

## Utah State Bar Commission

Friday, April 19, 2019

Provo Marriott Hotel

### Agenda

**1. 9:00 a.m. President's Report: Dickson Burton**

25 Mins.

1.1 Professional Services Tax Follow-up (**Tab 1, Page 3**)

15 Mins.

1.2 Bar Commissioner Participation in Park City Convention Marketing

**2. 9:40 a.m. Action Items**

10 Mins.

2.1 Approve LPP Committee Creation and Membership (**Tab 2, Page 10**)

20 Mins.

2.2 Approve LPP Marketing Funding (**Tab 3, Page 14**)

20 Mins.

2.3 Approve Regulatory Reform Task Force Funding

20 Mins.

2.4 Approve Supreme Court Recommendations for OPC (**Tab 4, Page 19**)

**3. 10:50 a.m. Discussion Items**

15 Mins.

3.1 Providing Lawyers' E-Mail Address as Public Information  
(**Tab 5, Page 57**)

15 Mins.

3.2 Increasing Reimbursements for Speakers and Panelists (**Tab 6, Page 60**)

**4. 11:20 a.m. Information Items**

15 Mins.

4.1 Well-Being Task Force Draft Report Recommendations (**Tab 7, Page 63**)

10 mins.

4.2 ABA Day in Washington Report: **Dickson Burton & Herm Olsen**

10 Mins.

4.3 Western States Bar Conference Report: **Dickson Burton & Herm Olsen**  
(**Tab 8, Page 90**)

05 Mins.

4.4 Bar Awards Schedule

**5. 12:00 N. Adjourn to Luncheon with Central Utah Bar Association**

### Consent Agenda (Tab 9, Page 133)

1. Approve Minutes of March 7, 2019 Commission Meeting

### Attachments (Tab 10, Page 137)

1. March 2019 Financial Report
2. *Utah Bar Journal* article; *Responding to the Diversity and Inclusion Challenge in Utah*; May/June 2019, Volume 32 No. 3
3. Certificate of Blue Sky renewable energy support 2018 presented to the Utah State Bar.

## Calendar

May 10	Executive Committee	12:00 Noon	
May 17	Commission Meeting	9:00 a.m.	Utah State Bar
May ?	Admission Ceremony	12:00 Noon	State Capitol
July 12	Executive Committee	12:00 Noon	Utah State Bar
July 18	Commission Meeting	9:00 - 11:00 am	Park City, Utah
July 18-20	Summer Convention		Park City, Utah

**TAB**  
**1**

## Article

# Legislative Update

by Douglas Foxley, Frank Pignanelli, and Steve Foxley

**T**raditionally, a post legislative session wrap-up would include a laundry list of bills the Bar supported or opposed along with other items of interest. But in the recently concluded 2019 Legislative General Session there was one matter that almost every lawyer in the state followed, commented on with lawmakers, and discussed with colleagues, friends and family members.

Therefore, we provide a review of 1 H.B. 441 Substitute – Tax Equalization and Reduction Act (Rep. Quinn – Republican, Heber City) – and again ask for your help.

### BACKGROUND

In December 2018, Bar Leadership (along with other trade associations) were asked to meet with the Governor's Office of Management and Budget (GOMB). They learned of the concerns regarding the General Fund and the potential diminishment of sales tax revenues as a percentage of the overall budget.

To counter this, the Executive Branch was seriously considering an expansion of the sales tax to include professional services.

Similar proposals have been discussed by Governors in the last 30 years, and gained little traction with lawmakers. However, we reviewed the issue with Bar leaders and suggested that preliminary research be conducted should a need to inform lawmakers as to our concerns develop. By mid-January 2019, the issue was discussed by lawmakers but with little clarity as to the extent of "broadening the base". We remained in contact with Bar leadership and started circulating a white paper detailing the concerns of a sales tax on legal services.

In late February, our sources and the media revealed that a number of professional services were to be targeted for sales tax collection. It was at that point Bar Leadership sent an email to all members requesting that they contact their legislators expressing concerns. On Wednesday, February 27, Bar President

Dickson Burton emailed all Bar members and asked them to contact their elected representatives with concerns. Attached to the email was a position paper that outlined matters of concern that the Bar is allowed to convey to lawmakers: access to justice, availability of legal services to all citizens, adherence to constitutional principles. The Bar cannot make direct statements regarding policy and how it may impact regulatory and economic activities beyond the items detailed above. However, attorneys were encouraged to contact local lawmakers to express their own concerns with the proposed tax. Many members did so and had an important impact on deliberations.

The bill was formally introduced to the House the next day, February 28.

On Friday, March 1, the House Revenue and Taxation Committee conducted a special hearing in which Representative Tim Quinn introduced the bill to the public. The presentation included a statement from the Salt Lake Chamber, who the day before had emailed its members to announce its backing of the Tax Equalization and Reduction Act and "reaffirming its support of the legislature taking bold action to implement an updated, balanced approach to Utah's tax policy." Individuals, businesses, and associations (including the Bar) spoke overwhelmingly in opposition.

The beginning of the following week, many lawmakers commented that the vast majority of emails they were receiving were from

*DOUGLAS FOXLEY, FRANK PIGNANELLI, and STEVE FOXLEY are registered lobbyists for the Utah State Bar.*





lawyers inside their district, but that the overall volume was less than they expected. This is important because Bar members laid the groundwork for raising questions and concerns with the legislation. By the end of that week, many other trade associations – and their members – had also contacted legislators expressing their concerns. Also, Bar leaders, your lobbyists and some of the leading law firms met with key lawmakers and others regarding the impact the legislation would have on the economy. The Bar developed and was implementing a strategy for the Senate with other legal groups. Beyond our access to justice concerns, the main argument centered on the “tax pyramiding” effect in which businesses that hire lawyers and other professionals would pay sales taxes on taxes, significantly raising the cost of doing business. In particular, Steve Young of Holland & Hart helped policymakers understand this issue.

On Thursday, March 7 there was apparently not enough votes to pass the legislation across both chambers with a super majority (to prevent a referendum). The bill was pulled and a task force created to study the issue.

## ACKNOWLEDGMENTS

As contract lobbyists, who are honored to represent the Bar as one of the many clients and organizations whose interests we advocate for at the Capitol. Thus, we can make the following representation with expertise and knowledge. The Utah Bar Leadership was absolutely engaged on this matter from the moment they received information from the Governor’s Office and have remained so in preparation of further study. President Dickson Burton, President-elect Herm Olsen, Director John Baldwin and the Bar Commissioners were intensely involved in developing strategy and communications to ensure their concerns were heard. Their passion and commitment was exceptional, and members must understand they are well represented.

Steve Young is acknowledged by attorneys, economists, officials and others as a leading tax law expert in the state. His public testimony and analysis provided to Bar leadership and other policymakers was absolutely essential in developing talking points for attorneys when engaging with lawmakers. We are grateful for his service and look forward to working with him on this matter throughout the year.

The lawyer-legislators were an invaluable tool inside the House and Senate conveying our message and providing needed information. Their commitment to justice and process is important. Members are encouraged to thank them when appropriate.

Finally, we commend lawmakers and the Governor’s Office for proactively dealing what they perceive as a looming problem. It’s easy to kick the can down the road, but it takes courage and vision to attempt resolution of problems before a crisis occurs. Although we did not always agree with the process surrounding the bill or a particular solution, we are appreciative of the lawmakers who met with us to discuss the issues for lawyers. The sponsor of the bill, Representative Quinn, was generous with his time and we also look forward to working with him on this matter.

## PLAN OF ACTION

In the final days of the Legislative Session, lawmakers passed H.B. 495, Tax Restructuring and Equalization Task Force. This task force is comprised of five senators and five representatives. The President of the Senate and the House Speaker each appoint two nonvoting members of the public with taxation expertise. Further, this task force is mandated to seek public input and coordinate with other individuals with taxation expertise. Reports on the progress and preliminary findings will be made in June 2019. Any recommendations will be made in August or September. The task force is authorized to remain in force until June 30, 2020. There may be a Special Session later in the year to implement any recommendations.

Your Bar leadership sent letters to Legislative leadership strongly recommending that Steve Young and David Crapo, attorneys of renowned tax expertise, be appointed to serve on this task force.

Based upon conversations with lawmakers and others, this task force will likely study expanding the sales tax base to include professional services. But other, less radical options might also be discussed. These include re-imposing the sales tax on food, increasing the current sales tax, a constitutional amendment allowing broader use of expenditures from the income tax, and others.

The task force will likely spend early meetings explaining to the public and other attendees the rationale for changing Utah’s tax base. There may be economists from other sectors of the state who provide differing opinions as to sales tax receipts projected into the future.

Your lobbyists and Bar Commissioners will monitor the actions of the task force and report developments to members in a timely matter. Furthermore, we will provide task force members information regarding potential issues that will occur if sales taxes are imposed upon professional services-especially on

attorneys-and the burden for citizens seeking justice.

## YOUR INVOLVEMENT

Please remember that the Bar is limited as to what it may take positions on by Supreme Court Rule 14-106 Authority to engage in legislative activities. (However, you may communicate with your elected senators, representatives, and other decision-makers on any matter.) You are encouraged to discuss with task force members and other state officials the items contained in the talking points sent to you, and that will be resent. These include:

1. Your opinion whether a sales tax would afflict residents at a time of stress and misfortune, especially those dealing with bankruptcy, personal injury, criminal charges, divorce, credit challenges, etc. This could be a “misery tax”.
2. Taxing legal services is a burden to those taking responsibility in managing the affairs of their family and others-including guardianships, estate and probate matters, incorporating businesses, etc.
3. Increasing the cost of legal services deters individuals and businesses from retaining lawyers when needed and incurring greater later cost. Further, this will push citizens into “do-it-yourself” or other online “non-attorney” options-jeopardizing their quality of legal counsel.
4. Communications between client and lawyer is confidential and an audit could threaten the client’s privilege and create a greater burden on lawyers’ efforts.
5. This tax would encourage citizens to obtain professional services from out-of-state entities.
6. The tax would discourage businesses and professionals from locating in Utah.
7. Constitutional issues with a sales tax on legal services, which include access to courts, violation of the supremacy cause for litigation in federal courts, breach of confidentiality in the right to counsel, violation of equal protection, and burdening rights guaranteed in the Constitution.

[A more detailed explanation of these items is contained in the documents sent by the Bar]

The Bar cannot make direct representations or discussions regarding economic matters to decision-makers. However,

individual members can. You may want to communicate issues that go beyond the Bar’s access to justice concerns. Your practice might raise other issues, such as firms hiring counsel in other states to avoid not just paying the tax, but avoiding the pain in administering the tax. Furthermore, you might believe that the tax is “unfriendly to business” and will result in industries moving from Utah or refusing to locate in the state. Also, the “tax pyramiding effect” could have a detrimental effect on other entities who utilize legal services. There are a number of potential issues with the sales tax on professional services, which likely explains why many states choose not to impose it and why those that do have such taxes have economies that are not as robust as Utah’s. Many local attorneys support policymakers who prize the competitiveness of Utah with other states economic development-maintaining our position as a leader across economic sectors, etc.

On a regular basis, and dependent on the activities of the task force, the Bar will send emails to remind members to communicate with your senators and representatives. We will also ask you to have a discussion with those members of the legislature with which you have professional or social relationship.

There is no profession that is better suited to articulate to their clients and to policymakers the complexities and needs of tax reform to a system that is simple, fair, and creates fewer problems than it is trying to solve.

Utah attorneys made a significant difference in this debate. We look forward to working with you and Bar Leadership and members into continuing to establish sound public policy and a thriving legal system in the State.

## Concerns with a Tax on Legal Services

### April 2019

The Utah State Bar supports a prudent review of tax policy and, where appropriate, reasonable and fair “modernization” of that policy. There are, however, unique and important public policy reasons why lawmakers should not impose a sales tax on legal services. They should also look to the example of other states in weighing these policy reasons as only three other states (**Hawaii, New Mexico and South Dakota**) add a sales tax to legal services, and Florida rescinded a sales tax on legal services after just six months. Each of them has a population of two million or less, and each has different revenue resources driving their tax systems. For example, South Dakota does not impose income taxes and depends heavily on sales tax. Hawaii is geographically isolated and is therefore less concerned about taxation’s impact on interstate competition.

**There are several examples of states repealing their legislatures’ attempts to tax professional services.**

- ✓ In 1987, **Florida** enacted a sales tax on legal services and repealed the measure six months later because it determined it put in-state businesses at a competitive disadvantage.
- ✓ In 1990, **Massachusetts** passed a sales tax on services provided to business. The state repealed the sales tax two days after it took effect because of fear of economic harm and potential job loss.
- ✓ In October 2007, **Michigan** enacted a broad tax on services and a taxpayer coalition was quickly formed to repeal it on the grounds it would negatively affect jobs. The tax was repealed 17 hours after it became effective.
- ✓ In 2013, **Massachusetts** approved an expansion of the definition of services to include computer and software design services and faced immediate backlash. Two months later, the legislation was repealed. Massachusetts also repealed a tax on services provided to business in 1990 two days after the tax took effect.
- ✓ In 2014, **Minnesota** enacted a tax on warehouse and storage services. After industry outcry, the tax was repealed prior to its effective date.
- ✓ In 2016, **Missouri** voters also prohibited state and local lawmakers from imposing taxes on any service or activity not already taxed.
- ✓ In 2018, **Arizona** voters overwhelmingly approved a constitutional amendment prohibiting state and local governments from taxing any service not already subject to tax.

(Over)

## Hardships for Utah's Citizens

- ✓ A sales tax on legal services would tax Utah residents at times of misery, misfortune and vulnerability. Clients dealing with divorce, domestic violence, debt collection, estate issues from the death of a family member, personal injuries, criminal charges, property damage, housing, and bankruptcy do so from necessity, not choice. This "misery tax" would place yet another burden on those already suffering financial or personal crisis.
- ✓ A sales tax on legal services would tax people for taking responsible steps in managing their affairs. Examples include persons who wish to protect their families by drawing a will and appointing guardians; individuals buying and selling their homes or businesses; and those who are trying to incorporate a new business.
- ✓ Increasing the cost of legal services would deter individuals and small businesses from retaining lawyers at the outset, resulting in more costly legal problems and greater burdens on our state's judicial system down the road. An additional tax would push more people who need an attorney to "do-it-yourself" or other non-attorney options, or to no help at all. Another sad consequence would be that consumers will forgo needed preventative services and not only preventative legal help, but also preventative engineering or accounting help.
- ✓ Many legal transactions are already taxed, like estate administration, resulting in additional taxes through legal fees. Additionally, unlike non-service businesses, legal and other professionals pay income tax on their fees already.
- ✓ All communications between a client and his or her lawyer are confidential to protect the client. An audit on a lawyer's client fund account in administering the tax could threaten the client's attorney/client privilege and create a greater burden on lawyers' efforts to protect those communications.
- ✓ A sales tax on legal services would force lawyers to collect a tax on a tax already paid when using outside services in a legal matter, such as copy services or litigation support, creating a burdensome and unwanted multiplying or "pyramiding" effect, and rendering the final sales tax paid by the client a multiple of the original tax assessed.

## Adverse Effects on Utah Business/Economic Development/Competitiveness

- ✓ The tax would encourage Utah citizens to seek professional services from out-of-state providers who are not taxed, putting Utah law firms at a competitive disadvantage. This is especially true of border communities and sophisticated clients, or clients of law firms that have out-of-state affiliates.
- ✓ Imposing a sales tax on the legal services would place Utah's law firms at a competitive disadvantage to law firms in states that do not tax legal services at a time when out-of-state law firms already are competing for business against Utah law firms.
- ✓ This tax would discourage businesses and professionals from locating in Utah, resulting in lost jobs, wages and tax opportunities.

(Over)

## Issues with Constitutionality

There may be constitutional problems in taxing a person's ability to retain counsel in certain circumstances, such as defending oneself in a criminal defense case or in taking money from a worker's compensation award. Unresolved questions as to the constitutionality of the proposed tax on legal services, which the State of Utah might well have to litigate over the next several years, include but are not limited to the following:

- ✓ **Access to courts.** Would the proposed tax on legal services impermissibly burden access to and use of the state or federal courts in violation of the Utah Constitution, Article III of the U.S. Constitution and the 5th, 6th and 14th Amendments to the U.S. Constitution?
- ✓ **Tax on litigation in federal courts may violate U.S. Constitution Supremacy Clause.** Would the proposed tax on legal services, in connection with litigation before the federal courts, violate the Supremacy Clause contained in Article VI of the U.S. Constitution?
- ✓ **Breach of confidentiality burdening right to counsel.** Would the proposed tax on legal services breach the attorney-client privilege and confidentiality, and thus impermissibly burden the right to counsel under both the Utah Constitution and the 6th and 14th Amendments of the U.S. Constitution?
- ✓ **Taxing some professions while exempting others may violate equal protection of law.** Would imposing a tax on legal and some professions, while exempting services rendered by other professions, be a violation of equal protection rights under the Utah Constitution and the 14th Amendment to the U.S. Constitution?
- ✓ **Burden on rights guaranteed in U.S. Constitution.** Would the proposed tax on legal services impermissibly burden the exercise of rights secured by the 5th, 6th, and 8th Amendments to the U.S. Constitution?
- ✓ **Violation of the Utah Constitution.** Does a sales tax on legal services violate the Utah Constitution, Article VIII, Section 4, which provides that "The Supreme Court by rule shall govern the practice of law . . . ."?

**TAB  
2**



## LPP Admission Committee

Julie Emery, Paralegal (Chair), Parsons Behle & Latimer  
Supreme Court LPP Steering Committee Member  
Former Paralegal Division President  
Former Bar Commission Ex-Officio Member

Heather Allen, Paralegal (Vice-Chair), Progressive Leasing  
Former Paralegal Division President  
Former Bar Commission Ex-Officio Member

Jackie Morrison, S. J. Quinney College of Law, Master of Legal Studies Program Director  
Supreme Court LPP Steering Committee Member

Jess Hofberger,  
Formerly of S.J. Quinney College of Law  
Former Bar Affordable Access for All Committee Member

Melanie Vartabedian, Ballard Spahr  
Women Lawyers of Utah President  
Bar Commission Ex-Officio Member  
Former Bar Ethics Advisory Committee Member

## CHARGE TO STANDING COMMITTEE

**TO:** Licensed Paralegal Practitioner Admissions Committee

**FROM:** H. Dickson Burton, President

**DATE:** April 2019

### **PURPOSE OF COMMITTEE:**

To oversee the admissions process for licensure as a paralegal practitioner by the Supreme Court and assure that:

- (1) each applicant has achieved a sufficient amount of scholarly education and substantive legal experience to satisfy the LPP education and experience requirements;
- (2) each applicant possesses the requisite moral character and fitness to protect the public interest and engender the trust of clients, adversaries, courts and others; and
- (3) each applicant has the ability to identify legal issues related to their area of practice, to engage in a reasoned analysis of those issues and to arrive at a logical solution by application of fundamental legal principles by examination which demonstrates the applicant's thorough understanding of these legal principles.

The Committee shall consist of its chair and any at-large members appointed by the Utah State Bar Commission.

### **SPECIFIC OBJECTIVES:**

To coordinate the LPP admissions process including:

- (1) the Rules of Admission for LPP's;
- (2) approving all applications and forms related to the LPP Examination and LPP Admissions process;
- (3) reviewing LPP examination application files;
- (4) overseeing the investigative process;
- (5) overseeing the LPP Character and Fitness review process, including conducting hearings and approving or denying applications for admission as an LPP; and
- (6) overseeing the LPP Exam administration and grading, specifically:
  - a. assigning subject matter experts to grade the written portions of the LPP examination so that the Bar may appropriately assess an applicant's knowledge and competence to practice as an LPP.
- (7) assuring that appropriate test accommodations are awarded as required under the Americans with Disabilities Act and that testing is conducted at a safe and suitable exam site.
  - a. this includes:
    - i. reviewing requests for test accommodations on the March and August LPP exams, investigating the applicants and their requests, and making a recommendation on whether to grant, modify, or deny an applicant's test accommodation request;
    - ii. emergency-preparedness; and
    - iii. test security issues.
- (8) to hear Bar Exam Applicants' grievances.
- (9) to research and recommend improvements in the process.



The committee chair shall also identify and train eventual successive chairperson(s).

Additionally, The Committee shall engage all persons fully, including persons of different ages, disabilities, economic status, ethnicities, genders, geographic regions, national origins, sexual orientations, practice settings and areas, and races and religions. Inclusion is critical to the success of the Bar, the legal profession, and the judicial system. Report annually to the Bar Commission on the Committee's diversity and inclusion successes.

