured him. “I won’t do that.”

“I won’t do that,” I repeated to myself, as sweat dripped down my face. As ants crawled up my feet in my office. As island fever set in. As I drove my beat-up Japanese car with the steering wheel on the right side up and down the single paved road in the country and pretended I was going somewhere. As I returned to my apartment one night to find a large rat had eaten through a screen in my window and dragged a chocolate cake I had just baked off of the kitchen counter and across the floor. “I won’t do that,” I reminded myself, every time I fantasized about

climbing onto a plane and flying to a city with air conditioning and a movie theater and functioning internet.

“I promised.”

In addition to my regular duties, I had been assigned to assist with the “Land Court.” The Land Court had been established in 1996 as a “temporary” adjudication body whose sole overly-optimistic purpose was to permanently settle all land disputes in the country and issue final determinations on boundaries and ownership within just a couple of years. Historically, Palau had not thought of land the way we are accustomed to think about it in the United States. Property ownership was less defined – more fluid and tribal. There are still no addresses in the country. The streets don’t have names. Residents receive mail in a centralized P.O. box located at the single island post office just next to the courthouse. Palauans don’t ask where you “live,” but rather where you “stay,” signaling the culture’s transient view of residency.

During the Japanese occupation of the country prior to World War II, Japanese lawyers attempted to survey all land in Palau and document borders and title. These old records, controversial and perpetually disputed, are reviewed by the Land Court, which still functions today, now nearly two-and-a-half decades after it was formed.

Once a week I sat in the chambers of the Land Court judge I had been asked to assist. We pored over massive table maps coated in scribbled Japanese characters and Palauan words I couldn’t read. “Our job is to figure this out so people don’t kill each other over it,” the judge had told me in our first meeting, before spitting some red betel nut saliva into a can.

To this day that still feels like a perfect description, *if not a little aspirational*, of this entire noble profession.

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The prison was not far from the courthouse. Small, and muggy, it housed a dozen or so of the nation’s incarcerated. I visited the prison a few times as a part of my work duties. The place was always something of an enigma to me. I had been told early on that some of the prisoners were let out during the day under a strict directive to report back to their cells by sundown – the idea being that they get jobs and help their families with household chores. I still don’t know whether this is true. It always seemed like a myth to me.

Something I *was* able to verify: To make some money, the

prison provides sharp knives to the inmates each morning to carve “storyboards” depicting fish and huts and Palauan legends. They are sold to visitors in the prison gift shop, the country’s best place to purchase souvenirs. “You have to stop by the prison gift shop,” I used to tell tourists when they asked for advice on what to do in the country. “The storyboards are gorgeous. Also, they have a wall-mounted air conditioner that they run in the afternoons in there.”

Apart from providing weapons to the incarcerated, the security at the tiny prison was weak. There is a meager fence surrounding it. The building, housing a dozen or so cells, sat just off of the main road among dozens of homes and business. One inmate escaped only a few weeks after I arrived in Palau. I don’t remember many of the details – whether he had been let out and failed to report back or whether he had simply walked out the front door when he was supposed to be inside carving storyboards. I do remember he had committed a violent crime and some people were worried. Word got out quickly and by my memory it was only a matter of hours before the island gossip chain had pinpointed his exact location, well enough for the prison guards to pick him up and bring him back. The *Island Times* reported the excitement on a full front page the very next day.

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My Utah driver license was only good for thirty days in Palau. To continue driving, I would need to get a Palauan license, which meant I needed to take a written test. The clerk of court dropped a packet listing all of the nation’s driving laws onto my desk. “Just

memorize these word for word. It’s easiest not to think too much about it.” That proved to be good advice, particularly as it concerned one rule that I have spent probably a combined 200 hours in the last seven years thinking about: “It is not permitted for more than three people to ride in the front seat of a vehicle at a time, unless one of those people is a child under the age of seven.”

Although traffic travels on the right side of the road in Palau, many of the vehicles come from Japan and have the steering wheel on the right side. In the year I lived in Palau, I never

could get used to this. On many occasions I was caught off-guard by a beat-up Suzuki with three or more small toddlers bouncing around in what I implicitly believed to be the driver’s seat, like a pack of rogue children who had commandeered a vehicle.

Another law declared, “It is not permitted for anyone to have a driver’s license who has been previously adjudged to be an idiot.”

Frankly, we could use a rule like this in Utah.

\*\*\*\*\*

Word made it through the islands in December of 2013 that Typhoon Bopha was on its way.

The court marshals issued a set of instructions for every employee to place their computers on the floor and otherwise secure documents and records. Windows were taped and protected. Typhoon Bopha was expected to be the largest storm in Palau’s recorded history.

The typhoon veered north only hours before it was scheduled to hit the islands, and because of that, Palau avoided the worst of its strength. The wind surges and goliath raindrops were still brutal enough to cause substantial damage and destroy or badly



weaken hundreds of homes. When the sun rose six or so hours after the howling had stopped, we woke up to a battered nation. The power was out and wouldn't be restored for a few days. A message made it to me through the grapevine that the court would be closed until further notice.

Everyone was out on cleanup duty. Every shoulder to the wheel. That's the way things work in small towns.

Two hours later, I was chopping back razed banana trees with a rusted machete. A dozen or so others helped me pile the banana bunches into a plastic green wheelbarrow, which we later divvied up among the neighborhood; these would be the last fresh bananas we would have for many months as the decimated delicate shoots across Palau took that long to recover from the storm.

A few days later I returned to work. Thereafter the storm became the most common national excuse for procrastination. Litigators requested court extensions for several months, vaguely citing "Typhoon Bopha" as their good cause.

Some kids in my neighborhood regularly flagged my car down when they saw me driving by, hoping I could give them a ride somewhere. Four months after the trees had been cleared and the houses had mostly been put back in order, I pulled over to pick up 16-year-old Skarla and take her to school.

"I'm failing," she told me as she climbed into the car, tossed her backpack to the backseat, and slammed the door shut. "I'm failing math."

"Why?" I asked her.

She shrugged, spit some red betel nut saliva out the passenger's window.

*"Typhoon Bopha."*

\*\*\*\*\*

I had been in Palau for six months when I decided I should probably start trying to figure out what I would do next. I had mostly eased into my Palauan life by this point. No longer noticing the apartment geckos, hardly aware that I was perpetually sweating, and hitting my stride in my court role, I was getting almost comfortable.

Even my two long-lost checked bags had finally made it back to me after what appeared to be something of an exciting and

*religious* journey, evidenced by what looked like several knife wounds that were patched up by mysterious large stickers depicting Jesus on the cross. When I asked the airline employee who handed them over to me in front of the airport where the bags had been, he looked at the stickers, chuckled to himself, and said "hell, and then heaven, and then Palau."

I was happy to be in Palau, though I did still miss air conditioning and internet and still found myself staving off the occasional panic attack in the dark jungle.

This was 2013. The legal market in Utah was just beginning to recover from the recession that had left myself and my classmates from the class of 2011 with very few options. I had reached out to some law firms in Salt Lake City, pretty sure that's where I wanted to be when this odd career blip ended. Pretty soon I had a Skype interview set up with what would become my new employer.

I was brave to agree to do this over Skype in a country where the satellite internet was so slow that I often wasn't able to load my email. I had bigger problems than likely technological difficulties, though: I didn't own a suit. Well, I did, but not one within 7,000 miles of my apartment.

I had been told not to bother bringing one to Palau. "You'll never need it," my predecessor had explained to me via email. "Not even for court. Just bring some hiking pants and a few polo shirts. Also, CJ doesn't like us to wear flip flops to work so you'll need to get some business sandals."

Business sandals.

I thought that might be a joke, so I wore some polished black loafers on my travels to Palau just in case. Two days after arriving in the country a nine-year-old boy stopped me and asked if I was a lawyer.

"Yes," I told him. "How did you know?"

"Because you're wearing shoes."

Before long I learned that the only lawyers who wore shoes were the ones who had recently arrived from the United States. After two weeks I walked to the local "department store" just on top of a small food market and bought myself a pair of business sandals.

They were only slightly more formal-looking than my black flip flops, but they did the job. I felt dignified in them, like I was respecting the judiciary every time I fastened the buckles. To



this day I'm still not used to wearing shoes to work. I take them off the moment I get to my office every morning.

I quickly began pinging everyone in the country I thought might have a suit I could borrow for the interview. In hindsight, I probably could have made a reasonable excuse for my informality, but I was nervous and wanted to make a good impression on this law firm that might not take me seriously if I was shirtless and fanning myself with a paper plate, as was usually my state of existence any time I was in my apartment.

My friend and co-counsel Brian told me he had a tweed jacket he had foolishly shipped to Palau the prior year. I could borrow that, and considering that the quality of the Skype call would be low, with the right amount of dim lighting it just might look like I was wearing a respectable suit.