**COMMISSION LIAISON:**

**BAR STAFF LIAISON:**

Carrie T. Boren

**TAB**  
**3**

# Licensed Paralegal Practitioner Marketing

## WEBSITE FOR MARKETING AND ADMISSIONS

---

At this point, the homepage of [utahbar.org](http://utahbar.org) contains the following:

- Link to the Court's LPP page
- Link to Salt Lake Bar article
- Link to separate page based on Carrie's LPP presentation (See attached)
- Link to UVU's program page

## MARKETING TO POTENTIAL STUDENTS, LEGAL ASSISTANTS, PARALEGAL DIVISION AND BAR

---

Marketing to potential students at UVU has started via social media and email. Currently, UVU social media reaches more than 80,000 people per month, and their email list consists of over 40,000 names.

The Bar has also started to market to current paralegals, legal assistants and Bar members using the Bar's social media pages, the monthly eBulletin, the Bar Journal. We will send a stand-alone email announcing the program and its registration at the end of March.

If funding can be made available, a transit advertising campaign (\$2,436/mo.) and a streaming OTT video campaign (\$3,000/mo) would be a great boost for the remainder of the Bar's year.

## MARKETING TO THE PUBLIC

---

To market the program to members of the public looking for a career change, we will use digital display ads on career sites such as KSL jobs, Indeed and Monster, rotating on a monthly basis. We will also use paid Facebook ads targeting people looking to change careers.

To market the legal services of the LPP program, we will use social media, digital display ads in conjunction with the Licensed Lawyer buy, live TV appearances, and SEO keywords. We can work this in with our current Licensed Lawyer expenditures.

### **Additional Marketing Funds requested for LPP for the Remainder of the Calendar Year:**

\$9,000 for digital video streaming on OTT (Other than TV)  
 \$9,745 for transit advertising campaign  
 \$2,000 for job boards (KSL, Indeed, Monster)

**Total:** \$20,745 for remainder of calendar year.



■ **HORIZONTAL INTERIOR | 14" x 60"**

On Thu, Jan 31, 2019 at 1:57 PM Matthew Page <[Matthew.Page@utahbar.org](mailto:Matthew.Page@utahbar.org)> wrote:

Hi Corey,

I was wondering if you could update that buy we did last year, exactly the same, and send it over to me. I need to present it in a meeting tomorrow and I can't seem to locate it. I'm trying to get them to fund it again...it was pretty popular with some of our attorneys.

Thanks,

Matthew Page

Communications Director

Utah State Bar

645 S. 200 E.

Salt Lake City, UT 84111

# Campaign Options

## ❖OTT Campaign: \$3,000/month

Your :30 or :15 commercial will reach non-paid\* TV service homes (27%) that can be targeted to A18-34 demo across the DMA, Ogden to Provo and choice of BIT(S): Choose up to 2.

- ☐ Paralegals
- ☐ Attorneys
- ☐ Legal Professionals

☐ \$3,000 a month delivers 71,440 impressions with targeted demo across DMA and 1 BITS\*\*

☐ \$3,000 a month delivers 68,180 impressions with targeted demo across DMA and 2 BITS\*\*

Start Date: \_\_\_\_\_ End Date: \_\_\_\_\_

Total Campaign (Months X \$3,000): \_\_\_\_\_

Agreed: \_\_\_\_\_  
Utah State Bar

Date

\* Paid TV service means Comcast Cable, DISH Network and Direct TV services

\*\* BITS = Behavioral & Intent Targeting Segment, i.e., auto intenders





**Subject:** Re: Revised Proposal  
**Date:** Monday, February 4, 2019 at 2:33:31 PM Mountain Standard Time  
**From:** Corey Headman  
**To:** Matthew Page  
**Attachments:** image.png, image.png, image.png, Horizontal Interior.jpg

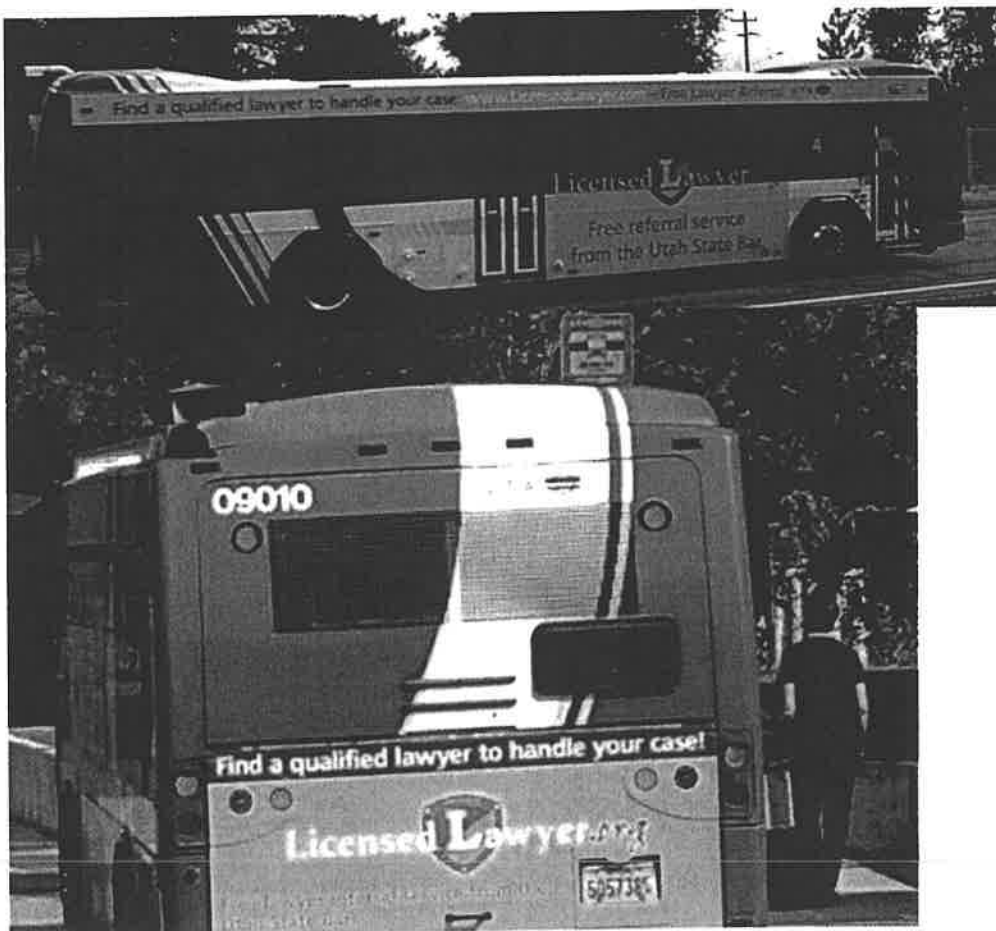
Hey Matt

Here is the same proposal as last year. We had a 5% rate hike but I also went in and added 10 Bonus Trax Interiors at no extra charge. All you have to do is pay for the cost of the vinyl at \$40 per interior. Take a look and let me know what you think. Total campaign is \$9,745.

Thanks

Utah Bar					4 Period (16 weeks)	Options
Product	Size	# of Units	Market	Cost/Display	Cost/P.	
Empress w/Extension + Headliner	3.5' x 114"+	3	Wasatch Front	\$735	\$2,2	
TRAX Horizontal Interiors	14"x60"	10	Wasatch Front	Bonus	Bon	
Super Tails	3' x 7'	3	Wasatch Front	Bonus	Bon	
<b>Bonus Production</b>	<b>\$925</b>	<b>Total Net Cost</b>	<b>\$9,745</b>	<b>Period Cost</b>	<b>\$2,2</b>	
				Value per Period	\$6,3	

Here are some images of the different display types in the proposal.



**TAB**  
**4**

**SUPREME COURT ORDER ON THE OFFICE OF PROFESSIONAL CONDUCT REVIEW**  
**April 2019**

**REPORT AND RECOMMENDATIONS**

**For the Utah State Bar**

The Supreme Court's ABA Report Review Committee proposed specific recommendations for action by the Bar (see below) which have been approved by the Court. We have already gone ahead and taken some steps at some small expense only and are preparing to take several others to implement the Court's order.

**Actions Taken and Planned**

**1. Recommendation 1a. Take steps necessary to separate OPC from the Bar. Make clear to Utah lawyers and the public that OPC is independent from the Bar. OPC should have a separate phone number, email address, and website from the Bar. The reception desk at the Utah Law & Justice Center should answer the phone by stating, "Utah Law & Justice Center". Signs at the building should say "Utah Law & Justice Center rather than "Utah State Bar".**

**Actions Taken**

A. Our receptionist now answers the phone, "Utah Law & Justice Center" instead of "Utah State Bar."

B. The brass lettering on the stone marker in front of the building has been changed to delete "Utah State Bar" and identifies the building as just the "Utah Law & Justice Center."

C. The heading on the daily room schedules posted in the building have been changed to "Utah Law & Justice Center" instead of "Utah State Bar."

D. The signage in the building posting the weekly Character & Fitness Screening Panels has been changed to read "Supreme Court Screening Panels."

E. The signage in the lobby and in the elevator lists tenants as in the "Utah Law & Justice Center" instead of the "Utah State Bar."

F. The Bar information table with the "Utah State Bar Information" tablecloth has been taken out of the lobby. Brochures and other information is now on the front counter.

G. A separate secured file room for all OPC files and records in the building has been built out on the first floor.

H. The OPC has a separate public phone number and their in-take receptionist answers the phone "Office of Professional Conduct".



### Planned Action

I. The chrome lettering behind the reception desk will be changed to delete the name "Utah State Bar" and will just list the building as the "Utah Law & Justice Center."

J. The TV monitors behind the reception desk will include more information about tenants' schedules and activities instead of exclusively about the Bar's schedules and activities.

K. The outdoor banners by the entrance doors will be changed to identify the building as the "Utah Law & Justice Center" instead of as the "Utah State Bar."

**2. Recommendation 1b. The Supreme Court should create an Administrative Oversight Committee for the discipline system. The Executive Director of the Utah State Bar should be an ex-officio non-voting member. The Administrative Oversight Committee should develop an annual budget for OPC and submit the annual budget to the Supreme Court and to the Bar. The Oversight Committee should be independent from the Bar.**

### Action Taken

The Court has created the Oversight Committee and appointed members. I am now serving as an *ex-officio* non-voting member of the Committee and will assist as needed and helpful.

### Planned Action

Bar staff will continue to include the OPC budget in the Bar's annual operations and capital budgets and will coordinate planning with the Oversight Committee for approval by the Supreme Court pursuant to this charge and Recommendation 1c below.

**3. Recommendation 1c. The Bar should continue to fund the OPC budget without creating a direct assessment to fund the disciplinary process but should strengthen the "safety valve" to ensure proper funding, which would include obtaining input from the Ethics and Discipline Committee.**

### Planned Action

Bar staff will work with OPC staff to prepare annual budgets for submission to the Oversight Committee and approval by the Supreme Court for inclusion in the Bar's annual operating and capital budgets.

**4. Report Recommendation 5. The OPC should have enhanced technology tools.**

Action Taken

The Bar's new Director of Technology and new Technology Administrator have focused on the hardware, database and software needs of OPC, including monthly meetings with OPC senior staff, more direct daily attention, and more direct involvement with the software provider when problems arise. We have already budgeted for additional hardware and software for purchase as needed. Additionally, the OPC benefits from the upgraded servers recently purchased by the Bar.

**5. Report Recommendation 6. OPC should be provided with funding to hire an investigator as part of the OPC staff and to hire forensic experts as needed.**

Action Taken

The OPC's budget now includes funding for an investigator, who has been hired, and includes funding for forensic experts who may be utilized when needed.

**6. Report Recommendation 8a. The OPC should have its own standalone website to increase public access and awareness.**

Planned Action

We are preparing to carve off the OPC's portion of the Bar's website as a stand-alone site separate from the Bar and the Supreme Court with its own web address and we will create separate e-mail addresses not related to the Bar or the Court.

## Focus on Ethics & Civility

# Utah Supreme Court Forms OPC Oversight Committee

by Judge Diana Hagen and Keith A. Call

Nothing will raise a lawyer's blood pressure like getting a letter from the Office of Professional Conduct stating that you are under investigation for violation of the ethical rules. If you have ever seen such a letter, it probably included something like this: "We recognize that having our office involved in matters such as this can be inconvenient and unsettling." They are obviously Masters of Understatement.

### What Is the OPC?

The Office of Professional Conduct (OPC) is comprised of a "senior counsel" appointed by the Board of Commissioners of the Utah State Bar, and other lawyers and non-lawyer staff appointed by the senior counsel. See Utah Sup. Ct. R. Prof'l Practice 14-504. The purpose of the OPC is three-fold: (1) investigate allegations of attorneys violating the Rules of Professional Conduct; (2) prosecute those allegations in accordance with applicable rules; and (3) provide informal guidance to members of the Bar concerning professional conduct. See [www.utahbar.org/opc/](http://www.utahbar.org/opc/) (last visited Mar. 30, 2019). The Bar pays the salaries of OPC counsel and their staff. Utah Sup. Ct. R. Prof'l Practice. 14-505.

### What Changed?

A few years ago, at the suggestion of the Utah State Bar, the Utah Supreme Court asked the American Bar Association to conduct an evaluation of Utah's attorney discipline system and make recommendations for improvement. In 2017, the ABA submitted its findings in a written report available on the Utah Courts website. See American Bar Association, *Utah Report on the Lawyer Discipline*

*System* (Apr. 2017), available at [https://www.utcourts.gov/resources/reports/docs/ABA-OPC\\_Report.pdf](https://www.utcourts.gov/resources/reports/docs/ABA-OPC_Report.pdf) (last visited Mar. 30, 2019). While noting the many strengths of Utah's existing system, the ABA recommended specific reforms designed to increase public trust and confidence in the system as well as the speed and efficiency of the process.

After receiving the report, the Utah Supreme Court formed an ad hoc committee to review the ABA's suggestions and make recommendations as to what changes should be implemented. The committee's recommendations (also available on the Utah Courts website), fall into two general categories. First, the committee recommended a series of procedural changes designed to improve the efficiency and effectiveness of the disciplinary system. Those changes include streamlining the complaint process to make it more accessible to the public, providing additional tools and resources to OPC staff to speed investigations, and simplifying the process used by screening panels to increase efficiency while providing important due process protections to attorneys accused of professional misconduct.

Second, the committee recommended a series of steps to separate the OPC from the Bar. It is important for the public to understand that OPC is part of the Utah Supreme Court's regulation of the practice of law and operates independently of the Bar. Some of the recommendations seek to correct the misperception that OPC is part of the Bar (for instance, by separating OPC's website from the Bar's website and changing

DIANA HAGEN is a judge on the Utah Court of Appeals. She served on the ad hoc committee that reviewed the ABA's recommendations and chairs the new Oversight Committee.



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



the signs in the Utah Law and Justice Center to distinguish between OPC and the Bar), but others are more substantive and will require rule changes (such as appointment of OPC's Chief Disciplinary Counsel – formerly “senior counsel” – by the Supreme Court, rather than the Bar Commissioners). One of those substantive changes is the creation of the new Oversight Committee.

### What Is the New Oversight Committee?

On March 4, 2019, the Utah Supreme Court adopted a rule, Rule 11-501, creating a new Oversight Committee for the OPC. Utah Sup. Ct. R. Prof'l Practice. 11-501. The Committee is comprised of five voting members appointed by the Court. The members must include at least one judge, one member of the public, one past chair or past vice chair of the Ethics and Discipline Committee, and one member with an accounting background. The Executive Director of the Bar is an ex-officio, non-voting member of the Committee.

The purpose of the Committee is to “assist the OPC in implementing the reforms to the attorney discipline process adopted by the Utah Supreme Court and to provide oversight for the OPC.” *Id.* R.11-501(2)(A).

### Oversight Committee Responsibilities

The new Rule charges the Committee with the following responsibilities:

1. Implement performance metrics and annual evaluations of OPC's senior counsel;
2. Develop an annual budget for the OPC;
3. Prepare a three- to five-year funding plan;
4. Report to the Court annually; and
5. Develop formal policies for the OPC.

*Id.* R. 11-501(2)(B). Placing these responsibilities under the purview of the Oversight Committee underscores OPC's independence from the Bar.

### So, What Can We Expect?

The Utah Supreme Court has adopted the recommendation to create the Oversight Committee but has yet to officially approve the other recommendations. Over the next year, the Oversight

Committee will present the Court with concrete proposals for implementing the recommended reforms, which the Court will review individually. Because many of the recommendations require changes to court rules, you can expect to see notices of proposed rule amendments in your inbox over the coming months. In short, the Court is looking for ways to improve both process and perception. Members of the public may tend to believe the OPC is comprised of lawyers protecting lawyers. Members of the Bar charged with violations of the rules may perceive they are the subject of a Star Chamber proceeding. *See, e.g., In re Nicholson*, 791 S.E.2d 776, 778 (Ga. 2016) (highlighting a respondent's claim in State Bar disciplinary action that “[t]his is a Star Chamber proceeding... [a]nd you're here to do a hatchet job on me”); *see also* Bryan Garner, *Lawyer Walks Out of Hearing, Misses 10-Year Disbarment Recommendation* (June 5, 2008), [http://www.abajournal.com/news/article/lawyer\\_walks\\_out\\_of\\_hearing\\_misses\\_10\\_year\\_disbarment\\_recommendation](http://www.abajournal.com/news/article/lawyer_walks_out_of_hearing_misses_10_year_disbarment_recommendation) (last visited Mar. 3, 2019). The new Oversight Committee may be able to help with this perception on both sides by creating more transparency and recommendations for improvement.

The bottom line is to expect additional changes to the lawyer disciplinary process as the new Oversight Committee ramps up. Whatever the changes may be, I am sure you will keep hoping they stay irrelevant to you and your practice.

*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 authors.*

## IN THE SUPREME COURT OF THE STATE OF UTAH

----oo0oo----


In re: Proposed New Rule 11-501. Oversight Committee of the Office of Professional Conduct and the amended title of Chapter 11, Article 3 to Judicial Professionalism and Civility, of the GENERAL PROVISIONS to the SUPREME COURT RULES OF PROFESSIONAL PRACTICE.

## ORDER

IT IS HEREBY ORDERED that the proposed new Rule 11-501. Oversight Committee for the Office of Professional Conduct and amended title of Chapter 11, Article 3 to Judicial Professionalism and Civility, of the General Provisions to the Supreme Court Rules of Professional Practice are adopted and promulgated effective March 4, 2019.

FOR THE COURT:

3-6-19  
Date

  
Matthew B. Durrant  
Chief Justice

## Executive Summary

### Supreme Court Committee for the Evaluation of the ABA Report on the Utah Lawyer Discipline System

The Utah Supreme Court, with the support of the Utah State Bar, asked the American Bar Association (ABA) to conduct an evaluation of Utah's attorney discipline system and make recommendations to increase the efficiency and effectiveness of Utah's discipline system. The Court asked the ABA to conduct the evaluation because the ABA has developed model disciplinary procedures and has completed similar evaluations for over 64 different discipline systems. In April, 2017, the ABA Standing Committee on Professional Discipline submitted its findings to the Utah Supreme Court in a report titled "Utah, Report on the Lawyer Discipline System" (ABA Report).

The ABA Report found that the Utah Supreme Court, the Office of Professional Conduct, the Ethics and Discipline Committee, and volunteer staff and leadership of the Utah State Bar are all committed to maintaining an effective and fair lawyer disciplinary system. The ABA Report also commended the Supreme Court for adopting effective Rules of Professional Conduct and other mechanisms to protect Utah citizens. The ABA Report's suggestions for improving Utah's lawyer discipline system can be summarized with three general themes: 1) Utah's Office of Professional Conduct appears too intertwined with the operations of the Utah State Bar, which may undermine public trust and confidence in the attorney discipline system; 2) Utah should adopt a different procedural model similar to some other states, which could increase the speed and efficiency of the disciplinary process; and 3) Utah needs to take steps to increase confidence in the neutrality of the discipline process.

The Supreme Court established a committee to evaluate the ABA Report recommendations. The voting members of the ABA/OPC Committee included a representative from the public, the President of the Utah State Bar (USB), the Ethics and Discipline Committee Chair, District Court judges, a Court of Appeals judge, an attorney who represent lawyers who are the subject of disciplinary actions, an attorney who represents the press, former and current Screening Panel members, representatives of the Administrative Office of the Courts, and a law school professor. The Committee included the following non-voting members: the President of the Utah State Bar (USB); the Executive Director of the USB; General Counsel for the USB; and the Office of Professional Conduct Senior Counsel.