The tweed jacket was more clothing than I had worn in months, and it was nearly suffocating in my stifling apartment. To survive the interview without suffering heat stroke, I would have to do it without pants. "Don't stand up," I wrote on a sticky note that I taped to my laptop monitor, a reminder to keep the camera frame above my waist.

"So, what exactly is your job there?" a blurry man in a boardroom asked me as I resisted the urge to wipe sweat from my forehead.

"Well, I draft opinions and attend hearings, . . . and . . . I guess mostly just try to read Japanese maps so people don't kill each other."

\*\*\*\*\*

Twelve months, almost to the day, after I greeted the court marshal for the first time, a friend dropped me off at the airport to fly back to Utah. I had just parked my car at the courthouse and left the key in an envelope for the lawyer who bought it and would be flying in the next week to move into my apartment and office and assume my life.

I had left her a note on the coffee table: "Welcome! I hope Palau, and this place I called home, treat you how they treated me."

The plane took off long after sunset. Out the window I could see scattered dim lights flickering through the jungle below. Two minutes later it was gone – only the dark expanse of ocean in every direction.

Palau has sort of felt like a dream to me over the years since – like I made it all up – like it didn't really happen. Sometimes I

get online and pull it up on a map and zoom in as closely as I can, tracing the path on the unnamed road from my apartment to my office to my favorite island spots. It feels like I'm conjuring a pretend memory when I do that.

When you go to Palau, customs stamp a large pledge into your passport, and then they require you to read and sign it. It takes up a full page:

*Children of Palau,  
I take this pledge,  
as your guest,  
to preserve and protect  
your beautiful and unique  
island home.*

*I vow to tread lightly,  
act kindly and  
explore mindfully.*

*I shall not take what is not given.*

*I shall not harm  
what does not harm me.*

*The only footprints  
I shall leave are those  
that will wash away.*

To this day – as I remember to be grateful for air conditioning, as I inform my unamused husband I haven't done the project around the house I promised to do because of "Typhoon Bopha," as I tell law students "you can do a lot of strange things with a law degree," – I notice that while my footprints have surely long since washed away on Palau, Palau's have not for me.

1. This odd substance took some getting used to. And the term "betel nut" is really a double misnomer. The "nut" is really areca nut, and it's technically a berry. Many Palauans wrap the areca in betel leaves (hence the colloquial designation) and chew it throughout the day. Its use is pervasive, unlike chewing tobacco in the United States in recent years. I never tried it, something I occasionally regret. Heavy users have a mouth full of rotted red teeth, and a near constant nicotine-like buzz. So of course it's addictive and carcinogenic. See generally Wikipedia, *Areca nut*, [https://en.wikipedia.org/wiki/Areca\\_nut](https://en.wikipedia.org/wiki/Areca_nut) (last visited Mar. 30, 2020). Tiny Palau merited its own paragraph in the Wikipedia article on the areca nut: "In Palau, betel nut is chewed with lime, piper leaf and nowadays, with the addition of tobacco. Older and younger generations alike enjoy the use of betel nut, which is readily available at stores and markets. Unlike in Papua New Guinea and the Solomon Islands, where the inner areca nut is used, in Palau, the areca nut's skin is chewed along with lime, leaf and tobacco and the juice is not swallowed but spat out." *Id.* Fortunately, sidewalks are few and far between in Palau.

# Civility in a Time of Uncertainty

by Keith A. Call

As I write this from my home study on March 23, 2020, our community and world are in the midst of turmoil caused by the rapidly spreading coronavirus. Home offices have sprung up everywhere as we are being encouraged to stay home and avoid gatherings of more than ten people. Hearings, depositions, and mediations are being canceled. Court operations are being scaled back to only the most essential functions. We have all seen store shelves emptied of food and supplies, especially toilet paper, as people prepare to hunker down. And before we had any opportunity to get used to any of these ideas, people along the Wasatch Front were rattled by a moderately-sized earthquake.

It is an experience unprecedented in our lifetimes. As a community, there is a sense that we all hope things quickly improve, but we fear it may be worse before it gets better. By the time this article is published in early May, there is little doubt that things will have changed dramatically, either for better or worse, from what they are at the time of this writing.

What do the Utah Standards of Professionalism and Civility teach us for times like this? I dusted off a copy, read through it, and here are a few ideas.

### Preamble and Standard No. 1 – Be Nice and Watch Out for Each Other

The Preamble includes the following (emphasis added):

A lawyer's conduct should be characterized by **personal courtesy and professional integrity in the fullest sense of all those terms**. In fulfilling a duty to represent a client vigorously as lawyers, we must be mindful of our obligations to the administration of justice, which is a truth-seeking process designed to resolve human and societal problems in a rational, peaceful, and efficient manner. We must remain committed to the rule of law as the foundation for a just and peaceful society...

Lawyers should exhibit courtesy, candor and

cooperation in dealing with the public and participating in the legal system.

Utah Jud. Admin. Rule 14-301.

Standard No. 1 teaches that we should “treat all other counsel, parties, judges, witnesses, and other participants in all proceedings in a courteous and dignified manner.” *Id.*

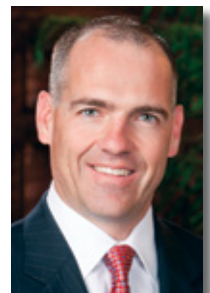
In the context of our day, the words “personal courtesy and professional integrity in the fullest sense of those terms” suggest to me that we should all pause for a moment, look past the disputes that divide us and our clients, and make sure that we, especially as fellow lawyers, are doing okay. Civility and personal courtesy should never be viewed as signs of weakness. *See id.* (Standard No. 2).

While continuing to zealously represent our clients, now is a good time to connect with our colleagues, including opposing counsel, to offer words of concern, hope, and encouragement. There is no doubt that *everyone* has felt and will continue to feel the effects of these unprecedented times, and many will feel them in profound ways. Let us demonstrate personal courtesy and professional integrity in the fullest sense of those terms by offering kind words and gestures to all within our profession.

### Standard 13 – Don't Take Advantage of the Situation

A few days ago I saw many empty shelves in our neighborhood grocery store. Notably, there were no potatoes in the produce section, something my wife and I specifically wanted to buy. As

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we left the store parking lot, we saw some people selling bags of potatoes out of a trailer. I could not help but wonder if they bought all the potatoes in the store and were selling them for a premium. Later that night, I heard a news story of someone doing just that with toilet paper!

As lawyers, we should never take unfair advantage of a world or community crisis. For example, Standard No. 13 states, “Lawyers shall not knowingly file or serve motions, pleadings or other papers at a time calculated to unfairly limit other counsel’s opportunity to respond or to take unfair advantage of an opponent, or in a manner intended to take advantage of another lawyer’s unavailability.” Utah Jud. Admin. Rule 14-301.

Any effort to take unfair advantage of our world crisis should be frowned upon. Don’t do it!

### Standards 14 and 15 – Scheduling with Civility

Lawyers should teach their clients that the lawyer reserves the right to determine whether to grant accommodations to others in all matters not directly affecting the merits of a cause or prejudicing a client’s rights. This includes extensions of time and continuances. *See id.* (Standard No. 14). Lawyers should also consult with other counsel so that depositions, hearings, and conferences are scheduled at mutually convenient times, and they should cooperate in making reasonable adjustments. *See id.* (Standard No. 15). Lawyers should not request extensions solely for the purposes of delay or tactical advantage. *See id.* (Standard No. 14).

These Standards may be some of the most difficult ones to apply

during these times. Many continuances and extensions of time have occurred and will necessarily occur because of coronavirus. The line between a courteous extension and prejudice to a client’s rights is not a bright one. Making these determinations will require “professional integrity in the fullest sense of those terms.”

Counsel should endeavor to accommodate each other as much as possible, while continuing to zealously advocate their clients’ legitimate rights. This may require all of us to learn to effectively use alternate means of continuing our work such as remote depositions and hearings. In every instance, even when counsel cannot agree on scheduling matters, civility and courtesy should remain paramount.

### Conclusion

These worst of times can bring out the best in each of us. As lawyers, we can help set the tone for how our community and the world respond to current events, making it a spring of hope instead of a winter of despair, a season of light instead of darkness. *See* Charles Dickens, *A TALE OF TWO CITIES*, p. 1, (1859). We must find ways to continue to zealously advocate justice for our clients, while at the same time looking for solutions to societal problems in a rational, peaceful, and efficient manner. Let us all practice professional integrity in the fullest sense of those terms for the betterment of our clients and our society during these trying times.

*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.*

## LEGAL SERVICES CORPORATION NOTICE OF GRANT FUNDS AVAILABLE FOR CALENDAR YEAR 2021

The Legal Services Corporation (LSC) announces the availability of grant funds to provide civil legal services to eligible clients during calendar year 2021. In accordance with LSC’s multiyear funding policy, grants are available for only specified service areas. On or around April 1, 2020, LSC will publish the list of service areas for which grants are available, and the service area descriptions at <https://www.lsc.gov/grants-grantee-resources/our-grant-programs/basic-field-grant/lsc-service-areas>. The Request for Proposals (RFP), which includes instructions for preparing the grant proposal, will be published at <https://www.lsc.gov/grants-grantee-resources/our-grant-programs/basic-field-grant> on or around June 1, 2020. Applicants must file a Notice of Intent to Compete (NIC) and the grant proposal through LSC’s online application system in order to participate in the grants process.

Please visit <https://www.lsc.gov/grants-grantee-resources/our-grant-programs/basic-field-grant> for filing dates, applicant eligibility, submission requirements, and updates regarding the LSC grants process. Please email inquiries pertaining to the LSC grants process to [LSCGrants@lsc.gov](mailto:LSCGrants@lsc.gov).



## *The Utah Immigration Collaborative: A Legal Network for Access to Justice*

by Martha Drake Reeves

There are currently 70.8 million forcibly-displaced people worldwide: men, women, and children escaping war, persecution, natural disasters, and political turbulence. Of these, nearly 30 million are refugees protected under United Nations High Commissioner for Refugees (UNHCR) mandate, over half of whom are minor children under the age of eighteen. People are forced to flee their countries of origin because of fear of persecution or a well-founded fear of persecution on account of their race, religion, nationality, membership in a particular social group, or political opinion, unable or unwilling to return to their homes. 8 U.S.C. § 1157. They fear extreme violence, sexual abuse or trafficking, harm to their children, torture, kidnapping, horrors of war, and death and thus leave their homes seeking safety and stability. UNHCR, *Figures at a Glance*, <https://www.unhcr.org/en-us/figures-at-a-glance.html>. An official entity, such as a government or the UNHCR, determines whether a person seeking international protection meets the definition of a refugee. Those who obtain this life-changing status receive certain protections; in the United States, they have the opportunity to become lawful permanent residents and eventually obtain citizenship.

There are also 3.5 million displaced persons seeking asylum by physically arriving at or crossing a physical geographic border in order to apply for safety. They must prove they meet the definition of a refugee among other criteria, but not every asylum-seeker will receive this protection. 8 U.S.C. § 1158. While waiting – and the wait could be many years – they face unspeakable hardships. They, too, fled their homes out of fear. Refugees, asylum-seekers, stateless people, unaccompanied or separated children, or victims of trafficking: all could wait for years to receive any alleviation to their fears in refugee camps worldwide or risk traveling in migratory movements seeking safety.

Many people come to the United States outside the formal categories of refugees or asylum-seekers for a range of often overlapping reasons: to reunite with family members already

here under a protected status, to escape violence, or to pursue a better economic or educational future for themselves and their families. While they may be free to return to their country of origin at any time, many have the great hope of settling and residing in their new homes permanently. An immigrant may be eligible for permanent or temporary status under a variety of options. Some “mixed status households” have individuals with differing permanent or temporary statuses living under one roof and face great struggles as one may have a protected legal status, another a temporary protection status without a clear path to legal permanent status, with others still vulnerable to removal.

These are refugees, asylees, immigrants, and other categories of individuals seeking to make the United States their permanent home. In Utah, these are community members who aspire to be new Americans. To the Utah legal community, these are thousands of underrepresented, low-income clients without access to fair representation as they maneuver a complicated, ever-changing immigration and citizenship justice landscape. This vulnerable population faces the same challenges any Utahn faces, such as paying taxes or school enrollments for minor children, in addition to piles of paperwork in a foreign language to prove that they too deserve to reside here. They wish for safety, employment, education, healthcare, and economic stability, just like any other Utahn.

In 2017, the Kem C. Gardner Policy Institute at the University of Utah estimated approximately 60,000 refugees, speaking over

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forty languages, lived in Utah; the majority of whom lived in Salt Lake County. See University of Utah Policy Institute, *Refugees in Utah* (April 2017), available at <https://gardner.utah.edu/wp-content/uploads/Refugee-Fact-Sheet-Final.pdf>. Immigrant households also contribute hundreds of billions of dollars in federal income, state, and local taxes and hold a powerful amount of economic clout in the United States. According to New American Economy 2018 statistics, 65,666 immigrants resided in the state of Utah and contributed greatly to the economy, taxes, and spending power of the state. The total immigrant household income in Utah was \$7.6 billion, with \$1.9 billion in taxes paid (federal, state, and local), a total spending power of \$5.7 billion, and \$3.1 billion spending power in the greater Salt Lake City metropolitan area. There were also 38,699 Utahns employed by immigrant-owned firms and 16,703 immigrant entrepreneurs reported in 2018. New American Economy, *Utah Demographic Overview*, <https://www.newamericaneconomy.org/locations/utah/> (last accessed April 13, 2020).

There are many individuals in Utah who may or may not have a linear path to eventual U.S. citizenship, such as those protected under Deferred Action for Childhood Arrivals (DACA). DACA holders are commonly referred to as “Dreamers,” after the DREAM Act (Development, Relief, and Education for Alien Minors Act), which was first introduced in Congress in 2001 but, despite growing bipartisan support, has failed to pass time and again. In 2012, after ongoing legislative failures to pass the DREAM Act or comprehensive immigration reform, the White House administration announced DACA, an executive action that temporarily protects nearly 800,000 immigrant youth from deportation and provides a work permit for two years. DACA was rescinded in September 5, 2017, by the current White House administration, leaving these youth and young adults at heightened risk of deportation; in fact, many had come “out of the shadows” to apply for DACA and will now be more vulnerable to immigration enforcement actions that could send them to a country they do not even remember or where they do not speak the language. On November 12, 2019, the United States Supreme Court heard oral arguments on consolidated DACA cases (*Department of Homeland Security v. Regents of the University of California*, *Trump v. NAACP*, and *McAleenan v. Vidal*); a ruling is expected before June 2020. Though multiple lower courts have issued injunctions against the administration’s termination of DACA, there is no guarantee of the Supreme Court outcome. With 15,848 DACA-eligible Utah residents and 95.6% of this population employed in the labor force in 2018, this represents an important variable in the Utah economic landscape.

Thousands of vulnerable refugees, asylees, immigrants, and other displaced people in Salt Lake County are unsure of where to access justice and fair legal representation or wait months to receive competent consultation through free or low-cost legal service providers. Whether this marginalization is out of fear or uncertainty, the cycle of legal underrepresentation for this population in the Utah legal system must stop.

To that end, the Utah State Bar is thrilled to announce the creation of an ambitious, inaugural effort uniting the primary nonprofit immigration legal service providers in Salt Lake County funded by a multi-year Utah Bar Foundation grant. The Utah Immigration Collaborative (UIC), an immigration legal assistance network, officially commenced services on May 1, 2020. The UIC partnership currently includes Comunidades Unidas, Catholic Community Services of Utah, Immigrant Legal Services, International Rescue Committee, and Holy Cross Ministries. This innovative legal service network is streamlining and improving access to legal assistance for low-income refugees, asylees, immigrants, and other displaced persons currently living in Salt Lake County.

UIC represents a unified effort from these five major nonprofit civil legal immigration service providers to improve access for low-income individuals in need of immigration legal aid in Salt Lake County with plans to expand services and partners across the state of Utah. This legal network could not have come at a more urgent time: as refugees, asylees, immigrants, and other displaced individuals in Salt Lake County and across the United States face an increasingly-tense and evolving immigration landscape, providing affordable, accessible, and targeted competent immigration legal services is crucial to achieving clients’ safety and stability.

UIC takes a two-pronged approach to making access to equal justice and legal representation for new Utahns more streamlined:

1. Establishing a centralized UIC phone helpline [801-382-9027] with integrated screening and referral processes coordinating immigration services between the partners.
2. Increased immigration legal assistance capacity-building by working with UIC network and pro bono attorneys, Department of Justice (DOJ)-accredited representatives authorized to practice immigration law after meeting certain regulatory requirements, and supervised staff paralegals and law school students to expand the availability of immigration legal representation available.

The centralized UIC Helpline can be utilized by potential clients anywhere in the state of Utah. Operated by Comunidades Unidas, the UIC Helpline provides callers the opportunity to explain their legal situation to a culturally-sensitive, linguistically-accessible operator during an initial intake screening call. The UIC Helpline makes an efficient referral utilizing a specifically-built Salesforce data platform, matching the caller to the most appropriate of the five partnering UIC agencies. A provider is considered to be the appropriate referral agency if immigration legal staff have the language and cultural ability, financial and organizational capacity, and technical expertise required to adequately address the case. Once a case has been referred and accepted by the partner agency, the client is contacted directly by the partner to proceed with intake processing.