The Committee met monthly from September, 2017 until August, 2018. A Summary of the Committee's Recommendations is attached. The full report of the Committee's review of the ABA Report is also attached.



## ABA/OPC COMMITTEE SUMMARY OF RECOMMENDATIONS

### Office of Legal Professional Conduct

#### **Governance, Public Trust and Confidence**

The Office of Professional Conduct's name should be changed to the Office of Legal Professional Conduct (OLPC). The new name better describes the function of the office and is broad enough to include the new Licensed Paralegal Practitioner.

It is important for the public to understand that the OLPC is not a part of the Utah State Bar (USB), and that the OLPC is part of the Supreme Court's regulation of the practice of law. The OLPC and the USB should take steps to help the public understand that OLPC operates independently from the USB.

OLPC should create a website that is separate from the USB website, and the website should:

- Include information about all components of the disciplinary process
- Provide links to rules and uniform downloadable forms, including a complaint form in multiple languages
- Remove warning language to a complainant that is currently included on the website, that is inconsistent with OLPC practice, and might discourage complaints
- Include the names of attorneys who have received a public disciplinary action within the past 10 years, and the status of the disciplinary actions

In order to increase public confidence in the disciplinary process, OLPC should contact civic organizations, organizations that serve underrepresented populations in the state, and specialty bar associations, and offer to provide talks and information about the lawyer discipline process.

The governance of OLPC should be more transparent to the public and attorneys. An OLPC Oversight Committee should be created with 5 voting members, including a judge, a member of the public (with an accounting background), the State Court Administrator or the administrator's designee, 2 attorneys (one of whom is a past chair or vice-chair of the Ethics and Discipline Committee), and the Executive Director of the Bar, as an ex-officio non-voting member. The oversight committee, independent of the USB, should be authorized to:

- Assist OLPC and the USB with implementing the recommendations adopted by the Supreme Court
- Develop realistic performance metrics and conduct annual performance evaluations for OLPC Senior Counsel

Final

- Develop an annual budget for OLPC and submit the annual budget to the Supreme Court and to the USB
- Conduct a needs assessment for OLPC, setting forth a 3 to 5 year funding plan for the disciplinary process, including technology and staffing needs
- Annually, and in conjunction with OLPC Senior Counsel and the Chair of the Ethics and Discipline Committee, report to the Court regarding the operations of the OLPC and the general standing of disciplinary matters and procedures
- Develop formal policies for OLPC such as records retention policies

The oversight committee should not have authority to interfere with the prosecutorial independence of the OLPC, but should have access to confidential information as necessary to carry-out its duties.

### **OLPC Staff**

The Supreme Court should appoint the OLPC Senior Counsel.

OLPC staff titles should be changed as follows – Chief Disciplinary Counsel, Deputy Chief Disciplinary Counsel, and Assistant Disciplinary Counsel.

OLPC should be provided with funding to hire an investigator as part of the OLPC staff and to hire forensic experts as needed.

OLPC should create a policy and budget that requires more standardized training for staff, including training on substantive law, use of technology, behavioral health, and effective investigation techniques.

### **OLPC Budget**

The USB should continue to fund the OLPC budget without creating a separate, direct assessment to fund the disciplinary process.

The USB should adopt the budget created by the Oversight Committee unless the USB petitions the Supreme Court for a different budget for the OLPC, and the Supreme Court approves a different budget for the OLPC, in which case, the USB should adopt the budget approved by the Supreme Court.

OLPC Senior Counsel should evaluate the OLPC technology needs and take steps to update current equipment and software, and acquire needed IT staff.

OLPC should create a budget to assist the Ethics and Discipline Committee with implementing enhanced training for Ethics and Discipline Committee Screening Panel volunteers.



## **OLPC Records**

OLPC should continue the current practice of providing information about disciplinary actions by phone, or other means, for actions more than 10 years old. OLPC should publish on its website, the names of attorneys who have been publicly disciplined in the last 10 years. The USB should continue to publish attorney licensure status on the USB website.

OLPC should collect the following information from an attorney who is the subject of a disciplinary action: years of practice, county of practice, and practice area involved in the complaint. OLPC should publish the following aggregate data as part of its yearly report: years of practice for attorneys subject to disciplinary action, the number of attorneys in a particular county who were disciplined in the past year, and the number of attorneys in a particular practice area who were disciplined in the past year.

A Rule of Lawyer Discipline and Disability should be adopted to formalize the current record retention practices for OLPC and OLPC should find a more secure location in the Law and Justice Center to store discipline records.

## **Complaint Intake Process – Office of Legal Professional Conduct**

The complaint process should be more accessible to the public. OLPC should modify its intake process as follows:

- OLPC should develop an on-line complaint form available in multiple languages and should accept on-line submission of a complaint
- Notarization of a complaint should be discontinued, but a declaration, under penalty of perjury, should be required
- References in rules to formal and informal complaints should be replaced with “complaints”

OLPC should continue to conduct an informal screening /investigation stage of a complaint before deciding to refer a complaint to the screening panel, but OPC should discontinue using confusing terminology related to a complaint, such as “Requests for Assistance”, “informal complaints”, and “Notice of Informal Complaints” (NOIC). Rules that include the confusing terminology should be amended.

OLPC should have the authority to compel an attorney to provide information to OLPC during an initial investigation of a complaint. The Rules of Lawyer Discipline and Disability should give OLPC the authority to issue investigative subpoenas prior to a matter being referred to a Screening Panel and upon the approval of the Chair of the Ethics and Discipline Committee.

Final

The Court should amend Rule 14-509 of the Rules of Lawyer Discipline and Disability to make a lawyer's willful failure to comply with a subpoena validly issued by OLPC or a Screening Panel, or knowing failure to respond to a lawful demand from OPC counsel, a separate ground for discipline.

If OLPC dismisses a complaint, OLPC should continue its current practice of providing notice to the complainant of the decision to dismiss the complaint and notice of a complainant's right to appeal an OLPC decision to the Chair of the Ethics and Discipline Committee.

Discipline by consent should be encouraged at all stages of the proceeding.

The Court should amend the rules to allow OLPC to initiate reciprocal disability inactive status proceedings when another jurisdiction has made a determination of disability.

## **Ethics and Discipline Committee Screening Panels**

### **Role of Screening Panels**

The Ethics and Discipline Committee Screening Panels provide complainants an important opportunity to tell their story, and provide important due process to an attorney accused of violating a rule of professional conduct. The Committee supports the role of the Screening Panels in the attorney discipline process and does not support the ABA Report's suggestions to diminish the function of the Screening Panels.

### **Membership and Training**

The number of screening panel members who sit for a hearing varies between Screening Panels. The Screening Panel hearings should be standardized. The Screening Panel members required for a hearing should be reduced from 8 members to 5 members, with one of the 5 being a public member. All Screening Panel hearings should require 5 panel members unless all parties agree to fewer than 5 panel members.

The Supreme Court and the Chair of the Ethics and Discipline Committee have done a good job of increasing diversity of members related to gender, race, ethnicity, geography, and firm size. They should continue their efforts to increase diversity of the members on Screening Panels. The volunteer solicitation process should include communication with community groups and bar associations that represent minority or underrepresented populations. The applications, the application process, and volunteer opportunities should be prominently displayed on the Court website, the USB website, and the OLPC website.

Final

Terms for members of the Ethics and Discipline Committee should be limited to 3 years with a maximum of 2 consecutive terms, unless a member is appointed chair or vice chair of a screening panel, in which case, the member may serve more than 2 terms.

The Chair of the Ethics and Discipline Committee and OLPC Senior Counsel should implement enhanced training for Screening Panel volunteers.

## **Process**

Rule 14-515 should be amended to apply the confidentiality restrictions for disciplinary proceedings only to non-party participants unless the Screening Panel Chair issues an order of confidentiality for the parties based on a showing of good cause. If the Screening Panel Chair issues an order of confidentiality for the parties, the rule should establish enforcement mechanisms for the order of confidentiality through a petition filed with the District Court, under seal.

The Court should adopt a disqualification and abstention rule applicable to Screening Panel members who serve on a particular case. Screening Panel members and OLPC staff should be barred from representing a lawyer in a discipline case for one year after service on a panel or committee.

The Ethics and Discipline Committee Chair should continue to review the Screening Panel's findings and recommendations for complaints that are resolved without a recommendation to file an action in the District Court. The Ethics and Discipline Committee Chair should not make changes to Screening Panel findings and recommendations, other than changes needed for clarity, and should prepare the order to execute the Screening Panel's findings and recommendations.

When the Screening Panel recommends a public reprimand, the respondent should be permitted to choose one of three options: accept the public reprimand; file an exception with the Chair of the Ethics and Discipline Committee with the right to appeal the ruling on the exception; or elect a trial de novo with the District Court.

When the Screening Panel recommends the filing of a complaint with the District Court, the Ethics and Discipline Committee Chair should be given notice of the Screening Panel recommendation and a copy of the complaint, but should not approve the recommendation or sign the complaint filed with the District Court.

## **Diversion Programs**

The Court should streamline the diversion process and OLPC should enhance the use of diversion.

Final

The Diversion Committee should be eliminated and OLPC should be responsible for overseeing and operating the diversion programs, including, negotiating the diversion contract with the attorney tailored to the specific case, and designating a monitor for compliance who will be responsible to report to OLPC.

The OLPC should establish diversion programs that educate lawyers on practice management and trust account management.

The USB should increase the public awareness of the USB's voluntary fee dispute program to increase its use among attorneys and clients.

## **Probation and Interim Suspensions**

The Supreme Court Advisory Committee on Rules of Professional Conduct should consider amending rules to better address potential harm to the public and profession that may occur while an attorney discipline case is being litigated.

Utah Rule of Professional Practice 14-603 Sanctions, and 14-504 OPC Counsel, should be amended to provide details relating to probation, including:

- Change the nature of probation so that it can be used as a set of conditions accompanied with a sanction, rather than using it as the sanction itself
- Provide guidance regarding when probation is appropriate
- Provide a non-exclusive list of standard terms and conditions for probation, such as
  - behavioral health treatment
  - Restitution
  - Completion of the MPRE
  - Completion of a course of study
  - Regular, periodic reports to OLPC
  - Payment of disciplinary costs

Utah Rule of Professional Practice 14-518 Interim Suspension for Threat of Harm, should be amended to:

- Permit an interim suspension based on serious harm to the public
- Use a preponderance of the evidence standard
- Use the same procedure to obtain the interim suspension as the procedure for a temporary restraining order under URCP 65A
- Permit OLPC to request and the Court to impose other types of interim orders to protect the public, such as supervision or limited practice while a case is pending

Utah Rule of Professional Practice 14-519 Lawyers Convicted of A Crime, should be amended to:

- Permit interim suspension after a finding or admission of guilt (as opposed to a conviction of guilt), including a plea in abeyance

Final

- Clarify that the hearing permitted before the interim suspension, is only for the purpose of determining whether a finding or admission of guilt was for a serious crime or misdemeanor that reflects adversely on the lawyer's honesty, trustworthiness, or fitness to practice law

## **Complaints Filed in District Court**

The ABA Report recommended that the Court undertake a study regarding the feasibility of retaining District Courts as the adjudicators in discipline cases. The report suggested that the Court consider using lawyer and non-lawyer adjudicators for disciplinary matters which would submit findings and recommendations to the Court for entry of a final order. The committee believed that the trier of fact should continue to be the District Court.

The Utah Rules of Civil Procedure Advisory Committee should adopt rules to apply to attorney discipline cases filed in District Court to require active case management for attorney discipline cases, including:

- Requiring a Rule 16 scheduling conference at the beginning of attorney discipline cases, similar to the now completed Case Management Pilot Program for Tier III cases
- Promulgating specific Rule 26 requirements and deadlines for attorney discipline cases similar to Rules 26.1 to 26.3

The District Courts should make it a priority to train judges about the attorney disciplinary process. The training could be included at judicial conferences, at new judge orientation, and in bench books.

Utah Rule of Professional Practice 14-511(f) should be amended to remove the requirement that the court hold a sanctions hearing within 30 days after it enters findings of fact and conclusions of law, and to remove the requirement that the court issue its order sanctioning the defendant within 5 days after the sanctions hearing. Instead, a disciplinary action filed in District Court should follow the time requirements that are applied to all cases in District Court under the Rules of Civil Procedure, except as modified by an active case management program.

**ABA/ OPC's Response to the American Bar Association's  
"Utah Report on the Lawyer Discipline System"  
2017**

**ABA Report Recommendation 1:** The Supreme Court's oversight and control of the discipline system should be emphasized.

**ABA Report Recommendation 1a:** The Court should take steps necessary to separate the Office of Professional Conduct from the Utah State Bar.

**Committee Discussion:** The ABA/OPC Committee (Committee) and the American Bar Association's "Utah Report on the Lawyer Discipline System" (ABA Report) both recognize the need to take steps to separate the Office of Professional Conduct (OPC) from the Utah State Bar (USB) to make clear to Utah lawyers and the public that OPC is independent from the USB, and to emphasize the Supreme Court's responsibility to regulate and discipline lawyers. The Committee considered whether the OPC should move from the Utah Law and Justice Center. John Baldwin, the USB Executive Director, reported on the cost of the OPC office at the Utah Law and Justice Center. The OPC offices use approximately 4,000 square feet at the Utah Law and Justice Center and shares space with the USB, such as bathrooms, storage, printer room, and common space. The USB assigns \$4,000 a month in cost for the space used by OPC, which is one dollar a square foot. Comparable cost for space in the downtown area would be at least \$21 a square foot. The Committee did not think it was economically feasible to move the OPC offices. The Committee did agree that OPC should have a separate phone number, email address, and website from the USB. In addition, the reception desk at the Utah Law and Justice Center should answer the phone by stating "Utah Law and Justice Center". Signs at the building should say "Utah Law and Justice Center" rather than "Utah State Bar".

In December 2017 the USB reported to the Committee that the USB and OPC are ready to implement the following:

- The receptionist will answer the phone "Utah Law and Justice Center" instead of "Utah State Bar"
- Internal and external building signage will change to "Utah Law and Justice Center" instead of "Utah State Bar"
- A list of building tenants in the elevators will distinguish tenants from the USB.

**Motion:** The Committee adopted a motion that the name of the Office of Professional Conduct be changed to the "Office of Legal Professionals Conduct."

**(All motions in this summary were unanimously adopted by the Committee, unless indicated otherwise)**



**Motion:** The Committee adopted a motion that the Supreme Court should appoint the OPC Senior Counsel.

**Motion:** The Committee adopted a motion that OPC staff titles should be changed as follows – Chief Disciplinary Counsel, Deputy Chief Disciplinary Counsel, and Assistant Disciplinary Counsel. After discussion about the terms discipline versus conduct, the motion passed unanimously.

**ABA Report Recommendation 1b: The Supreme Court should create an Administrative Oversight Committee for the discipline system.**

**Committee Discussion:** The ABA Report states the OPC and disciplinary system is too intertwined with the USB. The USB's board appoints OPC counsel and approves the OPC budget which is formulated by the USB's executive director. Current rules are not clear about whom the OPC Senior Counsel reports to, and how performance metrics are developed. The ABA Report suggested a 6 member oversight committee with diverse membership from across the state, including a judge and a public member. The ABA Report suggested that an oversight committee, independent of the USB could be authorized to:

- Propose rules of procedure for the lawyer discipline proceedings, with the Court's approval
- Periodically review the operations of the discipline system to identify where delays occur and take prompt action to address delays
- Develop realistic performance metrics and conduct annual performance evaluations for Senior Counsel
- Develop an annual budget process and inform the Court of the budget for the OPC
- Conduct a needs assessment, setting forth a 3 to 5 year funding plan for the disciplinary process, including technology and staffing needs
- Periodically report to the Court regarding the operations of the OPC and the general standing of disciplinary matters and procedures
- Develop training programs for OPC staff and Screening Panels
- Develop formal policies for OPC such as records retention policies
- Engage in public outreach on behalf of the OPC

**Motion:** The Committee adopted a motion to accept recommendation 1b as follows: An OPC Oversight Committee should be created with 5 voting members, including a judge, a member of the public (with an accounting background), the State Court Administrator or the administrator's designee, 2 attorneys (one of whom is a past chair or vice-chair of the Ethics and Discipline Committee), and the Executive Director of USB as an ex-officio non-voting member. The oversight committee would not have authority to interfere with the prosecutorial independence of the OPC, but would have access to confidential information as necessary to carry out its duties. The oversight committee, independent of the USB, would be authorized to:

- Assist OPC and the USB with implementing the recommendations of the ABA Report and the ABA/OPC Committee recommendations that are adopted by the Supreme Court
- Develop realistic performance metrics and conduct annual performance evaluations for Senior OPC Counsel

- Develop an annual budget for OPC and submit the annual budget to the Supreme Court and to the USB
- Conduct a needs assessment, setting forth a 3 to 5 year funding plan for the disciplinary process, including technology and staffing needs
- Annually, and in conjunction with Senior Counsel for OPC and the Chair of the Ethics and Discipline Committee, report to the Court regarding the operations of the OPC and the general standing of disciplinary matters and procedures
- Develop formal policies for OPC such as records retention policies

**ABA Report Recommendation 1c: The court should consider revising how the disciplinary system is funded.**

**Committee Discussion:** The Committee considered the use of direct assessments and other means to fund the OPC budget, but in the end the Committee concluded that the lack of budget flexibility from direct assessments may hurt the OPC more than help. The Committee also thought that the oversight committee should seek input from the Ethics and Discipline Committee and OPC when developing the budget.

**Motion:** The Committee adopted a motion that the USB should continue to fund the OPC budget without creating a direct assessment to fund the disciplinary process, but should strengthen the “safety valve” to ensure proper funding, which would include obtaining input from the Ethics and Discipline Committee.

**Motion:** The Committee adopted a motion that the OPC Oversight Committee should be responsible for creating a budget for the OPC, which budget shall be adopted by the USB, unless the USB petitions the Supreme Court for a different budget for the OPC and the Supreme Court approves a different budget for the OPC.

**ABA Report Recommendation 2: The Consumer Assistance Program (CAP) and the Disciplinary Process Information Office (DPIO) should be merged with OPC.**

**Committee Discussion:** Mr. Lund commented that the USB provides a needed service to both the public and to members of the USB by answering questions about the attorney discipline process. The Committee noted that calls to CAP and DPIO often de-escalate complaints or concerns without the need for action by OPC. The Committee did not want to lose this service by the USB to the public.

**Motion:** The Committee made a motion to recommend that the Consumer Assistance Program, which is currently run by the USB stay with the USB, and that the Disciplinary Process Information Office also stay with the USB. The offices should operate independently of each other, but CAP may refer people to the OPC.



**ABA Report Recommendation 3: The Court should amend the rules to restructure the role and responsibilities of the Ethics and Discipline Committee.**

**ABA Report Recommendation 3a: The Screening Panel's Structure and role in the disciplinary process should be revised.**

**Committee Discussion:** The Committee expressed the opinion that the Ethics and Discipline Committee Screening Panels provide complainants an important opportunity to tell their story, and provide important due process to an attorney accused of violating a rule of professional conduct. The Committee supported the role of the Screening Panels in the attorney discipline process and did not support the ABA Report's suggestions to diminish the function of the Screening Panels.

The Committee found that the current size of the eight member screening panel is too large and can create scheduling difficulties which may delay a disciplinary proceeding. In addition, the number of screening panel members who sit for a hearing sometimes varies. The Committee created a working group composed of Terrie McIntosh, Jeff Hunt, Judge Scott and Mike Skolnick to develop a proposal to establish a consistent size of Screening Panels.

**Motion:** The Committee unanimously adopted a motion that Rule 14-503(d) be amended to require 5 panel members for each hearing with one of the 5 being a public member, and except for the chair and vice chair of the panel, all other members will be randomly assigned.

**Motion:** The Committee adopted a motion that terms for members of the Ethics and Discipline Committee be for 3 years with a maximum of 2 consecutive terms, unless a member is appointed chair or vice chair.

**ABA Report Recommendation 3b: The duties of the Chair of the Ethics and Discipline Committee should be revised.**

**Committee Discussion:** The Ethics and Discipline Committee Chair's role in reviewing Screening Panel recommendations and findings when the Screening Panel does not recommend filing a complaint in District Court helps to monitor decisions among different screening panels, to check for consistency, and to discover areas in which additional training for volunteers may be needed. The Chair's review adds value to the disciplinary process and does not cause undue delay in the process.