During intake, clients will receive an in-depth review of the individual's or family's situation to determine viable legal options. Official intakes will be executed by UIC attorneys, participating pro bono attorneys, DOJ-accredited representatives, and law school students and paralegals supervised by an accredited representative or attorney. Case types include but are not limited to applications for asylum and withholding of removal, naturalization, DACA, Temporary Protected Status, bond hearings and other requests for release from detention, employment authorization documents, family reunification, general consultation, applications to attain lawful permanent resident status (green card), pro se support, removal defense, replacement of documents, representation at USCIS interviews, U nonimmigrant status (U Visas), and Violence Against Women Act (VAWA) relief.

The UIC legal capacity-building prong of the Utah Bar Foundation grant facilitated the hiring of two in-house attorneys – one at Catholic Community Services and Immigration Legal Services – and will facilitate the full accreditation of a DOJ representative at a UIC partner agency. UIC attorneys have already taken on cases including asylum-seekers, minor children placed into removal proceedings, and immigrants who have lived in Utah for years who are now facing removal. UIC will continue to bolster the cultivation of a pro bono immigration legal network in Salt Lake County by increasing development of continuing legal education training opportunities for pro bono attorneys and further expanding the nonprofit immigrant legal community to better address the needs of low-income immigrants in Salt Lake County.

Collectively, UIC will result in improved coordination between

the five major nonprofit immigrant legal providers in Salt Lake County with the goal of increasing partnerships to expand across the state of Utah. This initial, one-time seed-funding from the Utah Bar Foundation will be supplemented in the following two years to sustain the existence and expansion of the UIC to serve all Utahns. Partner agencies will engage in collaborative fundraising campaigns to permanently establish the UIC as an efficient, reliable resource for immigrants to seek legal representation in the state of Utah. UIC will not eliminate any direct legal services provided by the named existing nonprofit organizations below, but rather will combine efforts through an advanced referral process linking each partners' distinct resources and immigration legal expertise.

Comunidades Unidas' (CU) mission is to empower Latinx to recognize and achieve their own potential and be a positive force for change in the larger community, providing low-cost immigration services to immigrants in Utah with DOJ-certified representatives with robust workers' rights assistance. CU clients receive a range of personalized and affordable immigration services and provides support for those looking to apply, renew, or update their immigration status. Comunidades Unidas, *Immigration Services and Rights*, <https://www.cuutah.org/immigrationservices>.

Catholic Community Services of Utah (CCS), an agency sponsored by the Catholic Diocese of Salt Lake City, empowers people in need along the Wasatch Front to reach self-sufficiency. As one of two government-recognized refugee resettlement agencies in Utah, CCS resettles approximately 600 refugee clients per year. For over twenty years, CCS has provided refugees the assistance needed to become self-sufficient in their new home via a variety of services, including case management, job placement, health services, interpretation, transportation, housing, food assistance, volunteer opportunities, and more for the first six months following arrival. CCS legal immigration services employs immigration attorneys, legal representatives, and an immigration case manager who collectively file over 1,000 immigration applications every year. The primary programmatic purpose is to provide full legal representation to immigrants and refugees when they submit applications to legally upgrade their immigration status. CCS also provides individual consultations to immigrants, refugees, and even U.S. citizens who have questions about immigration laws, procedures, and basic eligibility. Catholic Community Services, *Immigration Program Services*, <https://www.ccsutah.org/programs/refugees/immigration>.



Immigration Legal Services' (ILS) mission is to help clients navigate the complex immigration system through high-quality and affordable legal representation. ILS is an organization not motivated by profit but with a goal to provide immigrants access to legal help regardless of their ability to pay or the complexity of their case. ILS has five main legal focuses: affirmative (not in removal proceedings) and defensive (already in removal proceedings) asylum cases, family reunification, citizenship and education, juvenile cases, and victim assistance, including domestic violence, criminal violence, sexual crimes, and human trafficking utilizing U visa issuance, VAWA, and waivers to help clients. Since 2016, ILS has reunited hundreds of families and works with many victims of violence and abuse. Immigration Legal Services, *Mission Statement*, <http://www.immigrantlegal-services.org/what-we-do-1>.

International Rescue Committee in Salt Lake City (IRC SLC) is one of two government-recognized refugee resettlement agencies in the state of Utah, along with CCS. Since founding in 1994, IRC SLC has provided life-changing services to over 12,000 refugees resettled in Salt Lake County. IRC SLC works at the nexus of global crises and the greater Salt Lake County communities to assist

clients to recover, rebuild their lives, and achieve self-sustained success in their new country and communities. IRC SLC actively provides services to refugees, asylees, and immigrants in Salt Lake County needed to build thriving lives in the United States. IRC SLC's targeted programming includes resettlement support, including two years of extended case management for refugees, economic well-being services, educational programming, physical and behavioral health services, and robust legal immigration and citizenship services. The breadth of diversity and experience of IRC SLC staff provides linguistically-appropriate and culturally-sensitive services and education to a population that has demonstrated challenges in accessing mainstream legal services. International Rescue Committee in Salt Lake City, *The IRC in Salt Lake City*, <https://www.rescue.org/united-states/salt-lake-city-ut#how-does-the-irc-help-refugees-in-salt-lake-city>.

Holy Cross Ministries (HCM) is a nonprofit organization, dedicated to building just, compassionate, sustainable, and inclusive communities. HCM's tradition of service began in 1875 by the Sisters of the Holy Cross, who worked tirelessly to meet the needs of Utah's underserved through health care and education. Today, HCM continues its legacy of compassionate services through

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collaborative partnerships and direct programming in health outreach, early childhood education, legal aid, and trauma-informed counseling services. HCM proudly offers its programs without regard to ethnicity, age, gender, religious affiliation, ability to pay, or any other defining characteristic. HCM operates the first and largest U Visa program in the state of Utah, providing consultations, legal support for immigrant victims of violence, support for temporary status applicants, family reunification assistance, and citizenship services. HCM's Legal Immigration Program has helped more than 10,000 clients, primarily women, and children, who are fleeing domestic violence, to gain legal status since opening in 2000. Holy Cross Ministries, *Mission & History*, <https://hcmutah.org/mission-history>.

These potential clients have many different backgrounds, needs, and stories, but the fact remains they now live in Utah and deserve fair legal representation and access to justice. Many have lived in Utah for years and have so much to lose when faced with deportation or any other legal proceeding that threatens their current living situation. With an incredible amount at stake from a humanitarian standpoint, the process of legally deciding their fates should be fair. This population deserves to no longer live in fear of the uncontrollable and the unknown.

A December 2015 University of Pennsylvania Law Review article presented the results of the first national study of access to counsel in U.S. immigration courts, drawing on data from over 1.2 million removal cases decided between 2007 and 2012. The study revealed only 37% of immigrants secured counsel, with a drastic drop in representation for detained respondents who proceeded without counsel 86% of the time. The study noted inconsistencies in representation rates along geographic locations, nationality of the respondents, fiscal year of decision, and detention status. Ninety percent of immigration representation was provided by solo practitioners or small law firms, acknowledging even this percentage was misleading as only 45% had adequate legal representation present at all court hearings. Only 2% of immigrants were represented pro bono by large law firms, nonprofit organizations, or law school clinics. Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. PA. L. 1 (2015).

Thousands of immigrant Utahns lack access to competent immigration legal representation and counsel. Most face cultural, technological, and linguistic barriers to find providers. Indeed, an English-speaking U.S. citizen may be overwhelmed by the numbers of replies to the internet search “immigration law

assistance Utah.” While there may be many different resources available, there is no guarantee the representation will be competent. One study found that 47% of immigration lawyers appearing in immigration courts are rated “inadequate” or “grossly inadequate” by judges, whether by failure to investigate the case, inability to identify defenses or forms of relief, lack of familiarity with the applicable law or factual record, failure to meet submission deadlines, or failure to appear in court. Incompetent representation can ravage these vulnerable clients’ livelihoods and lives. This is a staggering statistic with grave consequences for clients, resulting in the destruction of cases, unnecessary deportation, families torn apart, and clients at risk of torture and death. New York Immigrant Representation Study Report, *Accessing Justice: The Availability and Adequacy of Counsel in Removal Proceedings*, 33 CARDOZO L. REV. 357 (Dec. 2011).

There is much to consider with these statistics, especially in light of UIC’s efforts. The current political environment, both nationally and in the state of Utah, demands a more thorough and coordinated response from Salt Lake County immigrant legal service providers, both to better serve clients and to increase the overall impact and volume of services provided. For this reason, participating UIC partners work to support a comprehensive response to meet the needs of low-income refugees, asylees, and immigrants via its helpline and system to facilitate access to nonprofit legal providers in Salt Lake County.

Among most refugee, asylee, and immigrant communities, “word-of-mouth” or recommendations from local community groups goes very far. A main goal for establishing a coordinated, easy-to-access UIC Helpline is to become the top trusted resource in Salt Lake County for these populations. These particular partners are trusted by the refugee, asylee, and immigrant communities and in a unique position to reach the legally underserved and ensure access adequate legal counsel.