**Motion:** The Committee adopted the following motion:

**Screening Panel Does Not Recommend Filing a Complaint in District Court**

The Committee recommends that for complaints for which the Screening Panel does not recommend filing a complaint in District Court, the Ethics and Discipline Committee Chair should continue to review the Screening Panel's findings and recommendations, should not make

changes to the findings and recommendations other than as needed for clarity, and should prepare the order to execute the Screening Panel's findings and recommendations.

#### Screening Panel Recommends Filing a Complaint in District Court

The Committee recommends that when the Screening Panel recommends the filing of a formal complaint with the District Court, the Ethics and Discipline Committee Chair should be given notice of the Screening Panel recommendation, but should not approve the recommendation or sign the complaint filed with the Court.

#### **ABA Report Recommendation 4: The Court should consider whether to retain the use of District Courts for adjudicating disciplinary, disability, and reinstatement proceedings.**

**Committee Discussion:** The District Courts have the responsibility to adjudicate formal disciplinary proceedings, reinstatement petitions, petitions for interim suspensions, and transfers to disability status. The Rules of Civil Procedure and Rules of Evidence apply in discipline cases. The ABA Report suggested that the Court consider either specialized courts for discipline cases, or a model used in other states in which a panel of lawyer and non-lawyers adjudicate the discipline matter and the Court enters a final order based on the panel adjudication. The OPC offered the opinion that specialized courts would be helpful. The Committee believes that the nature of the formal complaints warrant the use of District Courts as the trier of fact. The Committee member representing respondents in discipline cases expressed strong feelings in support of the District Court as the trier of fact. The Committee noted that complaints filed in the District Court are subject to Rule 26 of the Rules of Civil Procedure and could participate in a program for active case management.

**Motion:** The Committee adopted a motion to recommend that the trier of fact for formal complaints continue to be the District Court. The Committee also recommends that formal complaints for attorney discipline be eligible to participate in a program for active case management.

#### **ABA Report Recommendation 5: The OPC should have enhanced technology tools.**

**Committee Discussion:** Both the ABA Report and OPC acknowledged the need for additional IT support, both for updated software and IT staff. OPC should conduct a careful analysis of technology needs, and management and budget decisions should be made to support those needs.

**Motion:** The Committee adopted a motion to recommend that OPC Senior Counsel evaluate the OPC technology needs and take steps to update current equipment and software, and acquire needed IT staff.

#### **ABA Report Recommendation 6: OPC would benefit from an investigator and forensic accountant.**

**Committee Discussion:** OPC needs dedicated resources to investigate complicated cases that often need the services of a forensic accountant or other expert. Currently OPC has to request additional funds from the USB when investigators or other forensic experts are needed on a case by case basis. The OPC budget should include resources to hire a staff investigator, and to pay the expense of outside forensic experts when needed.

**Motion:** The Committee adopted a motion to recommend that OPC be provided with funding to hire an investigator as part of the OPC staff, and to hire forensic experts as needed. The motion passed with one dissenting vote.

**ABA Report Recommendation 7: The Court should use an open and transparent appointment process to fill committee vacancies.**

**Committee Discussion:** The ABA Report stated that the Utah Supreme Court appoints 36 volunteers (28 lawyers and 8 public members) to serve on the Ethics and Discipline Committee. The Court is assisted by an appointment committee that vets applicants. The ABA Report could not find rules or procedures setting forth qualifications, or the vetting or selection process for the appointment of volunteers. The ABA Report commented that the OPC website and the Court website do not provide much information about the volunteer opportunities, the qualifications for volunteers, or the process for appointment. The Committee noted that vacancies in the screening panels are announced on the Court's website and notices are sent to attorneys through the USB. The Committee acknowledged the benefit of increasing outreach to minority groups in the USB and in the community to increase diversity on the Screening Panels.

**Motion:** The Committee adopted a motion to accept ABA Report Recommendation 7 and to recommend that the Supreme Court and the Chair of the Ethics and Discipline Committee should take steps to increase diversity on the Screening Panels. The volunteer solicitation process should include communication with community groups and associations that represent minority or underrepresented populations, and to prominently display the application process and volunteer opportunities on the Court and OPC websites.

**ABA Report Recommendation 8a: The OPC should have its own website to increase public access and awareness.**

**Committee Discussion:** The ABA Report suggested OPC create a standalone website, including:

- Information about all components of the disciplinary system;
- Links to rules and uniform downloadable forms;
- Removal of warning language that is inconsistent with OPC practice and that discourages complaints

**Motion:** The Committee adopted a motion to accept ABA Report Recommendation 8a.

**ABA Report Recommendation 8b: Licensure status and disciplinary precedent should be available online in an easily searchable format.**

**Committee Discussion:** Currently, OPC publishes summaries of cases resulting in public discipline, and summaries of private admonitions which do not include attorney names. The ABA Report suggested that optimally, the OPC website should have a searchable library of the Court's disciplinary opinions, all District Court disciplinary decisions and orders, and past Screening Panel decisions resulting in public reprimands. The Committee discussed the fact that current licensure status is available on the USB website and will always be available on the USB website. In addition, discipline information can be obtained by calling the OPC. The Committee acknowledged that the public would be better served if discipline information was publicly available on line, and that many professions currently provide public, online notice of discipline actions going back for a designated period of time. Regarding the recommendation that the OPC create and maintain a searchable database of discipline actions, the Committee acknowledged that such a database would be helpful to the Court and to the public, but there are currently no resources for the creation or maintenance of a database.

**Motion:** The Committee adopted a motion to accept part of ABA Report Recommendation 8b and to recommend that OPC develop a public online database that includes the names of attorneys who have received a public disciplinary action within the past 10 years, and the status of the disciplinary action. The motion included the recommendation that OPC continue the current practice of providing information by phone, or other means, for actions more than 10 years old, and that the USB continue to publish licensure status on the USB website.

**ABA Report Recommendation 8c: The content of the annual OPC report should be enhanced.**

**Committee Discussion:** OPC publishes an annual report to the Supreme Court and publishes the report on the USB's website. The ABA Report suggested that the OPC annual report should be published on the OPC and USB website. The ABA Report also suggested increasing the statistical information included in the OPC annual report, such as lawyer practice area, firm size, and years in practice. The Committee noted that the report is currently published on the OPC and USB website. The Committee discussed the potential value to adding information to the annual report for the public.

**Motion:** The Committee adopted a motion to accept ABA Report Recommendation 8c and to recommend that OPC collect the following information from an attorney who is the subject of a disciplinary action: years of practice, county of practice, and practice area involved in the complaint. The motion also included direction to OPC to publish the following aggregate data as part of its yearly report: years of practice for attorneys subject to disciplinary action, the number of attorneys in a particular county who were disciplined in the past year, and the number of attorneys in a particular practice area who were disciplined in the past year.

**ABA Report Recommendation 9: Outreach to the public should be enhanced.**

**Committee Discussion:** The ABA Report commended the OPC and USB outreach efforts to lawyers and judges. The ABA Report recommended OPC undertake similar efforts with the public. Mr. Lund commented that outreach efforts should be formally incorporated into the Screening Panel selection process so that outreach is not dependent on a particular person's interest in diversity.

**Motion:** The Committee adopted a motion to accept ABA Report Recommendation 9 and to recommend that the OPC contact civic organizations, organizations that serve underrepresented populations in the state, and specialty bar associations to inform those organizations about the lawyer disciplinary process and to invite members to apply for public volunteer positions.

**ABA Report Recommendation 10: The Office of Professional Conduct should enhance outreach to specialty bar associations.**

**Committee Discussion:** The ABA Report found no evidence of institutional bias against minority lawyers in the OPC disciplinary process. However, across the nation, there is a perception that disciplinary process is biased against minority leaders.

**Motion:** The Committee adopted a motion to accept ABA Report Recommendation 10.

**ABA Report Recommendation 11a: The professional staff of OPC should receive increased regular training.**

**Committee Discussion:** The ABA Report noted that disciplinary matters are becoming more complex in terms of technology, substantive law, behavioral health issues, and effective investigative techniques. The ABA Report recommends that OPC staff continue its involvement in the ABA National Conference on Professional Responsibility, continue its participation in the National Organization of Bar Counsel, participate in the NOBC Skills Training Boot Camp, and the develop internal training sessions for professional staff.

**Motion:** The Committee adopted a motion that OPC should develop a standardized training policy for staff, including training on substantive law, use of technology, behavioral health issues, and effective investigation techniques.

**ABA Report Recommendation 11b: The disciplinary system's volunteers and adjudicators should receive enhanced training.**

**Committee Discussion:** The ABA Report stated that the Ethics and Discipline Committee training consists of two lunches, one for new members and one for returning members. District Court Judges do not receive training for attorney discipline proceedings. The ABA Report expressed concerns regarding the consistency of sanction recommendations at the screening panel and District Court levels.



**Motion:** The Committee adopted a motion that the Committee accept the ABA Report recommendation and that OPC should create a budget to assist the Ethics and Discipline Committee with implementing enhanced training for Ethics and Discipline Committee volunteers.

**Motion:** The Committee adopted a motion that the District Courts should make it a priority to include training for judges regarding the disciplinary process during a session at Judicial Conferences and at new judge orientation.

**ABA Report Recommendation 12: The Court and OPC should streamline the complaint screening and investigation process.**

**Committee Discussion:** The ABA Report found the current system in which complaints are received, screened, and investigated is layered with multiple and duplicative procedures that contribute to confusion for complainants and respondents, and increases the time to disposition. Judge Blanch summarized the ABA Report's time to disposition findings. The ABA Report found that in their sample it took 966 days on average from filing of the complaint with OPC until the adjudication hearing with Screening Panel, and then 524 days from the Screening Panel adjudication until completion of the District Court process, for a total average of just over 4 years. The Committee discussed whether it is appropriate to use averages for time to disposition since a couple of unusual cases may skew the average. The Committee gathered information to evaluate median time to disposition. The Committee used the following framework for the discussion of time to disposition:

1. Is there a delay in a particular stage of the process?
  - 1<sup>st</sup> stage of process: complaint filed with OPC and the OPC decision to dismiss or go to a Screening Panel
  - 2<sup>nd</sup> Stage of process: Screening panel receives complaint and adjudicates complaint (time to disposition for screening panels)
  - 3rd Stage of process: Screening panel recommends formal charges and a complaint is filed in District Court (time to disposition in Court)
2. Can we find a solution for any part of the delay?

**District Court Time to Disposition (Formal Complaint Process):**

Rick Schwermer, State Court Administrator, discussed the data for District Court time to disposition for attorney discipline cases for the period of 2014 through 2017. The data shows 106 discipline cases during the past 3 years. While a numerical average of the time to disposition is 430 days, 44% of the cases were disposed of within 6 months, and 55% within a year. The mean time to disposition is just over 7 months. However, the percentage of attorney discipline cases that meet the Court's civil case standard for time to disposition is lower than other civil cases. 76% of attorney discipline cases meet the 2 year time to disposition standard in comparison to 90% of other civil cases that meet the 2 year time to disposition standard.



### Screening Panel Time to Disposition:

Terrie McIntosh, the Chair of the Ethics and Discipline Committee, discussed the time to disposition from when OPC referred a case to the Screening Panel until the Screening Panel hearing was scheduled, for the period of October 2016 until April 2018.

Number of Cases	Days to disposition
13	31-50
17	51-60
14	61-70
18	71-80
13	81-90
5	91-100
8	101 or more

Terrie McIntosh explained that the reason for the delay in the 8 cases over 100 days was numerous continuances requested by the respondent attorneys. Ms. McIntosh believes that the process is quicker than when the ABA Report examined the process because the Ethics and Discipline Committee has a clerk to help schedule hearings and track the hearings. She also explained that some of the longer delays shown on the table resulted when OPC prepared an unusually large number of cases for hearing in the last six weeks of 2017. It took extra time to schedule those cases because there are only 8 hearing times available each month. She also pointed out that the rules require that respondents be given notice at least 30 days before a hearing is set. Terrie McIntosh informed the Committee that the period of time after a screening panel makes a decision until the parties receive the screening panel decision is not tracked, but she thinks the panels are efficient in their work.

### OPC Screening Process:

Billy Walker, OPC Senior Counsel, stated that the screening process for a complaint (prior to an informal complaint being filed with a Screening Panel) varies, because the types of complaints vary. When OPC determines the need to investigate a complaint, OPC tries to gather as much information as possible before sending the complaint to the Screening Panel. This investigation process often takes time and can be prolonged by a respondent attorney failing to respond to OPC requests for information. OPC often has to send a notice of an informal complaint (the decision to send a complaint to the Screening Panel) before an attorney will provide OPC with requested documents or information. Mr. Walker discussed the time to disposition from when a case was opened by OPC to when a case was closed. The data that Billy provided showed:

- For 2016, the median time for a request for assistance was 186 days, and for an informal complaint dismissed without a screening panel was 111 days.
- For 2017, the median time for request for assistance was 168 days and for informal complaints without a screening panel was 75 days.

**Motion:** The Committee adopted the following two part motion:

1. The appropriate advisory committee should consider adopting rules to apply to attorney discipline cases to address perceived delays in such cases. These rules may include:

- Requiring active case management through a Rule 16 scheduling conference at the beginning of an attorney discipline case, similar to the now completed Case Management Pilot Program for Tier III cases.
- Promulgating specific Rule 26 requirements and deadlines for attorney discipline cases, similar to Rules 26.1 to 26.3.

2. The Supreme Court should consider revising Rule 14-518 to better address potential harm to the public and profession that may occur while attorney discipline cases are being litigated. Such revisions may include amending the standard for interim suspension to be consistent with Rule 65A (injunctions) and permitting OPC to request, and the court to impose, other types of interim orders while a discipline case is pending such as supervision or limited practice.

**ABA Report Recommendation 12a: There should be one form of complaint and the Court should eliminate formalities attendant with their filing.**

**Committee Discussion:** The OPC intake and investigation process varies depending on the form in which a complaint is received by the office. OPC currently accepts complaints in the form of Requests for Assistance (RFA), Informal Complaints, or other written communications. OPC is obligated to evaluate all information coming to its attention. The ABA Report recommended that OPC should provide the public with a simple straight forward method to complain about the conduct of Utah lawyers, including:

- The use of RFA should be eliminated and all communications to OPC should be treated the same
- Eliminate the requirement that a complaint be in writing
- Provide a universal, on-line complaint form, in multiple languages, but do not require the use of the form
- Discontinue the practice of notarizing complaint forms
- Amend Rules 14-502, 14-510 and other Disability Rules to eliminate references to "Informal Complaints" and "Notice of Informal Complaint"

**Motion:** The Committee adopted a motion to accept Recommendation 12c with the following changes:

- OPC should establish an intake process and create a budget for the intake process
- The USB should continue its Consumer Assistance Program
- OPC should develop an on-line complaint form available in multiple languages and should accept on-line submission of a complaint
- Notarization of a complaint should be discontinued but a declaration under penalty of perjury should be required
- References in rules to formal and informal complaints should be replaced with "complaints".

**ABA Report Recommendation 12b: The Court should amend the rules to provide for one investigation of complaints.**

**Committee Discussion:** The ABA Report found the practice of first conducting a preliminary investigation, which may include an exchange of correspondence between OPC and the respondent, and then reformulating the allegations of the complaint into a Notice of Informal Complaint before securing the respondent's "official response" is inefficient. The communication between OPC and the respondent is often via US Mail, when email or telephone can be effective for many purposes. Several complainants reported that they were unable to obtain information about the status of their case for long periods of time. The ABA Report suggested that the Rules of Lawyer Discipline and Disability should be amended to create screening of a complaint by OPC staff, investigation of the complaint by OPC staff, and then a probable cause determination by the screening panel. The Committee acknowledged that the terms and rules related to the complaint process are confusing; however, there is value in properly screening out improper complaints. Several committee members commented that the highest goal of the discipline process should not be efficiency, but should be justice and fairness in the process. OPC has to be very specific in a complaint about the exact rule that was violated. Billy Walker said there is no process for amending a complaint, which requires careful preparation of the complaint.

**Motion:** The Committee adopted a motion to instruct OPC to continue to conduct an informal screening /investigation stage of a complaint before deciding to refer a complaint to the screening panel, but to discontinue the use of confusing terminology related to a complaint such as Requests for Assistance, Informal Complaints, and Notice of Informal Complaints. OPC should also suggest changes to rules that include the confusing terminology.

**ABA Report Recommendation 12c: Complainants should be provided a limited appeal from OPC dismissals.**

**Committee Discussion:** The ABA Report questioned whether a complainant is provided with notice of an OPC decision to dismiss a complaint and notice of the right to appeal OPC's decision. The Report noted that if a person files a request for assistance rather than a complaint, the person may not receive notice of the right to appeal the OPC decision. The Committee found that OPC provides notice to a complainant of both the OPC's decision and the right to an appeal.

**Motion:** The Committee adopted a motion to accept the ABA Report's recommendation 12c, which is consistent with current OPC practice which provides a complainant with notice of the OPC decision to dismiss a complaint and notice of the right to an appeal of that decision.

**ABA Report Recommendation 12d: The assignment of investigative and prosecutorial duties to separate OPC counsel should be revised.**

**Committee Discussion:** The ABA Report states that if a matter is not screened out at the intake stage of proceedings, OPC may refer a complaint to a Screening Panel. The file is then re-assigned to one of two counsel designated to prosecute cases who often need to conduct additional

investigations or re-investigate matters. Then, if the Screening Panel recommends that an action be filed in the District Court, the case is assigned to a third attorney designated to prosecute disciplinary charges in District Court. The ABA Report stated that this process contributes to delay that is both unfair to the respondent and the complainant, and is a legitimate concern of the public. Billy Walker commented that the OPC uses roundtable discussions to keep all staff current on a case and the bifurcation works well in the office. Billy Walker does not think the use of different counsel for the case results in delay.

**Motion:** The Committee adopted a motion to reject the ABA Report Recommendation 12d which calls for the same OPC attorney to handle a case throughout the investigative and prosecutorial process.

**ABA Report Recommendation 13:** The Court should amend the rules to streamline the process for requesting subpoenas, and OPC should be allowed to issue investigative subpoenas.

**Committee Discussion:** The ABA Report states that currently, the Rules of Lawyer Discipline and Disability permit the issuance of a subpoena only in conjunction with a Screening Panel proceeding, and requires the requesting party to petition the District Court for issuance of the subpoena. The rules do not permit the OPC, prior to referring a matter to the Screening Panel, to issue an investigative subpoena. The ABA Report finds the current rule burdensome, and states that the current rule leaves the OPC without important investigation tools, or recourse when needed to address a respondent's failure to produce needed documents. In contrast, the authority to issue a subpoena is currently given to the USB's Executive Committee, the General Counsel, and Deputy Counsel for investigating issues related to the Court's Admission Rules. Oversight of investigative subpoenas could be provided by the Chair of the Ethics and Discipline Committee and the Court could adopt necessary provisions related to motions to quash subpoenas.

**Motion:** The Committee adopted a motion to accept ABA Recommendation 13: OPC should have the authority to issue investigative subpoenas prior to a matter being referred to a Screening Panel and upon the approval of the Chair of the Ethics and Discipline Committee.

**ABA Report Recommendation 14:** The Court should streamline proceedings involving probable cause determinations and appeals from Screening Panel Decisions.

**Committee Discussion:** The ABA Report recommends that the role of the Screening Panel be limited to making probable cause determinations. The OPC staff should be conducting complete and thorough investigations, and if OPC does not dismiss a complaint, refer it to diversion, or issue an admonition, the matter should be referred to a screening panel for a probable cause determination.

**ABA Report Recommendation 14a:** The Court should eliminate probable cause hearings.

**Committee Discussion:** Under current rules, if the OPC decides to refer a matter to the Screening Panel, the OPC prepares a Screening Panel Memo and provides copies of the memo to the respondent. The Screening Panel then holds a hearing in which respondents, complainants, and witnesses appear. The Screening Panel then makes a probable cause determination. Screening Panels currently serve as investigators and adjudicators of probable cause. The ABA Report states that if the OPC conducts a full investigation as recommended by the report, both the complainant and the respondent lawyer will have been notified of the allegations in the complaint and provided an opportunity to respond and submit written explanations and no hearing is necessary.