Coupling UIC outreach efforts with a culturally-appropriate, linguistically-accessibly helpline, streamlined referral system, and strengthened long-term capacity of Salt Lake County immigration legal service providers, thousands of underrepresented low-income refugees, asylees, immigrants, and other displaced persons will have improved access to competent legal assistance, pro bono representation, and fair, effective administration of justice in the state of Utah.

For more information on the Utah Immigration Collaborative, please contact Martha Drake Reeves: [marthadrake.reeves@rescue.org](mailto:marthadrake.reeves@rescue.org).

## Utah State Bar Members Step Up To Help South African Judiciary

by Nathan D. Alder

I received a call from Judge Ben Hadfield (ret.) late one Sunday afternoon. He called to see if I knew of any way to create a training opportunity for five judges interested in mediation. The state court training had only two open spots, but he needed five. Wow. What were we going to do?

Mind you, Judge Hadfield was not calling to see how he and four of his Utah judicial colleagues could be trained as mediators. Months before the pandemic and ensuing crisis, which of course would have foreclosed any thought about such a thing happening in the near future, he was seeking the opportunity for South African judges. The notion of judges traveling across the globe to be trained in Salt Lake City to help launch their own country's court-annexed alternative dispute resolution program started to set in. Wow, was right. What an opportunity for us, as Utah practitioners, to give and share our knowledge and experience with people from another country. At the same time, what an incredible chance for us to learn from them.



colleagues in South Africa that a training itinerary was taking shape and that they should buy plane tickets. Within a few days our core group had assembled – Professor Jim Holbrook at the S.J. Quinney College of Law (U of U), Professor Ben Cook at the J. Reuben Clark Law School (BYU), Steve Kelson (a mediator and leader in both the Utah State Bar's Dispute Resolution Section and the Utah Council on Conflict Resolution), Judge Hadfield, and myself. Within the next few weeks, we had secured a location (BYU Salt Lake Center) through the good offices of BYU Law Dean Gordon Smith, two receptions (one at each law school), and visits at both federal and state courts, and we had started to build a training schedule with calls to interested volunteers. As expected, no one turned us down. What amazed me was to learn that a local charity, the Wagner Foundation, was willing to help underwrite some of our costs to put on the training. That donation helped elevate the training to a much



I never doubted we could do this, even with the limited amount of time to organize it. The Utah mediation community is cohesive, caring, and rich with talent, good will, and volunteers. I knew that within just a few phone calls Judge Hadfield would be off and running and would be able to report back to his

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higher and professional level. And we received more good news: the number of visitors from South Africa had grown from five to seven. Seven! We were excited.

As we were finalizing the schedule, we noticed some breaks in the action. What should the judges do during the weekend? A trip to Southern Utah (Zion and Bryce) was proposed and accepted. Other ideas to enrich their Utah experience came together; we started to wish we could keep our guests here for a few more days.

We knew this was going to be a special experience, but what many of us did not fully anticipate was just how each judge would impact us, how amazing each individual would be, and how strong the friendships would become. We immediately felt connected to them. Each one of them made a strong impression. Each interaction confirmed how strong their desire was to initiate a lasting program in South Africa that would help transform their professional culture of dispute resolution, particularly through mediation. Bonds of friendship had formed, and by the end of our short time together, we could not imagine them actually leaving us. We joked about starting to develop an “Advanced Course” for next year. Truly, this was a once-in-a-lifetime experience for all of us.

Members of the Utah State Bar community who stepped forward

and served include the following: Justice John Pearce, Judge Greg Orme, Judge Shauna Graves-Robertson, Judge Royal Hansen, Judge Adam Mow, Judge David Nuffer, Judge Bill Bohling (ret.), Judge Tyrone Medley (ret.), Stacy Parsons, Michelle Mattson, Heidi Smith, Daniel Crook, Velvet Rodriquez-Poston, Tamara Fackrell, Meggan McLean Castleton, Karin Hobbs, Michael Zimmerman, Emily Taylor, LeeAnn Glade, Lisa Jones, Michelle Oldroyd, Nini Rich,Carolynn Clark, Lee Wright, and Immanuel Amerikau. Special thanks go to Ben and Annette Hadfield who were involved in every aspect of this effort, including hosting the judges from start to finish, to Dean Elizabeth Kronk Warner and Dean Gordon Smith for officially sponsoring our program through a joint venture of the two law schools, to professors Jim Holbrook and Ben Cook (who just happen to be co-authors of an ADR book) for creating the teaching curriculum, and for so much more, and to Steve Kelson (who just happens to have spent a semester abroad in South Africa during law school) for organizing and teaching.

Utah mediators are giving notice of our intent to serve. Yes, we really enjoyed putting this amazing event together for our friends from South Africa.

So, who's next?

### PLEASE NOTE:

Due to continued COVID-19 restrictions and out of an abundance of respect for the rule of law and social distancing policy, the Utah State Bar is cancelling the 2020 Summer Convention in Park City. The Utah State Bar wishes you and our community continued safety and health during this worldwide pandemic.



### ***MCLE Compliance Update for the 2020 and 2021 Reporting Periods***

#### **2020 CLE COMPLIANCE REPORTING PERIOD**

On March 12, 2020, the Supreme Court authorized the Supreme Court Board of Continuing Legal Education “the Board” to suspend the traditional live in-person credit requirement for lawyers reporting in 2020, allowing all required CLE to be fulfilled with online self-study with audio or video presentations, webcasts or computer interactive telephonic programs for the compliance period ending June 30, 2020.

On April 13, 2020, due to the ongoing COVID-19 virus, the cancellation of in-person CLE courses, and the uncertainty as to when in-person courses may resume, the Supreme Court authorized the Board to extend compliance deadlines for the compliance period ending June 30, 2020. Lawyers will have through September 1, 2020 to complete required CLE hours without paying late filing fees and will have through September 15, 2020 to file Certificate of Compliance reports without paying late filing fees.

#### **2021 CLE COMPLIANCE REPORTING PERIOD**

On April 13, 2020, the Supreme Court authorized the Board to suspend the traditional live in-person credit requirement for lawyers reporting in 2021, allowing all required CLE to be fulfilled with online self-study with audio or video presentations, webcasts or computer interactive telephonic programs for the compliance period ending June 30, 2021.

**PLEASE NOTE: The 2020 Compliance Reporting Period Extension does not apply to the 2021 Compliance Reporting Period.**



**Should you have any questions or concerns regarding this announcement, please contact Sydney Kuhre, MCLE Board Director, at [sydnie.kuhre@utahbar.org](mailto:sydnie.kuhre@utahbar.org) or 801-297-7035.**

## ***Bar Thank You***

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Jeffrey Enquist	Carlos Navarro	



## ***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](http://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](http://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](mailto: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. The rebate amount will be calculated April 1, 2020 and we expect the amount to be consistent with prior years.

## ***Mandatory Online Licensing and Extension of Late Fees***

The annual online licensing renewal process will begin the week of June 8, 2020, at which time you will receive an email outlining renewal instructions. This email will be sent to your email address of record. Utah Supreme Court Rule 14-507 requires lawyers to provide their current e-mail address to the Bar. If you need to update your email address of record, please contact [onlineservices@utahbar.org](mailto:onlineservices@utahbar.org).

Renewing your license online is simple and efficient, taking only about five minutes. With the online system you will be able to verify and update your unique licensure information, join sections and specialty bars, answer a few questions, and pay all fees.

**No separate licensing form will be sent in the mail.**

You will be asked to certify that you are the licensee identified in this renewal system. Therefore, this process should only be completed by the individual licensee, not by a secretary, office manager, or other representative. Upon completion of the renewal process, you will receive a licensing confirmation email. If you do not receive the confirmation email in a timely manner, please contact [licensing@utahbar.org](mailto:licensing@utahbar.org).