**ABA Report Recommendation 14b: Procedures governing exceptions to Screening Panel recommendations should be streamlined.**

**Committee Discussion:** Either party may file exceptions to a Screening Panel decision recommending the imposition of an admonition or public reprimand. The OPC can file an exception to the Screening Panel's dismissal of a complaint or referral of the attorney to diversion. The Ethics and Discipline Committee Chair serves as the Exceptions Officer and may hold a hearing. The Chair may sustain, dismiss, or modify the Screening Panel finding. Either party may appeal the Chair's ruling on the exception to the Supreme Court. The ABA Report believes this process is inefficient, that the Chair should not hold a hearing for the exception determination, and that due process does not require an appeal of the Chair's decision to the Supreme Court. The report suggests that the Court should eliminate appellate hearings for exceptions filed with the Ethics and Discipline Committee Chair. The Chair should make a determination of the exception based on a document review and there should not be a right to an appeal to the Supreme Court for an exception ruling by the Ethics and Discipline Committee Chair.

**Motion:** The Committee adopted a motion that the Screening Panel process should remain the same, but when the Screening Panel recommends a public reprimand, the respondent should be permitted to choose one of three options: accept the public reprimand; file an exception with the Chair of the Ethics and Discipline Committee with no right of appeal for the ruling on the exception; or elect a Trial de Novo with the District Court.

**ABA Report Recommendation 15: The Court should take steps to enhance the efficiency of formal disciplinary proceedings.**

**Committee Discussion:** The ABA Report stated that they believe there are ways in which the Court can improve the efficiency of the formal complaint process and eliminate unnecessary delay. The Committee believes that its Motion for recommendation 4 which was to include disciplinary cases in enhanced case management programs is the best tool to address issues of delay.

**ABA Report Recommendation 15a: The Ethics and Discipline Committee Chair should not review and sign formal complains.**



**Committee Discussion:** Data reviewed by the ABA Report consultation team showed that on average, in 2016, it took 95 days from the time a complaint was filed with the Screening Panel until the Chair of the Ethics and Discipline Committee approved and signed formal charges based on that complaint. In addition, the report stated that national practice is to delegate prosecutorial discretion to disciplinary counsel to amend or dismiss counts of a formal complaint when counsel determines it is appropriate, or to conform to the proof of the case. The report suggested that the chair should not review and sign the pleadings filed with the District Court. The report also stated that the court should amend the Rules of Lawyer Discipline and Disability to give OPC the authority to amend or dismiss counts of a formal complaint when OPC counsel determines it appropriate or necessary to conform to the proof of the case. The Committee did not agree with giving disciplinary counsel the authority to amend or add counts to a formal complaint without review of a Screening Panel or the Chair of the Ethics and Discipline Committee.

**Motion:** The Committee adopted a motion to reject the suggestion that the Rules of Lawyer Discipline and Disability should be amended to give the OPC authority to amend counts of a formal complaint when OPC determines it is appropriate or to conform to the proof of the case.

**ABA Report Recommendation 15b:** The Court should amend the Rules of Lawyer Discipline and Disability to require the trier of fact to hold at least one prehearing conference, with additional prehearing conferences scheduled as necessary.

**Committee Discussion:** The Committee recognized the value of pre-trial conferences for discipline cases and approved a motion as part of ABA Report Recommendation 4 to make Attorney Discipline cases eligible for a program for active case management.

**ABA Report Recommendation 15c:** The Court should amend the rules to better clarify the scope of discovery and applicability of other rules.

**Committee Discussion:** Utah applies the Rules of Civil Procedure and Rules of Evidence to formal discipline matters filed in District Court. The ABA Report stated that some jurisdictions limit the application of rules of procedure for discipline cases, such as allowing only limited discovery and precluding impleader. The ABA Report suggested that the Court should amend the Rules of Civil Procedure to provide more specific guidance for which rules apply to attorney discipline cases. The Committee took no action on the ABA Report Recommendation 15c and noted that this recommendation could be incorporated into the analysis of whether and how to include discipline cases in a case management program.

**ABA Report Recommendation 15d:** Extensions for time granted by District Courts to respondents should be limited and the default process should be streamlined.

**Committee Discussion:** The ABA Report stated that some delays in formal proceedings occur because respondents request and judges grant repeated extensions of time to meet deadlines. When respondent fail to answer formal charges it takes a long time to secure a default



judgement. The ABA Report suggested the Court should amend the Rules of Lawyer Discipline and Disability to include statements that anything other than an initial request for extension of time by a party will only be granted for good cause shown. The Committee decided that this recommendation could go to the oversight committee for further consideration.

**ABA Report Recommendation 15e: The Court should eliminate bifurcated disciplinary hearings on formal charges.**

**Committee Discussion:** Currently, the District Court enters findings of facts and conclusions of law regarding attorney misconduct. The parties then reconvene within 30 days for a sanctions hearing. The ABA Report suggested that the Court should hear all evidence, including evidence of mitigation and aggravation during the same hearing. The ABA Report also suggested there is a need for the Courts to include more legal analysis, citations to existing authority, and independent assessment of the issues in the Court's opinions. The Committee does not believe there is a problem with court decisions and agrees that decisions should be well reasoned with citations to existing authority, however, the short time lines for discipline cases required by Rule 14-511(f) can be an impediment to that goal. Some Committee members strongly rejected the idea of combining the sanctions hearing with the hearing on the merits of the complaint.

**Motion:** The Committee adopted a motion to reject the recommendation to eliminate the bifurcated hearings on formal charges and sanctions.

**Motion:** The Committee adopted a motion to amend Rule 14-511(f) to remove the requirement that the court hold a sanctions hearing within 30 days after it enters findings of fact and conclusions of law, and to remove the requirement that the court issue its order sanctioning the defendant within 5 days after the sanctions hearing. Instead, a disciplinary action in District Court should follow the time requirements in the Rules of Civil Procedure for other cases.

**ABA Report Recommendation 16: The Court should amend Rule 14-515 governing confidentiality in disciplinary proceedings.**

**Committee Discussion:** Rule 14-515 provides generally that disciplinary proceedings are confidential prior to the filing of formal charges or the issuance of a public reprimand. The confidentiality applies to witnesses, the complainant, OPC staff, and the volunteer Screening Panel members.

**ABA Report Recommendation 16a: The Court should eliminate confidentiality restrictions on complainants and witnesses.**

**Committee Discussion:** The ABA Report opined that similar restrictions against witnesses and complainants have been struck down in other jurisdictions as unconstitutional infringements of First Amendment rights. The ABA Report recommends that the confidentiality restrictions apply only to the OPC staff and the volunteer members of Screening Panels. In addition, the report suggests that the rule should be clarified to allow OPC to disclose information to law

enforcement, state bar admission agencies, and committees for judicial appointment. The report suggested that language should be added to the rule to require OPC to inform the disciplined USB member of the disclosure of information unless the disclosure would interfere with or prejudice an investigation.

The Committee discussed First Amendment issues related to the confidentiality rule and Mr. Hunt expressed the opinion that the current rule would not survive a constitutional challenge. Mr. Skolnick stated that some confidentiality requirements should be imposed and gave an example of a case in which a litigant tried to use confidential information from a pending USB complaint for an advantage in a civil action. The Committee created a working group to evaluate Rule 14-515 for First Amendment issues and to compare Utah's rule to other state's confidentiality rules. The working group opined that Utah's rule is subject to challenge under the First Amendment. The working group also summarized confidentiality models used in other states. The first model, adopted by only 5 states, is a completely open model with no restrictions on disclosures about a pending discipline case. The second model does not restrict disclosure, but encourages confidentiality by warning the parties that the parties have immunity for their speech about the issues of the discipline process only when the speech is part of the disciplinary process. The third model, which is the model used by a majority of jurisdictions, restricts non-party participants from disclosing information. The Working Group recommended the third approach and prepared amendments to Rule 14-515 for the Committee's consideration. Judge Hagen asked why the working group did not recommend the second model and was informed that immunity granted for the discipline process is legally nuanced and would be hard to adequately explain and implement for the parties.

**Motion:** The Committee adopted a motion to recommend that Rule 14-515 be amended as set forth in "Exhibit A" (attached).

**ABA Report Recommendation 16b:** The Court should specify that information sharing is permitted with law enforcement, bar agencies and others, with notice provided to the disciplined attorney, unless notice would interfere with or prejudice an investigation.

**Committee Discussion:** The Committee found that current practice is consistent with Recommendation 16b.

**ABA Report Recommendation 17:** The Court should clarify the record retention rules for the Office of Professional Conduct.

**Committee Discussion:** OPC established informal record retention policies for communications and files not identified in the Rules of Lawyer Discipline and Disability. The report recommends the Court amend the rules to formalize the record retention and expungement requirements for the OPC. The report recommends that records of formal proceedings be kept indefinitely. The report also commented that OPC currently stores records and client files in an unsecure area accessible by other USB employees and building services. OPC said that all files are secured in locked drawers. Billy Walker said the current record retention policy is:

- Records of an attorney who is disciplined are kept forever;
- Records of dismissed complaints are kept for 7 years;
- Records of Screening Panels are kept for 1 year if there is a finding of no probable cause.

**Motion:** The Committee adopted a motion to create a Rule of Lawyer Discipline and Disability to formalize the OPC record retention policy, and to find a more secure location within the Law and Justice Center to store the OPC records.

**ABA Report Recommendation 18:** The Court should streamline procedures for the interim suspension for threat of harm.

**Committee Discussion:** Rule 14-518 allows interim suspension for a substantial threat of irreparable harm to the public, and if an attorney has either committed a violation of the Rules of Professional Conduct or is under a disability. OPC has the burden of proof by clear and convincing evidence. The ABA Report suggested that Rule 14-518 should be amended to allow for interim suspension upon receipt of sufficient evidence demonstrating a lawyer has committed a violation of the Rules of Professional Conduct and poses a substantial threat of serious harm to the public.

**Motion:** The Committee adopted a motion to accept ABA Report Recommendation 18 and to amend Rule 14-518 to:

- Permit an interim suspension based on a threat of serious harm to the public;
- Use a preponderance of the evidence standard; and
- Use the same procedure to obtain the interim suspension as a TRO under Rule 65A.

**ABA Report Recommendation 19:** The Court should amend Rule 14-519 governing interim suspension for conviction of a crime.

**Committee Discussion:** The ABA Report stated that Utah Rule 14-519 permits interim suspension based on a conviction of guilt, as opposed to a finding or admission of guilt, which creates too much delay. In addition, the current rule provides that an interim suspension does not start until both the motion for interim suspension and formal charges are filed. The ABA Report stated that a suspension should occur upon a finding or admission of guilt and later, after appeal times have ended, the formal disciplinary charges should be filed. The current rule does not permit an evidentiary hearing prior to the interim suspension but allows an informal hearing, without explaining how or why an informal hearing is held.

**Motion:** The Committee made a motion to accept ABA Report Recommendation 19 to amend Rule 14-519 to permit interim suspension after a finding or admission of guilt, including a plea in abeyance.

**Motion:** The Committee adopted a motion that Rule 14-519 be amended to clarify that the hearing permitted before the interim suspension is only for the purpose of determining whether

a finding or admission of guilt was for a serious crime or misdemeanor that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law.

**ABA Report Recommendation 20:** The Court should amend the rules to allow OPC to initiate reciprocal disability inactive status proceedings when another jurisdiction has made a determination of disability.

**Motion:** The Committee adopted a motion to accept ABA Report Recommendation 20.

**ABA Report Recommendation 21:** The Court should amend the rules to eliminate the statute of limitations.

**Committee Discussion:** Rule 14-529 imposes a statute of limitations of 4 years from the discovery of the acts. The ABA Report opines that the purpose of lawyer discipline is to protect the public. The ABA report stated that the conduct of a lawyer, no matter when it occurs, is always relevant to questions of fitness to practice law. The Committee discussed this issue in detail, and in light of the pending Utah Supreme Court case that includes issues related to the statute of limitations. The Committee discussed the approach in some states which creates a statute of limitations for most cases, but imposes no statute of limitations if the case alleges fraud, conversion, or conviction of a serious crime, or for an offense the discovery of which has been prevented by concealment by the attorney.

**Motion:** The Committee adopted a motion to reject the recommendation to do away with a statute of limitations and to revisit the issue of any other amendments to the statute of limitations rule after the Supreme Court rules on a pending case.

**ABA Report Recommendation 22:** The Court should adopt a disqualification and abstention rule applicable to Screening Panel members and Ethics and Discipline Committee members.

**Committee Discussion:** The ABA Report stated:

- Panel and committee members should refrain from taking part in any proceeding in which a judge, similarly situated, would be required to abstain
- A panel member or committee member should be barred from representing a lawyer in a discipline case for one year after service on a panel or the committee
- OPC or a respondent should be allowed to seek a recusal of a member

**Motion:** The Committee adopted a motion to accept ABA Report Recommendation 22.

**ABA Report Recommendation 23:** The Court should amend Rule 14-513 to state specifically that all communications or contacts with the disciplinary system, including testimony, are subject to absolute immunity, and that no civil suit can be instituted against a complainant or witness based on the communication or contact.

**Committee Discussion:** The ABA Report suggested that Rule 14-513 is not clear about the type of immunity given to participants in the discipline process. Is it qualified immunity or absolute immunity? The ABA Report opined that the case law in Utah is not clear. Without assurances of immunity, complainants and witnesses may be unwilling to file grievances. The Committee believes that Utah case law on the issue of immunity is clear, but that the issue is nuanced. In addition, the Committee stated that providing absolute immunity would require a change to the Rules of Evidence rather than an amendment to Rule 14-513.

**Motion:** The Committee adopted a motion to reject ABA Report Recommendation 23.

**ABA Report Recommendation 24:** The Court should streamline the diversion process and OPC should enhance the use of diversion.

**Committee Discussion:** The ABA Report stated that Rule 14-533 includes many of the provisions that make for an effective diversion program but the process needs to be more efficient and more cases involving lesser misconduct should be referred to diversion. The current practice is to send diversion candidates to the Diversion Committee which administers the diversion program. The Diversion Committee and ABA Report did not see a benefit to the added layer of referring an attorney to a committee rather than directly to a diversion program.

**ABA Report Recommendation 24a:** The Diversion Committee should be eliminated and OPC should be responsible for overseeing and operating the diversion programs.

**Committee Discussion:** The ABA Report recommends that OPC should:

- Eliminate the Diversion Committee;
- Use the standards in Rule 14-533(d) to determine when a case of lesser misconduct should go to diversion;
- Amend Rule 14-533 to make it clear that diversion is not available once formal charges have been filed with the district court; and
- Negotiate the diversion contract with the attorney, tailored to the specific case, including:
  - Designate a monitor for compliance and have the monitor report to OPC; and
  - Determine when non-compliance results in termination of the diversion agreement.

**ABA Report Recommendation 24b:** The use of diversion should be enhanced.

**Committee Discussion:** Current available diversion programs are (1) Lawyers Helping Lawyers, (2) Professionalism Counseling Board; (3) Voluntary Fee Dispute Resolution and (4) Ethics School. The USB does not have a law practice management or trust account management diversion program. The ABA Report stated that there should be more referrals to existing programs and the USB should establish practice management and trust account management courses for diversion programs.



**Motion:** The Committee adopted a motion to accept the ABA Report's recommendations 24, 24a, and 24b.

**ABA Report Recommendation 25:** The Court should authorize OPC to issue an admonition with the consent of the respondent and approval by the Ethics and Discipline Committee Chair.

**Committee Discussion:** The ABA report suggested that it would be more efficient to allow OPC to issue an admonition and allow a respondent who does not want to consent to the admonition to demand that, within 14 days from the OPC notice imposing an admonition, the matter be resolved by formal proceedings. A respondent's failure to request a formal proceeding, within 14 days of notice of the admonition, would constitute consent. The ABA Report also suggested that the District Courts not issue admonitions, because once a complaint is in Court, the sanction should be public. The Committee rejected taking admonitions from the District Court. OPC reported that current practice allows OPC and a respondent to consent to an admonition, but in the absence of consent, does not allow an admonition from OPC. Billy Walker expressed the opinion that allowing what amounts to a default judgement for an admonition at the pre-screening panel stage results in OPC functioning as an adjudicator rather than a prosecutor. The Committee did not adopt this recommendation.

**ABA Report Recommendation 26:** The Court should enhance the use of probation and should adopt rules specifying terms of probation, monitoring of probation, and revocation of probation.

**Committee Discussion:** The ABA Report stated that current standards for imposing lawyer sanctions and rules of lawyer discipline do not provide guidance regarding when probation is appropriate, and they do not address terms for probation, requirements for monitoring probation, or procedures for revoking probation. District Courts do not often impose probation despite recognition that the imposition of probation with the right conditions may in some cases be more protective of the public than suspension from the practice of law. The Committee agreed with the report's analysis and also discussed whether probation terms should function as the sanction, or whether probation should be a tool accompanied with a sanction, much like a plea in abeyance tied to conditions of probation in a criminal proceeding.

**Motion:** The Committee adopted a motion to recommend that Rule 14-603 and 14-504 be amended to provide details relating to probation, including:

- change the nature of probation so that it can be used as a set of conditions accompanied with a sanction, rather than using it as the sanction itself;
- provide guidance regarding when probation is appropriate; and
- provide a non-exclusive list of standard terms and conditions for probation, such as
  - Behavioral health treatment
  - Restitution
  - Completion of the MPRE
  - Completion of a course of study
  - Regular, periodic reports to OPC



- Payment of disciplinary costs.

**ABA Report Recommendation 27:** The Court should eliminate resignation with discipline pending and should replace that option with Discipline by Consent (Rule 14-520). A lawyer who agrees to Discipline by Consent could consent to disbarment and withdraw from the practice of law, and the Utah Bar should record and treat the action as disbarment.

**Committee Discussion:** The ABA Report stated that Utah's practice of allowing resignation with disciplinary action pending (Rule 14-521) creates problems in the context of reciprocal disciplinary enforcement because a majority of jurisdictions have eliminated the option of resigning with charges pending in favor of adopting rules for discipline by consent, including consensual disbarment. The Committee discussed that under current Utah rules, the attorney who resigns with discipline pending must apply for readmission in the same manner as a disbarred attorney. It appears that resignation with discipline pending is tantamount to disbarment. The Committee discussed that resignation pending disciplinary action is often more palatable to a lawyer than disbarment, and encourages settlement. OPC reported that terms and reasons for discipline vary between states and understanding reciprocal disciplinary action usually requires independent analysis by state bar associations, regardless of how the action is labeled. The Committee did not adopt this recommendation.

**ABA Report Recommendation 28:** Discipline by consent should be encouraged at all stages of the proceeding.

**Motion:** The Committee adopted a motion to accept ABA Report Recommendation 28.

**ABA Report Recommendation 29:** The Court should amend Rule 14-509 of the Rules of Lawyer Discipline and Disability to make a lawyer's willful failure to comply with a subpoena validly issued by OPC or a Screening Panel, or knowing failure to respond to a lawful demand from OPC counsel, a separate ground for discipline.

**Committee Discussion:** Rule 8.1(b) requires an attorney to respond to OPC's request for information during an investigation. However, respondents often do not respond until the date a matter is set for a hearing before a Screening Panel. Adding new grounds for discipline will give OPC greater enforcement tools.

**Motion:** The Committee adopted a motion to accept ABA Report Recommendation 29.

**ABA Report Recommendation 30:** The Court should consider amending Rule 14-1101 to provide that arbitration of fee disputes is optional for a client, but mandatory for lawyers.

**Committee Discussion:** The ABA Report stated that arbitration eliminates the advantage a lawyer has over the majority of clients who are of modest means. If a client requests fee arbitration, a lawyer should be required to arbitrate the fee dispute. Mandatory fee arbitration programs have been in effect in 2 states for over 25 years. The Committee discussed the USB's voluntary fee

dispute program offered through its Fee Dispute Resolution Committee. Steve Johnson, who has served as an arbitrator for the USB's voluntary program, made a motion to accept the ABA Report recommendation 30. The Committee discussed only requiring arbitration if the amount in controversy was \$10,000 or less, and the client requested arbitration. The motion did not pass. Steve Johnson said for some reason the number of voluntary arbitrations has declined in the past few years. The Committee thought efforts should be made to increase awareness of the program.

**MOTION:** The Committee adopted a motion to increase public outreach for the voluntary fee dispute resolution program run by the USB.

**ABA Report Recommendation 31:** The Court should explore the adoption of a payee notification system that would notify a claimant when a check has been issued by an insurer.

**Committee Discussion:** The ABA Report stated that notifying a claimant when a check is issued either in the name of the claimant or jointly in the name of the claimant and the claimant's attorney will reduce the misconduct related to the handling of settlement funds. A notification rule usually requires legislation or action by the Insurance Department. The Committee did not adopt this recommendation for 2 reasons: the recommendation requires action by entities not under court jurisdiction; and notice alone would not keep an attorney from putting the money into a trust account and spending the money.