**License renewal and fees are due July 1 and will be late November 1. If renewal is not complete and payment received by December 1, your license will be suspended.**

**This one-time extension by 90 days of the deadlines for the assessment of late fees and suspension for non-payment is for this licensing year only.**



# ***Get The Word Out!***

**Advertise in the Utah Bar Journal!**

For **DISPLAY ADS** contact: Laniece Roberts  
[UtahBarJournal@gmail.com](mailto:UtahBarJournal@gmail.com) | 801-910-0085

For **CLASSIFIED ADS** ads contact: Christine Critchley  
[christine.critchley@utahbar.org](mailto:christine.critchley@utahbar.org) | 801-297-7022

## 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 February and March. 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

Kirk Heaton  
Joseph Perkins

### Community Legal Site: Ogden

Ali Barker  
Jonny Benson  
Joshua Irvine  
Hollie Peterson  
Gary Wilkinson

### Community Legal Site: Salt Lake

Jonny Benson  
McKay Corbett  
Craig Ebert  
Gabriela Mena  
Katey Pepin  
Bryan Pitt  
Brian Rothschild  
Paul Simmons  
Kate Sundwall  
Russell Yaune

### Community Legal Site: Sugarhouse

Skyler Anderson  
Brent Chipman  
Sergio Garcia  
Mel Moeinvaziri

### Custody/Paternity

Carolina Duvanced  
Zach Lindley  
Martin Stolz  
Russell Yaune

### Debtor's Legal Site

Tony Grover  
Paul Simmons

### Expungement Law Site

Daniel Diaz  
Josh Jones  
Grant Miller

### Family Justice Center

Geidy Achecar  
Steve Averett  
Elaine Cochran  
Michael Harrison  
Leilani Maldonado  
Brandon Merrill  
Sandi Ness  
Wendy Porter  
Babata Sonnenberg  
Nancy VanSlooten

### Family Law Site

Justin Ashworth  
Stewart Ralphs  
Leilani Whitmer

### Medical Legal Site

Stephanie Miya

### Rainbow Law Site

Jess Couser  
Orlando Luna

### Salt Lake Landlord Tenant/Debt Collection

Mark Baer  
Kyle Harvey  
Brent Huff  
Steven Nichols  
Randall Raban  
Chris Sanders  
Michael Thompson  
Mark Thornton  
Austin Westerberg

### Salt Lake Tuesday Night Bar

David Broadbent  
Kendra Brown  
Kathryn Carlisle-Kesling  
Elizabeth T. Dunning  
Scott Elder  
Dave Geary  
Rosemary Hollinger  
Emily Iwasaki  
Peter Kearn  
Erika Larsen  
Kurt London  
Chris Mack  
Jon Miller

Ben Onofrio  
Jennifer Orrison  
Joshua Randall  
Hal Reiser  
Clark Snelson  
Lynda Viti

### Street Law Site

Devin Bybee  
Dara Cohen  
Dave Duncan  
Adam Long  
Cameron Platt  
Clayton Preece  
Adam Saxby  
Craig Smith  
Jay Springer  
Katy Steffey  
Brent Wamsley

### SUBA Talk to a Lawyer Legal Clinic

Tony Allen  
Jared Brande  
Thomas Crofts  
Maureen Minson  
Willis Orton  
Aaron Randall  
Greg Walker  
Marshall Witt

### Timpanogos Legal Center

Danica Baird  
Linda Barclay  
Amirali Barker  
Bryan Baron  
Marca Tanner Brewington  
Cleve Burns  
Justin Caplin  
Mike Chidester  
Ashton Graff  
Jonathan Grover  
Kathryn Holt  
Joy Jelte

### Utah Legal Services Pro Bono Cases

Adult Guardianship  
Jaime Topham

### Bankruptcy

Steven Chambers  
William Morrison  
Jason Richards  
Jory Trease

### Divorce

Randy Birch  
Brent Chipman  
Jonathan Felt  
Jonathan Grover  
Ray Hingson  
Catherine Hoskins  
Darrin Johns  
Niel Lund  
Tamara Rasch  
Mathew Snarr

### Divorce Modification

Diana Telfer

### Expungement Case

Julie Bartlett

### Power of Attorney

Walter Bornemeier

### Protective Order

Joseph Goodman

### Will/Estate Case

Nicholas Angelides  
Adam Hensley  
Langdon Owen

### Wills For Heroes

Mike Branum  
David Cook  
Zachary Lindley  
Kigan Martineau  
Travis Walker  
Karly Walton

### Veterans Legal Clinic

Aaron Drake  
Brent Huff  
Jonathan Rupp  
Joseph Rupp

### YCC Family Crisis Center

Jonathan Bachison  
Amirali Barker  
Michelle Lesue  
Jonathan Porter

# 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:**

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

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

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**Please list the fields in which you practice law:**

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**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.**

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**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**



# Do You Hate Divorce Cases?

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We **Love** Them (*Divorce Is All We Do*).

Send Divorces To Us!



 Brown Law

 (801) 685-9999



[www.utdivorceattorney.com](http://www.utdivorceattorney.com)

## Attorney Discipline

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

### ADMONITION

On January 27, 2020, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rules 5.1(a) (Responsibilities of Partners, Managers, and Supervisory Lawyers) and 7.1 (Communications Concerning a Lawyer's Services) of the Rules of Professional Conduct.

#### *In summary:*

An attorney was a partner in a firm, but the attorney was also primarily responsible for developing, managing, and procuring advertising for the firm. The attorney failed to make reasonable efforts to ensure that there were measures in place at the firm to give reasonable assurance that all the lawyers in the firm complied with the Rules of Professional Conduct.

The firm advertised by presenting live, scripted, and recorded radio advertisements (radio spots) presented on air by disc jockeys from various Utah radio stations. The radio spots suggested that the radio personalities have personal knowledge of the character, abilities, competence, and/or professional qualities of the firm lawyers, without disclosing that the radio personalities have not had attorney/client relationships with the firm lawyers and otherwise don't have sufficient personal knowledge to affirm the traits suggested in the radio spots. Additionally, the radio spots functioned as endorsements because they purported to affirm the character, abilities, competence, and/or professional qualities of the firm lawyers. The radio personalities voicing the radio spots are well known by their respective audiences. The time slots for the radio spots are in the higher demand slots which tend to reflect the popularity associated with the radio personality operating that time slot and the trust and confidence placed in the radio personality by his or her listeners during that time slot. As a

result, the endorsements given by the radio personalities are more persuasive and more likely to mislead.

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#### *In summary:*

An attorney was a named partner in a firm. Both the attorney, the partner, and the firm held the respondent out to the public as a partner in the firm. The attorney also functioned as a partner although the attorney had not undertaken or been delegated responsibility for developing, managing, or procuring advertising for the firm. The attorney failed to make reasonable efforts to ensure that there were measures in place at the firm to give reasonable assurance that all the lawyers in the firm comply with the Rules of Professional Conduct.

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### PUBLIC REPRIMAND

On January 24, 2020, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Rocky D. Crofts for violating Rule 1.1 (Competence), Rule 1.3 (Diligence), and Rule 8.4(c) (Misconduct) of the Rules of Professional Conduct.

#### *In summary:*

A client retained Mr. Crofts to pursue a county property tax appeal. Mr. Crofts informed the client's assistant that he had gotten the appeal process started. Mr. Crofts represented to the OPC that he had filled out the appeal form and given it to his assistant to file with the county by fax and a confirmation of the receipt was printed. Mr. Crofts later determined that the form was likely sent to the wrong county office. Mr. Crofts testified that he personally sent the fax, did not assure that the fax was received, and learned later that the fax did not go through successfully because the receiving fax was busy.

The client's assistant attempted to follow up with Mr. Crofts several times. Mr. Crofts responded to the requests with answers indicating that he was working on "it" but provided no specifics regarding the status of the appeal. Mr. Crofts became aware that his initial attempt to file the appeal via fax had failed when the client, assistant, or the county informed him the county had no record of any appeal. Mr. Crofts sent an email to the client and attached a copy of the appeal he claimed to have filed with the county. In that same email, Mr. Crofts stated that he had made two trips down to the county to get the information and dropped off the request for appeal. A county employee notified Mr. Crofts that there was no appeal in their system and that he would need to provide proof of the delivery. A few days later, Mr. Crofts informed the client that he had confirmed that the appeal was filed with the county. Eventually, the county employee informed the client that no appeal had been filed; what they did receive was deficient and advised that the client would need to take further action.



Mr. Crofts informed the client's assistant that he would refund the money that the client paid. The assistant followed up with Mr. Crofts many times but no money was refunded. The client initiated a small claims action against Mr. Crofts. Although he was served with process, Mr. Crofts did not appear at the small claims trial and a judgment was entered against him in favor of his client. Mr. Crofts satisfied the small claims judgment against him after a writ of garnishment was filed.

### RECIPROCAL DISCIPLINE

On February 3, 2020, the Honorable James T. Blanch, Third Judicial District Court, entered an Order of Reciprocal Discipline: Suspension, against Kristian S. Beckett, suspending Mr. Beckett for twenty-eight days for his violation of Rule 1.4(a) (Communication) and Rule 1.15(a) (Safekeeping Property).

#### *In summary:*

Mr. Beckett entered into a stipulation regarding his discipline in Idaho where he acknowledged he violated two Idaho Rules of Professional Conduct. Mr. Beckett admitted that he failed to explain matters to his client to the extent reasonably necessary to permit her to make informed decisions about her representation, more specifically, explaining options other than settlement advances that may have been more suitable for her financial situation; by not promptly fully informing her of circumstances where her informed consent was required; and by not keeping her reasonably informed about the status of all post-settlement matters.

Further, Mr. Beckett admitted that he failed to hold all of his client's settlement funds in a trust account. He held his client's funds in a corporate bank account together with other funds which were not client's property.