**TAB**  
**5**

### **Bar Policies**

#### **3. Licensing Records.**

(a) Confirmation that a lawyer on Active Status, a House Counsel or a Foreign Legal Consultant is licensed, his or her licensing status, business address, business phone and date of admission, the law school from which the lawyer graduated, and the confirmation of “good standing”, including current public discipline and public disciplinary history, is public information. All other information is confidential.

### **Supreme Court Rules of Lawyer Discipline and Disability**

#### **Rule 14-507. Roster of lawyers and current record information.**

The Bar shall collect, maintain and have ready access to current information relating to members of the Bar, including:

- (a) full name;
- (b) date of birth;
- (c) current physical addresses, and current telephone numbers for law office and residence, except that full-time judges are exempt from providing residential addresses and telephone numbers;
- (d) current e-mail address;
- (e) date of admission
- (f) date of any transfer to or from inactive status;
- (g) all specialties in which certified;
- (h) other jurisdictions in which the lawyer is admitted and date of admission; and
- (i) nature, date, and place of any discipline imposed on any reinstatements.

### **Bar By-laws**

#### **Rule 14-203. License categories.**

(c) Register of members to be kept. The Executive Director shall maintain a register of lawyers which shall contain a designation as to their licensing status and such other information as the Board may determine to be necessary or desirable or as required by rule.

(d) Information required of members. Each member of the Bar shall furnish the Executive Director;

- (d)(1) full name;
- (d)(2) date of birth;

(d)(3) current physical addresses, and current telephone numbers for the law office and residence, except that full-time judges are exempt from providing residential addresses and telephone numbers;

(d)(4) current e-mail address;

(d)(5) date of admission;

(d)(6) date of any transfer to or from inactive status;

(d)(7) other jurisdictions in which the lawyer is admitted and the date of admission and Bar number or identification number from those jurisdictions;

(d)(8) nature, date, and place of any discipline imposed and any reinstatements; and

(d)(9) such other matters as the Board may from time to time prescribe.

This information shall be furnished by each member as a part of, or as a supplement to, the annual submission of licensing information required by the rules or upon inquiry at any time by the Executive Director. The Board shall make each active or current status member's name, firm or organization, business address, phone number and licensing status publicly available.

**TAB  
6**



practice of law, and the community; and when such membership otherwise directly serves the purposes and objectives of the Bar as determined by the Board.

**C. Fall Forum, Annual and Spring Convention Expenses.**

**1. Visiting Bar Presidents.**

Visiting bar presidents and their guest shall receive reimbursement for expenses in attending the Annual and Spring Conventions when those same expenses are reimbursed to the Bar when the Utah State Bar President visits that president's bar convention. These expenses may include a full registration package including all meal functions, and room accommodations up to and including four nights. Each visiting bar president shall pay for his or her accommodations and request reimbursement in accordance with the provisions above.

**2. Fall Forum, Annual and Spring Convention Chairs.**

Complimentary convention registration will be provided for the Fall Forum, Annual and Spring Convention Chairs. Mileage reimbursement and lodging at the convention hotel shall be provided for the chairs of the Annual and Spring Conventions.

**3. Convention Committee Members.**

Annual, Fall and Spring Convention Committee members receive a 50% registration discount for those conventions.

**4. Utah State Bar President and President-elect.**

A full complimentary registration package, including lodging and all meal functions shall be provided for the President and his or her guest for the Annual, Fall and Spring Conventions. A full complimentary registration package, including lodging and all meal functions shall be provided for the President-elect and his or her guest for the Spring Convention.

4. Speakers and Panel Members.

Speakers and panelists who are members of the Bar participating at the Fall Forum, Annual or Spring Conventions shall be provided with a 50% convention registration discount.

5. Awards Recipients.

Award recipients shall be provided with two complimentary tickets to an awards luncheon if one is held, and complimentary convention registration for the Fall Forum, Annual and Spring Conventions. Award recipients will be provided with one night lodging at the convention hotel and mileage reimbursement at the Annual and Spring Conventions. Fall Forum award recipients will be provided with one night lodging at the convention hotel and mileage reimbursement if they live more than 50 miles outside of Salt Lake City.

6. Judges.

Judges shall be provided with complimentary convention registration to the Annual, Fall Forum and Spring Conventions.

**D. Sections and Committees**

1. General.

(a) Creation, Organization and Duration.

(1) Sections.

(1.1) New sections will be considered for formation by written applications submitted to the Board. A new section application will identify the purposes of the proposed section, justify its creation and indicate why its objectives cannot be met by existing sections.

**TAB**  
**7**

## UTAH TASK FORCE ON LAWYER AND JUDGE WELL-BEING February 2019

### REPORT AND RECOMMENDATIONS

#### A. For Regulators

“Regulators” are broadly defined by the ABA as including the highest court in each state and all stakeholders who assist that court in regulating the practice of law. This “includes lawyers and staff in regulatory offices; volunteer lawyer and non-lawyer committee, board, and commission members; and professional liability lawyers who advise law firms and represent lawyers in the regulatory process.” In Utah, “regulators” include the Utah Supreme Court, the Utah State Bar, the Office of Professional Conduct, the Committee on Ethics and Discipline of the Supreme Court, the Supreme Court’s Advisory Committee on Continuing Legal Education, the Utah State Bar’s Admissions Committee, and the Utah State Bar’s Character and Fitness Committee.

Regulators are well positioned to identify conditions that can be detrimental to well-being, and they can be instrumental in improving regulatory processes to address conditions that produce toxic professional environments.

#### 1. Revise rules as needed to prioritize lawyer well-being.

We recommend evaluating relevant rules to prioritize rehabilitation over punishment where appropriate. This would include evaluating the rules governing Lawyer Discipline and Disability and any other relevant rules, and considering alternatives to discipline such as diversion programs. The ABA has recognized that to accomplish other professional objectives, the profession must first have healthy, competent lawyers. Healthiness, competency, and contentedness stem from effective rehabilitation. Amendments that prioritize rehabilitation over punishment will promote lawyer well-being, provide a healthier, more competent bar, and will ultimately protect clients.

#### 2. Evaluate amending the rules of professional responsibility to endorse well-being as part of a lawyer’s duty of competence.

Lawyers owe a duty of competence to their clients. “Competent” representation is defined as requiring “the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.” We should study amending applicable rules to include well-being as part of a lawyer’s duty of competence. In the event of such an amendment, the intention would not be for lawyers to be punished for failing to satisfy the well-being requirement. Instead, enforcement of this provision would proceed only in the case of actionable misconduct in client representation or in connection with disability proceedings. The intent of this proposed modification is to “remind lawyers that their mental and physical health impacts clients and the administration of justice.”

3. Expand continuing education curriculum to include well-being topics.

Regulators should evaluate expanding continuing education curriculum to include well-being topics. We should consider whether this should take the form of a required well-being hour of credit per reporting period, or simply granting CLE credit for this type of programming. In 2017, the ABA proposed a new rule that would require “lawyers to earn at least one credit hour every three years of CLE programming that addresses the prevention, detection, and/or treatment of ‘mental health and substance use disorders.’” Topic ideas can be found in Appendix B to the National Task Force Report. We note that this effort is already underway: for example, at the 2018 Utah State Bar Fall Forum, the MCLE Board granted CLE credit for well-being-related programming, including a plenary session addressing well-being topics and a day-long track of well-being-related sessions.

4. Re-evaluate bar application inquiries about mental health history.

There is controversy regarding whether bar admission agencies should eliminate inquiries about applicants’ mental health as part of fitness evaluations for licensure. Some argue that those inquiries discourage people in need of help from seeking it. Others contend that this information is necessary to evaluate the risk applicants might pose to the public. In 2015, the ABA adopted a resolution that such inquiries should be more narrowly focused “on conduct or behavior that impairs an applicant’s ability to practice law in a competent, ethical, and professional manner.” We recommend evaluating current admission inquiries to ensure they closely focus on such conduct or behavior rather than more general diagnosis or treatment history, as appropriate.

**B. For the Utah State Bar**

In addition to the recommendations for regulators that may involve the Bar, the following recommendations are specific to the Utah State Bar.

1. Sponsor a study to determine Utah lawyers’ well-being baseline.

Commission a scientific study of Utah lawyers to measure well-being, including stress, depression, anxiety, substance abuse, and attitudes toward seeking mental health and substance abuse treatment. The study will be confidential and scientifically valid. Because there will be a financial cost to this, we recommend coordinating with similar studies of judges and law students, if possible, to share costs.

2. Create a framework for future studies at regular intervals.

These studies will measure changes from the baseline and evaluate where well-being has improved or worsened, which efforts are working, which efforts are not working, and what specific challenges Utah lawyers continue to face. This information will ensure that we continue

to improve our efforts to increase lawyer well-being in an evidence-based manner. These studies will be confidential and scientifically valid. Because there will be a financial cost for this, we recommend coordinating with similar studies of judges and law students, if possible, to share costs.

3. Sponsor high-quality CLE programming on well-being-related topics.

Develop and gather existing educational programming on well-being-related topics. Bar leadership should adopt a goal of providing at least one well-being-related educational opportunity at the Spring and Summer Conventions and the Fall Forum, and at other Bar-sponsored events where appropriate and possible. As noted above, these efforts have already begun: the 2018 Fall Forum included a plenary session addressing well-being and a day-long track of sessions filled with well-being-related topics. These sessions were full and well-received. The Bar has planned additional well-being-related programming for its 2019 events and conventions.

4. Consider creating “best practice” model policies.

The National Task Force recommends that state bar associations develop “best practice” model policies for legal employers in areas that affect well-being, such as: responding to lawyers in distress, responding to lawyers with substance abuse problems, diversity and inclusion, mentoring, work-life balance, etc. We should assess whether any such policies are already being developed (for example, by the Utah Center for Legal Inclusion), and if not, whether this is something the Bar would want to undertake.



# *Creating a Well-Being Movement in the Utah Legal Community*

**Report and Recommendations from**

**THE UTAH TASK FORCE  
ON LAWYER AND JUDGE WELL-BEING**

**February 2019**

**TABLE OF CONTENTS**

---

Introduction: A Call to Action .....	1
The Utah Task Force on Lawyer and Judge Well-Being.....	3
The Problem.....	4
What is Well-Being?.....	5
The Case for Well-Being .....	6
How do We Begin? .....	7
Recommendations for Judges .....	8
Recommendations for Lawyers and Legal Employers .....	10
Recommendations for Regulators.....	11
Recommendations for the Utah State Bar.....	13
Recommendations for Law Schools .....	14
Next Steps .....	16
Conclusion .....	17
Appendix A.....	18

## INTRODUCTION: A Call to Action

---

The National Task Force on Lawyer Well-Being sounded a wake-up call in 2017 with its report titled “The Path to Lawyer Well-Being: Practical Recommendations for Positive Change.” The Report drew upon a 2016 study of nearly 13,000 practicing lawyers commissioned by the American Bar Association and the Hazelden Betty Ford Foundation. The Report’s message is clear: too many lawyers are struggling. The 2016 Study found that a high rate of lawyers experience some level of problem drinking, depression, and anxiety.<sup>1</sup>

While most lawyers may not have a mental health or substance abuse disorder, that does not mean they are flourishing. The Report notes that many lawyers struggle with stress, work addiction, and sleep deprivation.<sup>2</sup> And “[m]any lawyers experience a ‘profound ambivalence’ about their work . . . .”<sup>3</sup> Job dissatisfaction and attrition are challenges for lawyers and legal employers alike.

These problems start early. While law students generally begin law school with “high life satisfaction and strong mental health measures,”<sup>4</sup> this changes for the worse within the first year. “Law students are among the most dissatisfied, demoralized, and depressed of any graduate student population.”<sup>5</sup>

These problems are compounded by the tendency of lawyers and law students to avoid seeking help.

The National Task Force’s report focused on five central themes:

- (1) identifying stakeholders and the role each of us can play in reducing the level of toxicity in the legal profession;

---

<sup>1</sup> THE PATH TO LAWYER WELL-BEING: PRACTICAL RECOMMENDATIONS FOR POSITIVE CHANGE 7 (Aug. 2017) [hereinafter *THE PATH TO LAWYER WELL-BEING*] (citing Patrick R. Krill et al., *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICTION MED. 46, 46 (2016)).

<sup>2</sup> *Id.* The Study found that 21–36% of lawyers are problem drinkers, 28% struggle with depression, and 19% experience anxiety. See Patrick R. Krill et al., *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICTION MED. 46, 46 (2016).

<sup>3</sup> *Id.* (citing Jerome M. Organ, *What Do We Know About the Satisfaction/Dissatisfaction of Lawyers? A Meta-Analysis of Research on Lawyer Satisfaction and Well-Being*, 8 U. ST. THOMAS L. J. 225, 225 (2011); Lawrence S. Krieger & Kennon M. Sheldon, Ph.D., *What Makes Lawyers Happy?: A Data-Driven Prescription to Redefine Professional Success*, 83 GEO. WASH. L. REV. 554, 554 (2015)).

<sup>4</sup> *Id.* at 35.

<sup>5</sup> *Id.* (citing Abigail A. Patthoff, *This Is Your Brain on Law School: The Impacts of Fear-Based Narratives on Law Students*, 2015 UTAH L. REV. 391, 424 (2015)).

*Creating a Well-Being Movement in the Utah Legal Community*

- (2) eliminating the stigma associated with help-seeking behaviors;
- (3) emphasizing that well-being is an indispensable part of a lawyer's duty of competence;
- (4) educating lawyers, judges, law schools, and law students on lawyer well-being issues; and
- (5) taking small, incremental steps to change how law is practiced and how lawyers are regulated to instill greater well-being in the profession.

The National Task Force issued a call to action, challenging leaders in the legal profession to “get serious” about the well-being of lawyers.

The Utah Supreme Court and the Utah State Bar have accepted the challenge. Together, we have established the Utah Task Force on Lawyer and Judge Well-Being to create a well-being movement in the Utah legal community.

**THE UTAH TASK FORCE ON LAWYER AND JUDGE WELL-BEING**

---

Our Mission: Creating a well-being movement in the Utah legal community

The Utah Task Force on Lawyer and Judge Well-Being is co-chaired by Utah Supreme Court Justice Paige Petersen and Utah State Bar President Dickson Burton. In the summer of 2018, Justice Petersen and Mr. Burton gathered stakeholders from throughout the legal community to form the Task Force. The Task Force includes representatives from the following groups, entities, and fields: judges, the Administrative Office of the Courts, the Utah State Bar, the Office of Professional Conduct, other regulators, lawyers from large and small private firms, solo practitioners, legal employers, Young Lawyers Division, Lawyers Helping Lawyers, Minority Bar Association, the University of Utah S.J. Quinney College of Law, Brigham Young University J. Reuben Clark Law School, the Department of Substance Abuse and Mental Health, the field of Applied Positive Psychology, and the Utah Psychological Association.

The Task Force was charged with the following assignment: 1) carefully review the National Task Force Report, and 2) using it as a springboard, draw upon the expertise of Task Force members to develop recommendations for each stakeholder category in the Utah legal community. We have done so, and our recommendations are included in this report.

The Task Force believes it is crucial to gather data up front in order to set a baseline for lawyer well-being in Utah. This will allow us to measure our efforts going forward to determine what is working, what isn't working, and whether we have unique challenges in Utah that we must address.

This is our call to action. We hope these recommendations will be a valuable resource for judges, lawyers, legal employers, law students, law schools, regulators, and the Bar as we create our own well-being movement in Utah.

**TASK FORCE CHAIRS**

Honorable Paige Petersen  
Dickson Burton

**CHIEF STAFF**

Kim Free, PhD

**STAFF ATTORNEY**

Elizabeth Wright

**COMMITTEE MEMBERS**

Wendy Archibald  
Barbara Dickey  
Robert Denny  
Cathy Dupont  
Dr. Valerie Hale

Honorable Kim Hornak  
Honorable Elizabeth Hruby-Mills  
Brent Kelsey  
Martha Knudson  
Cassie Medura  
Brook Millard  
Andrew Morse  
Chris Newbold  
James Sorenson  
Cara Tangaro

**CONSULTANTS**

Rick Schwermer  
John Baldwin

**THE PROBLEM<sup>6</sup>**

---

Practicing lawyers experience high rates of mental health and substance abuse disorders, along with general job dissatisfaction, stress, and anxiety.

problem drinking - 21–36%

depression - 28%

anxiety - 19%

elevated stress - 23%

work addiction - 25%

suicide

sleep deprivation

work-life conflict

avoid seeking help

job dissatisfaction and ambivalence

attrition

---

<sup>6</sup> THE PATH TO LAWYER WELL-BEING 7 (citing Patrick R. Krill et al., *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICTION MED. 46, 46 (2016)); Anne M. Brafford, *Building the Positive Law Firm: The Legal Profession at Its Best*, (Aug. 1, 2014) (Master's Thesis, Univ. Pa., on file with U. Pa. Scholarly Commons Database), [https://repository.upenn.edu/mapp\\_capstone/62/](https://repository.upenn.edu/mapp_capstone/62/); Jerome M. Organ, *What Do We Know About the Satisfaction/Dissatisfaction of Lawyers? A Meta-Analysis of Research on Lawyer Satisfaction and Well-Being*, 8 U. ST. THOMAS L. J. 225, 225 (2011)).



## WHAT IS WELL-BEING?

---

Well-being is a broad concept. It is more than the absence of substance abuse or mental health disorders. It is “a continuous process toward thriving”<sup>7</sup> in all dimensions of life. This includes:

**Emotional:** Recognizing the importance of emotions; developing the ability to identify and manage our own emotions to support mental health, achieve goals, and inform our decision-making; seeking help for mental health when needed.

**Occupational:** Cultivating personal satisfaction, growth, and enrichment in our work; obtaining financial stability.

**Intellectual:** Engaging in continuous learning and the pursuit of creative or intellectually challenging activities that foster ongoing development; monitoring cognitive wellness.

**Spiritual:** Developing a sense of meaning and purpose in one’s life.

**Physical:** Striving for regular physical activity, proper diet and nutrition, sufficient sleep, and recovery; minimizing the use of addictive substances; seeking help for physical health when needed.

**Social:** Developing a sense of connection, belonging, and a well-developed support network while also contributing to our groups and communities.

---

<sup>7</sup> THE PATH TO LAWYER WELL-BEING 9.

**THE CASE FOR WELL-BEING**

---

Beyond being the right thing to do, there are other important reasons to focus on well-being.

First, well-being is preventative. By proactively identifying and implementing well-being strategies, we can help reduce the chances of Utah lawyers and judges becoming unwell in the first instance.<sup>8</sup>

Second, well-being is strongly connected to ethics and professionalism. Rule 1.1 of the Utah Rules of Professional Conduct requires lawyers to provide competent representation,<sup>9</sup> which is negatively impacted when a lawyer's well-being declines. For example, alcohol abuse and major depression impair core functions necessary for competent lawyering – causing diminished memory, reduced problem-solving skills, and impaired executive function.<sup>10</sup>

Finally, well-being is good for business. People who are thriving perform better, are more likely to enjoy their careers, are less likely to leave their jobs, and have more satisfied clients.<sup>11</sup>

---

<sup>8</sup> See THE PATH TO LAWYER WELL-BEING 33 (speaking to the creation and utility of preventative well-being programs).

<sup>9</sup> UTAH SUPREME COURT RULES OF PROF'L CONDUCT 1.1 (2019).

<sup>10</sup> THE PATH TO LAWYER WELL-BEING 8–9.

<sup>11</sup> *Id.* at 8.

**HOW DO WE BEGIN?**

---

How do we start a well-being movement in the Utah legal community? To answer that question, Task Force members developed recommendations specific to the following sectors of the legal community:

Judges

Lawyers and Legal Employers

Regulators

Utah State Bar

Law Schools

## RECOMMENDATIONS FOR JUDGES

---

1. Determine judges' well-being baseline. Commission a scientific study of judges to measure well-being, including stress, depression, anxiety, substance abuse, and attitudes toward seeking mental health and substance abuse treatment. If possible, this study should also measure data specific to judges, such as secondary trauma and compassion fatigue. The study will be confidential and scientifically valid. Because there will be a financial cost for this, we recommend coordinating with similar studies of lawyers and law students, if possible, to share costs.
  
2. Create a framework for future studies at regular intervals. These studies will measure changes from the baseline and evaluate where well-being has improved or worsened, which efforts are working, which efforts are not working, and what specific challenges judges continue to face. This information will ensure that we continue to improve our efforts to increase judicial well-being in an evidence-based manner. These studies will be confidential and scientifically valid. Because there will be a financial cost for this, we recommend coordinating with similar studies of lawyers and law students, if possible, to share costs.
  
3. Communicate that well-being is a priority. We encourage judges and other leaders in the judicial branch to communicate the importance of well-being whenever possible and in multiple media. This can be done not only during presentations and speeches or in written articles, but more informally in judges' interactions with lawyers and other judges in and outside of court. We note that these efforts are already underway. At the 2018 Utah State Bar Summer Convention in Sun Valley, Idaho, Chief Justice Matthew Durrant focused on the importance of lawyer well-being in his address to the convention. And as co-chair of this Task Force, Justice Petersen has spoken about well-being to incoming law students at the University of Utah College of Law during orientation week, to judges at the 2018 annual judicial conference, to lawyers at the 2018 Utah State Bar Fall Forum, to firm leaders/managing partners at a Bar-sponsored breakfast for leaders of large law firms, and to women lawyers at the 2019 Banter With the Bench event.

*Creating a Well-Being Movement in the Utah Legal Community*

4. Develop high quality training on well-being for new judge orientation, the annual judicial conference, and annual bench-level conferences. Well-being education should be integrated into new judge training in order to prepare new judges for the challenges and stressors they will face, and provide them with tools to handle those challenges as effectively as possible. High quality well-being education should also be included at the judicial conference and bench-level conferences. Topic ideas can be found in Appendix B to the National Task Force Report.
5. Update policies regarding impaired judges and educate judges about those policies. The courts currently have policies and procedures for impaired judges. These policies should be reviewed and modified as necessary to reflect the current understanding of behavioral and mental health issues. These policies and procedures should be communicated to judges and presiding judges through educational materials, trainings, and bench meetings.
6. Reduce the stigma attached to substance abuse and mental health disorders, and encourage help-seeking behavior. Train presiding judges to identify mental health and substance use disorders amongst judges, and eliminate the stigma associated with mental health and substance use disorders. Encourage presiding judges to convey an attitude of support. Include this role in presiding judge education.

**RECOMMENDATIONS FOR LAWYERS AND LEGAL EMPLOYERS**

---

1. Educate law firms on how to form a well-being committee. We will conduct in-person meetings with a number of local law firms, yet to be determined. We will communicate why it is in a firm's interest to prioritize lawyer well-being, including that lawyers who are well balanced mentally, physically, and emotionally are more successful in their performance and better stewards of the practice of law. We will guide any interested law firm in establishing its own internal well-being committee.
2. Assist firms in establishing policies and practices to support lawyer well-being. We suggest using the Lawyer Well-Being Tool Kit as a guide when speaking to firms/partners/boards. (See Appendix B of the National Task Force Report.)



## RECOMMENDATIONS FOR REGULATORS

---

“Regulators” are broadly defined by the ABA as including the highest court in each state and all stakeholders who assist that court in regulating the practice of law.<sup>12</sup> This “includes lawyers and staff in regulatory offices; volunteer lawyer and non-lawyer committee, board, and commission members; and professional liability lawyers who advise law firms and represent lawyers in the regulatory process.”<sup>13</sup> In Utah, “regulators” include the Utah Supreme Court, the Utah State Bar, the Office of Professional Conduct, the Committee on Ethics and Discipline of the Supreme Court, the Supreme Court’s Advisory Committee on Continuing Legal Education, the Utah State Bar’s Admissions Committee, and the Utah State Bar’s Character and Fitness Committee.

Regulators are well positioned to identify conditions that can be detrimental to well-being, and they can be instrumental in improving regulatory processes to address conditions that produce toxic professional environments.

1. Revise rules as needed to prioritize lawyer well-being. We recommend evaluating relevant rules to prioritize rehabilitation over punishment where appropriate. This would include evaluating the rules governing Lawyer Discipline and Disability and any other relevant rules, and considering alternatives to discipline such as diversion programs. The ABA has recognized that to accomplish other professional objectives, the profession must first have healthy, competent lawyers.<sup>14</sup> Healthiness, competency, and contentedness stem from effective rehabilitation. Amendments that prioritize rehabilitation over punishment will promote lawyer well-being, provide a healthier, more competent bar, and will ultimately protect clients.
2. Evaluate amending the rules of professional responsibility to endorse well-being as part of a lawyer’s duty of competence. Lawyers owe a duty of competence to their clients.<sup>15</sup> “Competent” representation is defined as requiring “the legal knowledge, skill,

---

<sup>12</sup> Resolution 105, AMERICAN BAR ASSOCIATION (Feb. 5, 2018), [https://www.americanbar.org/news/reporter\\_resources/midyear-meeting-2018/house-of-delegates-resolutions/105/](https://www.americanbar.org/news/reporter_resources/midyear-meeting-2018/house-of-delegates-resolutions/105/).

<sup>13</sup> THE PATH TO LAWYER WELL-BEING 25.

<sup>14</sup> *Id.*

<sup>15</sup> MODEL RULES OF PROF’L CONDUCT r. 1.1 (AM. BAR ASS’N 2018), [https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/model\\_rules\\_of\\_professional\\_conduct\\_table\\_of\\_contents/](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents/).

thoroughness and preparation reasonably necessary for the representation.”<sup>16</sup> We should study amending applicable rules to include well-being as part of a lawyer’s duty of competence. In the event of such an amendment, the intention would not be for lawyers to be punished for failing to satisfy the well-being requirement. Instead, enforcement of this provision would proceed only in the case of actionable misconduct in client representation or in connection with disability proceedings.<sup>17</sup> The intent of this proposed modification is to “remind lawyers that their mental and physical health impacts clients and the administration of justice.”<sup>18</sup>

3. Expand continuing education curriculum to include well-being topics. Regulators should evaluate expanding continuing education curriculum to include well-being topics. We should consider whether this should take the form of a required well-being hour of credit per reporting period, or simply granting CLE credit for this type of programming. In 2017, the ABA proposed a new rule that would require “lawyers to earn at least one credit hour every three years of CLE programming that addresses the prevention, detection, and/or treatment of ‘mental health and substance use disorders.’”<sup>19</sup> Topic ideas can be found in Appendix B to the National Task Force Report. We note that this effort is already underway: for example, at the 2018 Utah State Bar Fall Forum, the MCLE Board granted CLE credit for well-being-related programming, including a plenary session addressing well-being topics and a day-long track of well-being-related sessions.
4. Re-evaluate bar application inquiries about mental health history. There is controversy regarding whether bar admission agencies should eliminate inquiries about applicants’ mental health as part of fitness evaluations for licensure. Some argue that those inquiries discourage people in need of help from seeking it. Others contend that this information is necessary to evaluate the risk applicants might pose to the public. In 2015, the ABA adopted a resolution that such inquiries should be more narrowly focused “on conduct or behavior that impairs an applicant’s ability to practice law in a competent, ethical, and

---

<sup>16</sup> *Id.*

<sup>17</sup> THE PATH TO LAWYER WELL-BEING 26.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* (citing RULES OF THE STATE BAR OF CAL., Title 2, Div. 4, R. 2.72 (2017)).

*Creating a Well-Being Movement in the Utah Legal Community*

professional manner.”<sup>20</sup> We recommend evaluating current admission inquiries to ensure they closely focus on such conduct or behavior rather than more general diagnosis or treatment history, as appropriate.

---

<sup>20</sup> AM. BAR ASS’N RESOL. 102 (August 2015).

**RECOMMENDATIONS FOR THE UTAH STATE BAR**

---

In addition to the recommendations for regulators that may involve the Bar, the following recommendations are specific to the Utah State Bar.

1. Sponsor a study to determine Utah lawyers' well-being baseline. Commission a scientific study of Utah lawyers to measure well-being, including stress, depression, anxiety, substance abuse, and attitudes toward seeking mental health and substance abuse treatment. The study will be confidential and scientifically valid. Because there will be a financial cost to this, we recommend coordinating with similar studies of judges and law students, if possible, to share costs.
2. Create a framework for future studies at regular intervals. These studies will measure changes from the baseline and evaluate where well-being has improved or worsened, which efforts are working, which efforts are not working, and what specific challenges Utah lawyers continue to face. This information will ensure that we continue to improve our efforts to increase lawyer well-being in an evidence-based manner. These studies will be confidential and scientifically valid. Because there will be a financial cost for this, we recommend coordinating with similar studies of judges and law students, if possible, to share costs.
3. Sponsor high-quality CLE programming on well-being-related topics. Develop and gather existing educational programming on well-being-related topics. Bar leadership should adopt a goal of providing at least one well-being-related educational opportunity at the Spring and Summer Conventions and the Fall Forum, and at other Bar-sponsored events where appropriate and possible. As noted above, these efforts have already begun: the 2018 Fall Forum included a plenary session addressing well-being and a day-long track of sessions filled with well-being-related topics. These sessions were full and well-received. The Bar has planned additional well-being-related programming for its 2019 events and conventions.
4. Consider creating "best practice" model policies. The National Task Force recommends that state bar associations develop "best practice" model policies for legal employers in

*Creating a Well-Being Movement in the Utah Legal Community*

areas that affect well-being, such as: responding to lawyers in distress, responding to lawyers with substance abuse problems, diversity and inclusion, mentoring, work-life balance, etc.<sup>21</sup> We should assess whether any such policies are already being developed (for example, by the Utah Center for Legal Inclusion), and if not, whether this is something the Bar would want to undertake.

---

<sup>21</sup> THE PATH TO LAWYER WELL-BEING 41.

## RECOMMENDATIONS FOR LAW SCHOOLS

---

Both law schools are committed to improving the culture of legal education and the law school experience, which currently can be detrimental to students' mental, emotional, and physical health. This is a lofty goal that will require commitment from faculty, students, and employers. Such change will not happen overnight. But by taking incremental steps, we can begin a process of cultural transformation that will lead to a healthier law school environment over time.

1. Sponsor a study to determine first-year law students' well-being baseline. Commission a scientific study of Utah law students to measure well-being, including stress, depression, anxiety, substance abuse, and attitudes toward seeking mental health and substance abuse treatment. We recommend an initial study be administered to incoming students as early as possible. The study will be confidential and scientifically valid. Because there will be a financial cost for this, we recommend coordinating with similar studies of judges and lawyers, if possible, to share costs.
2. Create a framework for future surveys at regular intervals. Future studies should be repeated at set intervals (for example, at the end of 1L, 2L, and 3L years). These studies will measure changes from the baseline and evaluate where well-being has improved or worsened, which efforts are working, which efforts are not working, and what specific challenges law students at the University of Utah and Brigham Young University continue to face. This information will ensure that we continue to improve our efforts to increase law student well-being in an evidence-based manner. These studies will be confidential and scientifically valid. Because there will be a financial cost for this, we recommend coordinating with similar studies of judges and lawyers, if possible, to share costs.
3. Continue current efforts. Both law schools have already implemented some strategies to promote student welfare.
  - a. The strategies they have in common include:
    - (i) disseminating information about University and community resources (Wellness Center; Counseling Center; OEO; Title IX Office; Center for Sexual Assault; etc.);



*Creating a Well-Being Movement in the Utah Legal Community*

- (ii) working with Career Services to provide more information to students about non-law firm and other non-traditional employment opportunities; and
  - (iii) actively encouraging employers to focus on critical professional skills that are not reflected in grades.
- b. Additional strategies at the University of Utah College of Law include:
  - (i) mindfulness/meditation sessions (Mindful Mondays);
  - (ii) a new spring upper-division course titled Mindful Lawyering taught by professor Cliff Rosky (students will complete pre- and post-course empirically validated assessments that will measure stress, well-being, and mindfulness. Professor Rosky is willing to share his findings with the committee);
  - (iii) mandatory stress management sessions for first-year students; and
  - (iv) therapy dogs during exams.
- c. Additional strategies at Brigham Young University Law include:
  - (i) leadership training – communicating to students that a law degree is a leadership degree through a variety of leadership courses and newly created leadership fellowships;
  - (ii) professional identity formation – based on Neil Hamilton’s book “Road Map,” first-year curriculum includes weekly classes on the development of twenty professional competencies. Five of those competencies are reflected in students’ grade point averages. Other competencies include trustworthiness, good judgment, problem solving, work ethic, and interpersonal and organizational skills;
  - (iii) training all faculty and employees on this approach;
  - (iv) hiring a counselor charged, in part, with developing a more robust well-being program; and

*Creating a Well-Being Movement in the Utah Legal Community*

- (v) instituting a Wednesday Forum, which focuses on innovative changes in legal practice that broaden the range of career alternatives for students.
4. Create a new student organization to promote student well-being and/or a student well-being committee. The group would: a) sponsor well-being-related activities that would be student-led and student-driven; b) sponsor a series of presentations on student well-being (stress management, physical health, resiliency training) by either the student well-being group or by the law school; and c) coordinate with the Student Counseling Center to have an on-site counselor for a portion of the week (subject to budgetary approval).
  5. Continue developing peer-to-peer mentoring programs. Both schools have mentoring programs that pair incoming first-year students with either second or third-year students. The law schools will continue to train the mentors to focus on more than academic success. Mentors can provide encouragement and perspective to first-year students, with emphasis on mental and emotional well-being. Further, mentors can help detect when a student is struggling, and assist in getting help.
  6. Educate professors on well-being issues specific to law students. Topics relevant to law students can be found in Appendix E of the National Task Force Report.

**NEXT STEPS**

---

These recommendations are intended to start a well-being movement in Utah. But we must do more than begin. We aim to lay a foundation that will support well-being efforts in the long term. We recommend the following two steps to transition into implementing the recommendations we have set forth.

1. Establish a permanent Committee on Lawyer and Judge Well-Being. The Task Force is a temporary group of experts formed to make recommendations on how Utah can start its own well-being movement. We now need to implement those recommendations, gather data about whether they are working, and then adapt and improve based on the evidence we collect. This is a long-term endeavor. To do this, we need a permanent committee.
2. Determine whether we need a paid director for the Committee. The work load for this committee may be too much to rely entirely upon volunteers. Questions to consider include: do we need a paid director; who should employ the director; what are the responsibilities of this position; and is this a full or part-time job?

## CONCLUSION

---

Elevating the well-being of the members of our legal community is a big task. We must be innovative. And we must be willing to gather data and assess our efforts critically, so that we can continuously improve.

As with any endeavor of such magnitude, it begins with a single step. These recommendations represent our first steps toward a well-being movement in Utah. We hope these recommendations will create a path toward greater well-being for all the members of our legal community.

**APPENDIX A**

## Implementation Plan Timeline:

**2019**

Jan–May	Release report and prepare action plans for permanent committee
June	Distribute study to gather local baseline data
July	“Kick-off” Action Plan (new FY’20) Summer Bar Conference, Park City, Utah

**2020**

June	Distribute local study to compare data
------	--

**2023**

June	Distribute local study to compare data/revisit work
------	---

**TAB**  
**8**

## ***2019 Western States Bar Conference Hawaii Roll Call Report***

- 2018 natural disaster response:
  - o HSBA coordinated, educated and mobilized volunteer attorneys (HSBA, HSBA-YLD, Kauai Bar Association and LASH) in response to April 2018 severe flooding damage on Kauai.
  - o HSBA coordinated, educated and mobilized volunteer attorneys (HSBA, HSBA-YLD, Hawaii County Bar Association and LASH) in response to May 2018 increased lava flow and damage on the Big Island.
- HSBA Committee recently constituted, tasked and at work on assessing and evaluating core value to HSBA membership and developing a framework for planning for the future sustainability of the HSBA.
- HSBA participation on the recently created Hawai'i Task Force on Lawyer Well-Being (on which HSBA 2011 past-president Louise Ing will be presenting).
- HSBA continued collaboration (HSBA, HSBA – DLSP Committee, HSBA – Family Law Section, county bar associations, and LASH) on the self-help centers and access to justice rooms located in each judicial circuit.
- HSBA continued collaboration with the Hawaii Supreme Court on the Courts in the Community project; next oral argument on April 10, 2019 at Kauai Community College.

Derek R. Kobayashi  
HSBA President





**2019 WESTERN STATES BAR CONFERENCE**

*Wellness—The Path to Success*

MARCH 27 – 30, 2019 • KAUA'I MARRIOTT RESORT • LĪHU'E, HAWAII



## Dear Attendees of the Western States Bar Conference:



Pamela Reiter

**I AM HONORED TO WELCOME** you and your guests to the 2019 Western States Bar Conference in Kaua'i, Hawaii. It is my hope that the breathtaking ocean views and captivating sunsets at the Kaua'i Marriott Resort will provide a reprieve from the demands of your law practice and bar leadership duties, while the conference allows you to network and exchange ideas with leaders from other mandatory bars in the Western States. During my term as President of the State Bar of South Dakota, this

conference was at the top of the list for excellent content, problem-solving, practical ideas and development of invaluable relationships with other bar leaders. And please leave your suits at home—as all our events are resort casual!

We chose the theme *Wellness—The Path to Success* because the well-being of attorneys is a serious concern to our profession. The ABA's National Task Force on Lawyer Well-Being released a study entitled *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*, available on the ABA's website and it includes a call to action:

*To be a good lawyer, one has to be a healthy lawyer. Sadly, our profession is falling short when it comes to well-being... We are at a cross roads. To maintain public confidence in the profession, to meet the need for innovation in how we deliver legal services, to increase access to justice, and to reduce the level of toxicity that has allowed mental health and substance use disorders to fester among our colleagues, we have to act now. Change will require a wide-eyed and candid assessment of our members' state of being, accompanied by courageous commitment to re-envisioning what it takes to live the life of a lawyer.*

August 14, 2017

Foreword to the Well-Being Study

I am pleased to welcome our keynote speaker Terry Harrell, Executive Director of the Indiana Judges and Lawyers Assistance Program, who chaired the ABA Working Group to Advance Well-Being in the Legal Profession. Her position provides her a front row seat on the wellness issues facing our profession. Terry will share her insights and experience in this arena as well as help us unpack the concept of lawyer well-being and the recent work of the ABA Working Group. A panel of Bar leaders will also discuss practical steps on how to build a well-being movement in your Bar or advance your Bar's work in this area.

To further our members' wellness, the South Dakota Bar Foundation sponsored the recording of three- to seven-minute videos addressing the signs, symptoms and treatment available for several mental health disorders, including substance use disorder, anxiety, approaching an impaired colleague or friend, co-occurring disorders, perfectionism, ADHD, trauma, cognitive impairment and depression. You and your Bar members may view this video series, called "Living Above the Bar," at [www.statebarofsouthdakota.com](http://www.statebarofsouthdakota.com), under the Health & Wellness Tab.

During this conference, I hope that you will be moved to help break a dangerous cycle of denial and stigma before it breaks even one more lawyer. As a bar leader, you can actively support your bar's critical, lifesaving work of your lawyers assistance committees. An initial step is to educate ourselves about modern definitions and treatment modalities. And convincing your members that helping themselves first truly helps the entire profession and their clients.

During the Roll-Call of the States, we will hear an update on the projects, challenges and successes in each state's bar association. If possible, I request that each state please bring a written report of your Bar's top programs and projects and contact information for the individuals in your association willing to assist other bar leaders in learning about them.

I wish you a memorable trip to beautiful Kaua'i. In addition to beachside fun available at the resort, my daughter researched some fun outings: Wailua State Park & hiking trails; Kapa'a Bike Trail; Kaua'i Backcountry Adventures (ziplining with swimming in natural pool at end; and horse ride with waterfall swim at end); Kalalau Trail (hike short section for amazing views); and Waimea Canyon (hiking & views). Enjoy!

Please join me in extending your gratitude to Secretary/Treasurer, Paula Littlewood, the Executive Director of the Washington State Bar Association, Kara Ralph and all WSBA staff for again planning the details that make this a top-tier conference for Western States bar leaders!

*Pamela Reiter*

Pamela Reiter





# Aloha!

## ATTIRE

Dress is resort Casual

## WEATHER

The average high in Kaua'i is 72°  
and the average low 54°

## WHALE WATCHING

**Thursday, March 28 • 12:30–4:00 p.m.**

Polynesian Adventure Tours private charter will pick up the whale watching group at Porte Cochere – main entrance.

Blue Dolphin Charter is a 2-hour whale watching tour. Appetizers and soft drinks, juices, beer, wine and Mai Tais available during the tour. The private charter will pick-up the group to return to the hotel at 4:00 p.m.

**GOLF - Ocean Course At Hokuala**  
**Friday, March 29 • 1:00–5:00 p.m.**

Located 0.2 miles from the hotel. If you have any questions, Richard Diblee, Assistant ED Utah State Bar, is the coordinator of the event.

*Club Rentals \$65*

## FRIDAY NIGHT DINNER

**Friday, March 29 • 6:00–9:00 p.m.**

*Join WSBC President Pamela Reiter for food and conversation.*

## CLE Credit

Upon request, a Uniform Certificate of Attendance, which will need to be filed with the appropriate MCLE Board or Commission in that state to receive credit, can be provided to you.