#### *Aggravating circumstances:*

Vulnerability of victim.

#### *Mitigating circumstances:*

Absence of a prior record of discipline; inexperience in the practice of law.

### INTERIM SUSPENSION

On March 15, 2020, the Honorable Patrick W. Corum, Third

Judicial District Court, entered an Order of Interim Suspension, pursuant to Rule 14-519 of the Rules of Lawyer Discipline and Disability, against Steven E. Rush, pending resolution of the disciplinary matter against him.

#### *In summary:*

Mr. Rush was placed on interim suspension based upon the following criminal convictions:

Two counts of Possession or Use of a Controlled Substance, a Class A Misdemeanor;

Retail Theft, a Class B Misdemeanor;

Failure to Appear, a Class B Misdemeanor;

Burglary of a Vehicle, a Class A Misdemeanor; and

Driving Under the Influence of Alcohol/Drugs, a Class B Misdemeanor.

### ***Discipline Process Information Office Update***

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



**801-257-5515**

**DisciplineInfo@UtahBar.org**

## *The Utah Bar Review Diversity & Inclusion Scholarship*

*by Chelsea Davis*

Utah law school graduates can now receive financial support to offset the significant costs of preparing for and taking the Utah State Bar Exam through the Utah Bar Review Diversity and Inclusion Scholarship (Bar Review Scholarship). The Bar Review Scholarship awards financial support to deserving Utah law students who demonstrate a commitment to advancing the goals of equity and inclusion in Utah's legal profession, an active record of service to Utah's diverse communities, and financial need. Scholarship recipients receive an award of up to \$2,000 for qualifying costs associated with the bar exam.

The Bar Review Scholarship was first created in 2019 through the joint efforts and financial support of the Utah Center for Legal Inclusion (UCLI), the Young Lawyers Division of the Utah State Bar (YLD), and Holland & Hart LLP, which firm provided the sole foundational sponsorship for this scholarship. Leading bar review course companies, including BARBRI, Kaplan, Themis, and Quimbee, have also lent their support by providing discounted course rates for the scholarship recipients.

The Bar Review Scholarship continues its legacy this year with additional support and donations from the Utah State Bar, the Utah Bar Foundation, and the Utah Minority Bar Association (UMBA), which dedicated its 2019 Charity Challenge fundraiser and Juneteenth Event to UCLI. The 2019 UMBA Charity Challenge fundraiser raised \$44,444 for the benefit of UCLI and enabled UCLI, among other things, to fund and grow this important scholarship program.

Having adequate resources and time to devote to studying is critical to a law graduate's success on the bar exam. However, the costs of bar study courses are steep – ranging in the multiple thousands of dollars – and many law students cannot afford the course fee or take time off from work to study. The goal of the Bar Review Scholarship is to help law graduates who are committed to promoting diversity with costs associated with taking and studying for the bar exam so they can focus their time and energy on studying and passing.

Three Utah law students received the 2019 inaugural Bar Review Scholarship: Athelia Graham – Brigham Young University J. Reuben Clark Law School; Jonathan McClurg – Brigham Young University J. Reuben Clark Law School; and Carlos Quijada – University of

Utah S.J. Quinney College of Law. All three students passed the 2019 Utah State Bar exam and are now licensed to practice in Utah.

For recipient Athelia Graham, the Bar Review Scholarship allowed her “to give greater focus to my bar study and relieve some of the worry over financial pressures. It is so helpful to have the costs of bar preparation and the test covered so I am only responsible for living expenses for the next few months.” Graham adds, “Thank you to all of those who have been a part of making this scholarship available and selecting me! I look forward to using my legal skills to help advance the goals of equity and inclusion in the legal sphere.”

This year, in light of the uncertainties with the July 2020 Utah Bar Exam due to the COVID-19 pandemic, YLD and UCLI are working together to ensure that the scholarship funds can continue to be used to assist graduating law students with pursuing careers in the legal profession.

The Utah Center for Legal Inclusion is a 501(c)(3) nonprofit organization dedicated to advancing the goals of equity and inclusion in Utah's legal profession. UCLI invites all to participate in its inclusion initiatives, which will help strengthen Utah's legal institutions in an increasingly diverse state. If you are interested in becoming involved with UCLI's initiatives to help Utah's diverse students, visit UCLI's website at [www.utahcli.org](http://www.utahcli.org).

The Young Lawyers Division furthers the mission of the Utah State Bar, particularly among younger and newer members, through continued education, professional development, leadership training, social activities, public service, and other functions. If you are interested in becoming involved with YLD, contact [yldutah@gmail.com](mailto:yldutah@gmail.com).

*CHELSEA DAVIS is an associate with Holland & Hart LLP practicing in complex commercial and environmental litigation. She currently serves as Treasurer for the Young Lawyers Division and served on the board of the Utah Center for Legal Inclusion from 2017 to 2019.*





## Annual Paralegal Day Celebration

by Greg Wayment

Going back at least as early as May 19, 1994, then-governor Michael Leavitt proclaimed every third Thursday in May as Paralegal's Day (originally it was called Legal Assistants' Day). We invite all paralegals and their attorneys to join us in celebrating this day and are excited to announce Jon M. Huntsman, Jr. will be presenting the keynote address. Please see the invitation below for complete details.

As paralegals in the State of Utah, we take great pride in our profession and strive for excellence. *U.S. News & World Report* ranks the paralegal profession as #9 in best social services job and #83 in best overall jobs. Salaries for Utah paralegals tend to be competitive with national averages as well. For more information, please see the last salary survey results at: <http://paralegals.utahbar.org/articles-and-presentations.html>. And national results at: <https://money.usnews.com/careers/best-jobs/paralegal>.

A paralegal's primary role is to assist attorneys with the delivery of low cost and professional legal services to the public. Now, through the Licensed Paralegal Practitioner program (LPP), Utah paralegals are striving to assist attorneys and the public with the delivery of low cost and professional legal services to the public.

The Utah Supreme Court defines a paralegal as a person, qualified

through education, training, or work experience, who is employed or retained by a lawyer, law office, governmental agency, or other entity in a capacity or function that involves the performance, under the ultimate direction and supervision of an attorney, of specifically delegated substantive legal work, which work, for the most part, requires significant knowledge of legal concepts that, absent such a paralegal, the attorney would perform the task.

Now, with the LPP program, the definition of a paralegal is expanding. The Paralegal Division is committed to supporting both "traditional" paralegals and LPPs.

The utilization of paralegals in rendering legal services has been recognized and promulgated by the American Bar Association. We would continue to argue that, attorneys who use paralegals have achieved greater success in providing clients with high-quality service. Utilizing qualified paralegals helps attorneys deliver better service and more value while increasing law firm profits. As a result, paralegals continue to be essential contributors in the delivery of legal services.

The Paralegal Division thanks the Bar as well as the many law firms and attorneys that continually give support to paralegals and to our Division.

**Due to COVID-19 concerns, this event is subject to cancellation or postponement. Updated details will be e-mailed through the Utah State Bar listserv.**

## Annual Paralegal Day CLE

**Thursday,  
May 21, 2020**

**12:00 to 1:00 pm**

**For All Paralegals & Their Supervising Attorneys**

**KEYNOTE SPEAKER**

**Jon M. Huntsman, Jr.**

*The Ethics of  
Politics and Service*







## Continuing LEGAL Education

Friends & Colleagues:

Please know that your CLE Department has been working steadily since early March, when COVID-19 restrictions and remote working have been in place, to make commensurate changes to how and when we offer CLE events. We have loaded dozens of current and recent video CLE options to our Practice Portal/CE21 online service. We want to ensure that you have readily available and reasonably priced CLE options from local experts and colleagues.

As well, each week we are hosting Utah State Bar CLE webinars for your participation, to encourage continued community-building, learning, and responsible socializing during this interesting time. We also make recordings of these “live” CLE offerings available after the sessions have ended, via the Practice Portal.

For those who need, here are a few instructions about accessing your online events. Please go to [utahbar.org](http://utahbar.org) and select the “Practice Portal.” Once you are logged into the Practice Portal, scroll down to the “CLE Management” card. On the top of the card select the “Online Events” tab. From there select “Register for Online Courses.” This will bring you to the Bar’s catalog of CLE courses. From there select the course you wish to view and follow the prompts.

Also, please note that due to the CDC recommendations against gathering in large groups in order to mitigate the spread of the COVID-19 virus, the Utah Supreme Court has authorized the Supreme Court Board of Continuing Education to suspend all requirements for in-person CLE attendance for the remainder of the 2020 MCLE Reporting Cycle. Accordingly, those Bar members who are required to report CLE compliance this year may complete all required hours through webinars and other self-study courses in accordance with Rule 14-413 of the MCLE Rules.

We appreciate all of the work that you are doing to serve clients and our community during this time. We sincerely look forward to a time when we can gather in good conscience and in respect of the rule of law.

You are welcome to stay in touch with the CLE Department via email at [CLE@utahbar.org](mailto:CLE@utahbar.org) to inquire about courses or hosting an event. We will be glad to work with you and send our good wishes to all of you for your safety and well-being during this challenging time.

The CLE Department

## ***Certificate of Compliance***

**UTAH STATE BOARD OF CONTINUING LEGAL EDUCATION**  
Utah State Bar | 645 South 200 East | Salt Lake City, Utah 84111  
Phone: 801-531-9077 | Fax: 801-531-0660 | Email: [mcle@utahbar.org](mailto:mcle@utahbar.org)

**For July 1 \_\_\_\_\_ through June 30\_\_\_\_\_**

Name: \_\_\_\_\_ Utah State Bar Number: \_\_\_\_\_

Address: \_\_\_\_\_ Telephone Number: \_\_\_\_\_

\_\_\_\_\_ Email: \_\_\_\_\_

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Date of Activity	Sponsor Name/ Program Title	Activity Type	Regular Hours	Ethics Hours	Professionalism & Civility Hours	Total Hours
		<b>Total Hrs.</b>				

- 1. Active Status Lawyer** – Lawyers on active status are required to complete, during each two year fiscal period (July 1–June 30), a minimum of 24 hours of Utah accredited CLE, which shall include a minimum of three hours of accredited ethics or professional responsibility. One of the three hours of the ethics or professional responsibility shall be in the area of professionalism and civility. Please visit [www.utahmcle.org](http://www.utahmcle.org) for a complete explanation of Rule 14-404.
- 2. New Lawyer CLE requirement** – Lawyers newly admitted under the Bar’s full exam need to complete the following requirements during their first reporting period:
  - Complete the NLTP Program during their first year of admission to the Bar, unless NLTP exemption applies.
  - Attend one New Lawyer Ethics program during their first year of admission to the Bar. This requirement can be waived if the lawyer resides out-of-state.
  - Complete 12 hours of Utah accredited CLE.
- 3. House Counsel** – House Counsel Lawyers must file with the MCLE Board by July 31 of each year a Certificate of Compliance from the jurisdiction where House Counsel maintains an active license establishing that he or she has completed the hours of continuing legal education required of active attorneys in the jurisdiction where House Counsel is licensed.

## EXPLANATION OF TYPE OF ACTIVITY

**Rule 14-413. MCLE credit for qualified audio and video presentations; computer interactive telephonic programs; writing; lecturing; teaching; live attendance.**

- 1. Self-Study CLE:** No more than 12 hours of credit may be obtained through qualified audio/video presentations, computer interactive telephonic programs; writing; lecturing and teaching credit. Please visit [www.utahmcle.org](http://www.utahmcle.org) for a complete explanation of Rule 14-413 (a), (b), (c) and (d).
- 2. Live CLE Program:** There is no restriction on the percentage of the credit hour requirement which may be obtained through attendance at a Utah accredited CLE program. **A minimum of 12 hours must be obtained through attendance at live CLE programs during a reporting period.**

THE ABOVE IS ONLY A SUMMARY. FOR A FULL EXPLANATION, SEE RULE 14-409 OF THE RULES GOVERNING MANDATORY CONTINUING LEGAL EDUCATION FOR THE STATE OF UTAH.

**Rule 14-414 (a)** – On or before July 31 of alternate years, each lawyer subject to MCLE requirements shall file a certificate of compliance with the Board, evidencing the lawyer's completion of accredited CLE courses or activities ending the preceding 30th day of June.

**Rule 14-414 (b)** – Each lawyer shall pay a filing fee in the amount of \$15.00 at the time of filing the certificate of compliance. Any lawyer who fails to complete the MCLE requirement by the June 30 deadline shall be assessed a \$100.00 late fee. Lawyers who fail to comply with the MCLE requirements and file within a reasonable time, as determined by the Board in its discretion, and who are subject to an administrative suspension pursuant to Rule 14-415, after the late fee has been assessed shall be assessed a \$200.00 reinstatement fee, plus an additional \$500.00 fee if the failure to comply is a repeat violation within the past five years.

**Rule 14-414 (c)** – Each lawyer shall maintain proof to substantiate the information provided on the certificate of compliance filed with the Board. The proof may contain, but is not limited to, certificates of completion or attendance from sponsors, certificates from course leaders, or materials related to credit. The lawyer shall retain this proof for a period of four years from the end of the period for which the Certificate of Compliance is filed. Proof shall be submitted to the Board upon written request.

I hereby certify that the information contained herein is complete and accurate. I further certify that I am familiar with the Rules and Regulations governing Mandatory Continuing Legal Education for the State of Utah including Rule 14-414.

A copy of the Supreme Court Board of Continuing Education Rules and Regulation may be viewed at [www.utahmcle.org](http://www.utahmcle.org).

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

Make checks payable to: **Utah State Board of CLE** in the amount of **\$15** or complete credit card information below. Returned checks will be subject to a \$20 charge.

Billing Address: \_\_\_\_\_ Zip Code \_\_\_\_\_

Credit Card Type: ☐ MasterCard ☐ VISA Card Expiration Date: (e.g. 01/07) \_\_\_\_\_

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Please Note: Your credit card statement will reflect a charge from "BarAlliance"  
Returned checks will be subject to a \$20 charge.



# Classified Ads

## RATES & DEADLINES

**Bar Member Rates:** 1–50 words: \$50, 51–100 words: \$70. Confidential box is \$10 extra. Cancellations must be in writing. For information regarding classified advertising, call 801-297-7022.

**Classified Advertising Policy:** It shall be the policy of the Utah State Bar that no advertisement should indicate any preference, limitation, specification, or discrimination based on color, handicap, religion, sex, national origin, or age. The publisher may, at its discretion, reject ads deemed inappropriate for publication, and reserves the right to request an ad be revised prior to publication. For **display** advertising rates and information, please call 801-910-0085.

*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.

## JOBS/POSITIONS AVAILABLE

**AV-rated Business and Estate Planning law firm with offices in St. George, UT and Mesquite, NV** seeks a Utah or Nevada licensed Attorney with 3–4 years' experience for its St. George office. Experience in sophisticated Business/Transactional Law and/or Estate Planning is preferred. Ideal candidates will have a distinguished academic background or relevant law firm experience. Firm management experience would be a plus. We offer a great working environment and competitive compensation package. This is a great place to live with an abundance of recreational, cultural and family oriented opportunities. Please submit letter, resume and references to Daren Barney at [dbarney@barney-mckenna.com](mailto:dbarney@barney-mckenna.com).

**Established multi-attorney firm with a broad practice looking to add up to two members, with some room for staff.** Our sharp office space on Main Street in downtown Salt Lake City is within one block of state and federal courthouses. Excellent opportunity for an experienced attorney wanting to practice in a collegial atmosphere without the traditionally high overhead costs. If you are ready to stop sharing your profits, and start practicing with your own book of business in a friendly, mutually-helpful atmosphere, we invite you to inquire at [slclawopportunity@gmail.com](mailto:slclawopportunity@gmail.com). We look forward to meeting you.

## OFFICE SPACE/SHARING

**Large office in Holladay overlooking Big Cottonwood Creek is now available.** This office is for exclusive use and comes with separate storage and shared reception area with another law firm. It is located in a professional office building at 4764 South 900 East, Holladay, Utah. The other building tenants are lawyers and CPA's. Great parking and easy access from the freeways. \$600 per month full service lease. Reception, copier, printer, fax, services available for extra fee. Please call 801-685-0552 if your interested.

## SERVICES

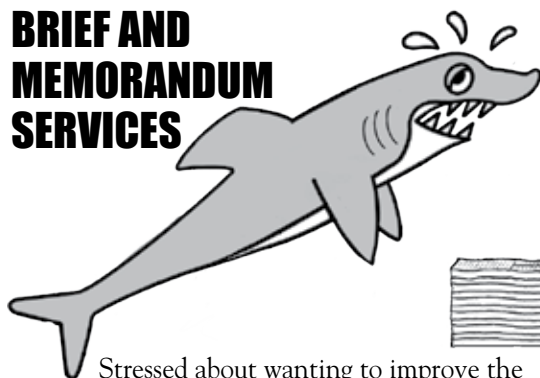
**CHILD SEXUAL ABUSE – SPECIALIZED SERVICES.** Court Testimony: interviewer bias, ineffective questioning procedures, leading or missing statement evidence, effects of poor standards. Consulting: assess for false, fabricated, misleading information/allegations; assist in relevant motions; determine reliability/validity, relevance of charges; evaluate state's expert for admissibility. Meets all Rimmasch/Daubert standards. B.M. Giffen, Psy.D. Evidence Specialist 801-485-4011.

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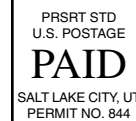
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