## DINING

- ❖ **Kukui's on Kalapaki Beach**  
*Breakfast/Lunch Dinner*
- ❖ **Toro-Tei Sushi Bar**  
*Dinner*
- ❖ **Aupaka Terrace**  
*Breakfast – Pastries & Coffee*
- ❖ **Duke's Kaua'i**  
*Lunch & Dinner*
- ❖ **Café Portofino**  
*Dinner*

## RECREATION AT HOTEL

### Hawaii Alive Luau

Enjoy a traditional Hawaiian dinner and show. Experience the culture of Kaua'i.

Tickets available through concierge.  
Call 808-245-5050.

### Alexander Day Spa & Salon

Appointment is required.  
Call 808-246-4918.

### Other Hotel Activities:

- ❖ Fitness center
- ❖ Pool & whirlpool – Largest single-level outdoor pool in the state of Hawaii
- ❖ Tennis
- ❖ Kayaking
- ❖ Surfing





## WEDNESDAY, MARCH 27TH

**9:00 – Noon**

### **Western States Bar Executives Retreat** *Kipu (Puna D)*

- ❖ Facilitator Deborah O'Regan, Executive Director, Alaska Bar Association

**4:30 – 5:30 p.m.**

### **Registration** *Puna Foyer*

**6:00 – 7:30 p.m.**

### **Welcome Reception** *Puna Court*



## THURSDAY, MARCH 28TH

**7:30 – 11:30 a.m.**

### **Registration/Exhibitors** *Puna Court*

**7:45 – 8:15 a.m.**

### **Breakfast** *Puna Court*

**8:20 – 8:35 a.m.**

### **Welcome to the Conference** *Kona (Salon 1)*

- ❖ Pamela Reiter, President, Western States Bar Conference 2018-2019

**8:35 – 8:45 a.m.**

### **Overview of the Conference** *Kona (Salon 1)*

- ❖ Paula Littlewood, Secretary-Treasurer, Western States Bar Conference; Executive Director, Washington State Bar Association

**8:45 – 9:00 a.m.**

### **Welcome to Kaua'i** *Kona (Salon 1)*

- ❖ Emiko L. Meyers, President, Kaua'i Bar Association

**9:05 – 10:00 a.m.**

### **The Power of Wellness: Getting on the Path to Lawyer Well-Being** *Kona (Salon 1)*

- ❖ Terry Harrell, Executive Director, Indiana Judges and Lawyers Assistance Program

As Executive Director of the Indiana Judges and Lawyers Assistance Program, Terry Harrell has a front row seat on the well-being issues facing our profession—the ABA couldn't have picked a better Chair for its Working Group to Advance Well-Being in the Legal Profession. Terry will share her insights and experience in this arena as well as help us unpack the concept of lawyer well-being and the recent work of the ABA Working Group.

**10:00 – 10:15 a.m. Break**

**10:15 – 10:45 a.m.**

### **Roll Call of the States** *Kona (Salon 1)* NV, AZ, WA, HI

**10:45 – 12:00 noon**

### **How to Build a Well-Being Movement for Your Bar** *Kona (Salon 1)*

The ABA Working Group to Advance Well-Being in the Legal Profession challenges us to create a well-being movement across the entire profession. Many states have been building a blueprint for getting their members and others on the path of well-being. During this session, leadership from four states will share their wisdom and experiences from their work in this important area.

- ❖ H. Dickson Burton, President, Utah State Bar
- ❖ Chris Costantino, President, Oregon State Bar
- ❖ Louise K.Y. Ing (A Law Corporation), Partner, Dentons US LLP, Honolulu
- ❖ Pam Moore, Program Director, New Mexico State Bar Judges and Lawyers Assistance Program
- ❖ **Moderator:** Pamela Reiter, President, Western States Bar Conference 2018-2019

**Noon – 2:30 p.m.**

### **Lunch on Own**

**12:30 – 4:00 p.m.**

### **Whale Watching Tour (optional)** *Porte Cochere – main entrance*

**Evening**

### **Dinner on Own**





## FRIDAY, MARCH 29TH

**7:30 – 12:30 p.m.**    **Registration/Exhibitors**  
Puna Court

**7:45 – 9:00 a.m.**    **Breakout Sessions  
for Bar Leaders**

**LARGE STATE BARS (more than 10,000 members)**  
*Ha'iku and Kipu (Puna CD)*

❖ **Moderator:** Trey Apfell, Executive Director,  
State Bar of Texas

**SMALL STATE BARS (less than 10,000 members)**  
*Nawiliwili and Niumalu (Puna AB)*

❖ **Moderator:** Richard Spinello, Executive Director,  
New Mexico State Bar

**9:00 – 9:15 a.m.**    **Transition Break**

**9:15 – 9:45 a.m.**    **Roll Call of the States**  
*Kona (Salon 1)*  
**UT, TX, WY, ID**



96

**9:45 – 11:15 a.m.**    **Integrated Bars: Is the Well-Being  
of the Current Structure at Risk?**  
*Kona (Salon 1)*

Litigation at the state and federal levels is leading to a re-examination of the decades-old model of integrating regulatory functions with professional association services into one organization. Many state supreme courts have already examined the integrated bar model within their states and made changes; other states are currently in the midst of such a review and/or are defending lawsuits. Panelists will describe the various developments in their own states while engaging attendees in discussion regarding this salient and ongoing topic.

- ❖ Helen Hierschbiel, Executive Director, Oregon State Bar
- ❖ Bill Pickett, President, Washington State Bar Association
- ❖ Tony Weiler, Executive Director, State Bar Association of North Dakota
- ❖ Jeff Willis, President, Arizona State Bar
- ❖ **Moderator:** Paula Littlewood, Secretary-Treasurer, Western States Bar Conference; Executive Director, Washington State Bar Association

**11:15 – 11:30 a.m.**    **Break**

**11:30 – Noon**    **Update from the ABA**  
*Kona (Salon 1)*

- ❖ Judy Perry Martinez, ABA President-elect
- ❖ Nate Alder, NCBP President-elect
- ❖ Patrick Palace, NCBP Council Member



**12:00 – 12:15 p.m.**    **Nominating Committee Meeting**

**1:00 – 5:00 p.m.**    **Golf Tournament**  
*Ocean Course  
at Hokuale*

**6:00 – 9:00 p.m.**    **Reception/Dinner**  
*Luau Grounds*







97

## SATURDAY, MARCH 30TH

**7:30 – 12:30 p.m.** **Registration/Exhibitor**

*Puna Court*

**7:30 – 8:30 a.m.**

**Breakfast**

*Puna Court*



**Breakfast for Presidents-elect**

*Halele'a (Salon 2)*

with ABA President-elect

Judy Perry Martinez

**8:30 – 8:45 a.m.**

**Transition Break**

**8:45 – 9:15 a.m.**

**Roll Call of the States**

*Kona (Salon 1)*

AK, ND, MT

**9:15 – 11:00 a.m.**

**Coming to a Theatre Near You**

**Soon: Third Party Funding of**

**Litigation and Blockchain as**

**Legal Technology**

*Kona (Salon 1)*

Many aspects of the profession are evolving quickly, with several of them well down the road and not necessarily in the forefront of our planning and understanding of them. Two trends that have been building steam for many years include the funding of litigation by third parties and the use, in legal services and regulatory contexts, of blockchain technologies and cryptocurrencies like Bitcoin. Grab a bag of popcorn, sit back, and enjoy the show as two experts give us an overview and highlights of these two trends and make themselves available to answer your questions!

- ❖ Maya Steinitz, Professor of Law and Bauma Family Fellow in Law, University of Iowa College of Law
- ❖ Tony Lai, Founder and Chairman at Legal.io, and Entrepreneurial Fellow and Founder of the Blockchain Group at CodeX, the Stanford Center for Legal Informatics

**11:00 – 11:15 a.m.**

**Break**

**11:15 – 11:45 a.m.**

**Roll Call of the States**

*Kona (Salon 1)*

SD, OR, NM

**11:45 – 12:00 noon**

**Conclusion of Conference**

*Kona (Salon 1)*

**Announcement of New Leadership**

**Adjourn**

**12:15 – 12:30 p.m.**

**Annual Business Meeting**

(for WSBC leadership)





# WSBC History

## WESTERN STATES BAR CONFERENCE PRESIDENTS

Harry J. McClean, California	1949–1951	David K. Robinson, California	1974–1975	Wiley Y. Daniel, Colorado	1996–1997
Alfred Pence, Wyoming	1951–1952	Jerry V. Smith, Idaho	1975–1976	Daniel E. Winfree, Alaska	1997–1998
Robert A. Leedy, Oregon	1952–1953	Henry Loble, Montana	1976–1977	Timothy J. Kirven, Wyoming	1998–1999
Thomas M. Robertson, Idaho	1953–1954	Joseph Novak, Utah	1977–1978	Steven T. Walther, Nevada	1999–2000
John Shaw Field, Nevada	1954–1955	Mark I. Harrison, Arizona	1978–1979	Dennis C. Karnopp, Oregon	2000–2001
H. Cleveland Hall, Montana	1955–1956	Leo J. Puccinelli, Nevada	1979–1980	Reed L. Martineau, Utah	2001–2002
Walter E. Craig, Arizona	1956–1957	James R. Crouch, New Mexico	1980–1981	Hod Greeley, Hawaii	2002–2003
William H. Robinson,		David D. Hoff, Washington	1981–1982	Don Bivens, Arizona	2003–2004
Colorado	1957–1958	Jon R. Kerian, North Dakota	1982–1983	Carl E. Olsson, Idaho	2004–2005
A. H. Nebeker, Utah	1958–1959	Donna C. Willard, Alaska	1983–1984	Dale Carlisle, Washington	2005–2006
H. B. Kidwell, Hawaii	1959–1960	Dwight M. Rush, Hawaii	1984–1985	Andrew Suenram, Montana	2006–2007
Glenn R. Jack, Oregon	1960–1961	Thomas S. Smith, Wyoming	1985–1986	Thomas Fritz, South Dakota	2007–2008
Joseph H. Gordon, Washington	1961–1962	Charles W. Deaner, Nevada	1986–1987	Daniel J. O'Brien, New Mexico	2008–2009
William Gaunt, Colorado	1962–1963	John J. Haugh, Oregon	1987–1988	Eduardo Rodriguez, Texas	2009–2010
Jess R. Nelson, New Mexico	1963–1964	O. Wood Moyle III, Utah	1988–1989	John J. Tiemessen, Alaska	2010–2011
Roy A. Bronson, California	1964–1965	John J. Bouma, Arizona	1989–1990	David S. Maring, North Dakota	2011–2012
Gilbert B. St. Clair, Idaho	1965–1966	Richard C. Fields, Idaho	1990–1991	Nathan D. Alder, Utah	2012–2013
Herbert H. Anderson, Oregon	1966–1967	Robert R. Redman,		Salvador A. Mungia,	
Elmer J. Scott, Wyoming	1967–1968	Washington	1991–1992	Washington	2013–2014
John Gavin, Washington	1968–1969	Burke M. Critchfield, California	1992–1993	Mitzi M. Nacler, Oregon	2014–2015
Ray R. Christensen, Utah	1969–1970	Damon Gannett, Montana	1993–1994	Molly O'Leary, Idaho	2015–2016
Edward L. Benoit, Idaho	1970–1971	Richard F. Rowley II,		Eric E. Jones, Wyoming	2016–2017
John Joe Wilkinson, Colorado	1971–1972	New Mexico	1994–1995	Andrew J. (Drew) Cloutier,	
John Huneke, Washington	1972–1973	Kermit Edward Bye,		New Mexico	2017–2018
John U. Yerkovich, Oregon	1973–1974	North Dakota	1995–1996	Pamela Reiter	2018–2019

## SECRETARIES/TREASURERS

Leland M. Cummings, Utah	1946–1954	Celene Greene, New Mexico		Diane K. Minnich, Idaho	2001–2005
John H. Holloway, Oregon	1954–1961	and Minnesota	1979–1983	Allen Kimbrough, Nevada	2005–2006
Alice Ralls, Washington	1961–1966	Robert J. Elfers, Oregon	1983–1985	Diane K. Minnich, Idaho	2006–2007
Dean W. Sheffield, Utah	1966–1971	Celene Greene, Oregon	1985–1986	Kimberly Farmer, Nevada	2007–2010
Eldon L. Husted, Arizona	1971–1973	Bruce Hamilton, Arizona	1986–1991	Joe Conte, New Mexico	2011–2015
G. Edward Friar, Washington	1973–1974	Linda L. McDonald, New Mexico		Paula C. Littlewood,	
Ronald L. Kull, Idaho	1974–1978	and Texas	1991–1996	Washington	2016–2019
Eldon L. Husted, Arizona	1978–1979	Charles C. Turner, Colorado	1996–2000		

## WESTERN STATES BAR CONFERENCE MEETING SITES

San Francisco	1949	Vancouver, British Columbia	1973	Scottsdale	1997
Salt Lake City	1950	Guadalajara, Mexico	1974	Waikoloa	1998
Denver	1951	Monterey	1975	San Diego	1999
Portland	1952	Palm Spring	1976	Maui	2000
Reno	1953	Maui	1977	Waikoloa	2001
Sun Valley	1954	Scottsdale	1978	Las Vegas	2002
Phoenix	1955	San Diego	1979	Kaua'i	2003
Cheyenne	1956	Acapulco, Mexico	1980	Scottsdale	2004
Santa Fe	1957	Tucson	1981	Maui	2005
San Francisco	1958	Maui	1982	San Diego	2006
Salt Lake City	1959	St. Thomas, Virgin Islands	1983	Kohala Coast	2007
Honolulu	1960	Kaua'i	1984	Tucson	2008
Seattle	1961	San Diego	1985	Turtle Bay, Oahu	2009
Denver	1962	Waikoloa	1986	San Antonio	2010
Phoenix	1963	San Antonio	1987	Maui	2011
Reno	1964	Kaua'i	1988	Las Vegas	2012
Monterey	1965	Monterey	1989	Kaua'i	2013
Las Vegas	1966	Waikoloa	1990	Palm Desert	2014
Guadalajara, Mexico	1967	Santa Barbara	1991	Kohala Coast	2015
Coronado	1968	Maui	1992	San Diego	2016
Maui	1969	Carmel	1993	Maui	2017
Colorado Springs	1970	Maui	1994	Santa Barbara	2018
Scottsdale	1971	San Diego	1995	Kaua'i	2019
Albuquerque	1972	Kaua'i	1996		



*Join Us Next Year*



April 1-4, 2020  
Scottsdale, AZ

*Mahalo to Our Sponsors!*

PLATINUM SPONSOR



SILVER SPONSORS



OTHER SPONSOR





## **2018 Facts and Figures**

### **Licensing/Membership**

- ⇒ 6,654 licensed members as of December 2018, 1.8% increase over 2017
- ⇒ 21 Sections of the Bar

### **Admissions**

- ⇒ 196 applicants sat for the Idaho Bar Exam in 2018, 65 attorneys were admitted reciprocally, 47 UBE applicants admitted
- ⇒ 69% pass rate for 2018, 74% pass rate for 2017

### **Discipline 2018**

- ⇒ 1,188 phone inquiries, 14% decrease from 2017
- ⇒ 343 grievances/complaints received, 4% increase from 2017
- ⇒ 32 informal discipline cases opened in 2018, 27% decrease from 2017
- ⇒ 18 fee arbitration cases opened, a decrease from 2017
- ⇒ \$49,079 paid on 16 claims from client assistance fund in 2018
- ⇒ Nearly 1,400 ethics questions responded to by Bar Counsel

### **Annual Meeting**

- ⇒ 378 total attendance (252 attorneys and judges) at the 2018 Sun Valley meeting, attendance increased 15% from 2017 meeting in Moscow

### **Mandatory Continuing Legal Education**

- ⇒ Over 5,000 CLE programs approved by the ISB in 2018

### **Lawyer Referral Service**

- ⇒ 150 attorneys on the LRS panel
- ⇒ 487 referrals given by phone and 837 referrals provided online in 2018

3/25/19



## Current Programs and Issues

### Professionalism/Competence/Public Protection

- In 2016, a requirement for lawyers to obtain malpractice coverage was approved by the bar membership (51%-49%). The rule change was approved by the Idaho Supreme Court and has been in effect for the 2018 and 2019 licensing cycles. To date, no lawyer subject to the rule has indicated they were unable to obtain insurance
- Idaho Rule of Professional Conduct 8.4(g) amendments approved by the membership, rejected by the Idaho Supreme Court
- Taskforce established to review ABA Model Rules 7.1-7.5 to determine whether the bar should recommend their inclusion in the Idaho Rules of Professional Conduct
- Succession Planning – guide and checklists available on the bar's website. The license fee notice included a question asking whether attorneys had a succession plan, only 6% of the attorneys responding reported they had a succession plan
- Leadership Academy in its 9<sup>th</sup> year

### Access to Justice

- Access to Justice Idaho Campaign- continue joint fund raising campaign with Idaho Legal Aid and the Disability Rights organization; raised nearly \$1,000,000 over the last five years

### Services to the Public and Lawyers

- Improving social media presence, increased online access to information and forms
- Creation of comprehensive resource pages and links for those seeking legal assistance and information

ISB Contact: Diane Minnich, Executive Director, [dminnich@isb.idaho.gov](mailto:dminnich@isb.idaho.gov)  
Website: [isb.idaho.gov](http://isb.idaho.gov)

**State Bar of Texas Report on Programs and Projects**  
 Western States Bar Conference  
 March 2019

**Texas Opportunity and Justice Incubator (TOJI).** TOJI is the first statewide legal incubator in Texas and aims to close the access to justice gap. The program teaches attorneys with fewer than five years of experience the finer points of setting up their practices, with a focus on the legal needs of low- and modest-income Texans. Attorneys are required to provide at least 100 hours of pro bono legal services during their first year in the 18-month program. Contact: Anne-Marie Rábago at [Anne-Marie.Rabago@texasbar.com](mailto:Anne-Marie.Rabago@texasbar.com). Website: [txoji.com](http://txoji.com)

**Texas Lawyers' Assistance Program (TLAP).** TLAP provides confidential help for law students, lawyers, and judges who have problems with substance abuse and mental health issues. Last year, TLAP staff handled over 700 calls regarding impaired attorneys and conducted 158 presentations to more than 12,000 members across Texas. Contact: Chris Ritter at [chris.ritter@texasbar.com](mailto:chris.ritter@texasbar.com). Website: [tlaphelps.org](http://tlaphelps.org)

**Texas Lawyers for Texas Veterans (TLTV).** TLTV is designed to provide pro bono legal clinics throughout the state to help military veterans who cannot afford or do not have access to the legal services they need. Created in 2010, TLTV has partnered with more than 25 local bar associations and has helped more than 32,000 veterans with the assistance of approximately 11,000 volunteer attorneys, paralegals, and law students. Contact: Susan Brennan at [susan.brennan@texasbar.com](mailto:susan.brennan@texasbar.com). Website: [texasbar.com/veterans](http://texasbar.com/veterans)

**Texas Young Lawyers Association (TYLA).** TYLA is the public service arm of the State Bar of Texas and is consistently recognized among the top young lawyer associations in the country. Contact: Tracy Brown at [tracy.brown@texasbar.com](mailto:tracy.brown@texasbar.com). Website: [tyla.org](http://tyla.org)

**TexasBarCLE.** TexasBarCLE offers members more CLE options than any other Texas provider, including live programs, studio-produced webcasts, and over 2,500 hours of online classes. Contact: Hedy Bower at [hedy.bower@texasbar.com](mailto:hedy.bower@texasbar.com). Website: [texasbarcle.com](http://texasbarcle.com)

**Law-Related Education (LRE).** The Law-Related Education (LRE) Department provides resources that help teachers inspire and engage their students in the pursuit of civics education. LRE also trains thousands of teachers each year, affecting hundreds of thousands of Texas students. Contact: Jan Miller at [jan.miller@texasbar.com](mailto:jan.miller@texasbar.com). Website: [texaslre.org](http://texaslre.org)

**Client-Attorney Assistance Program (CAAP).** CAAP is a confidential statewide dispute resolution service that continues to set the highest standard of customer service and quality of information to assist Texas lawyers and their clients in resolving minor disputes within the context of the attorney-client relationship. CAAP helps thousands of people every year resolve problems with their lawyers, and offers services in Spanish, Thai, and Laotian. Contact: Gene Major at [gene.major@texasbar.com](mailto:gene.major@texasbar.com). Website [texasbar.com/CAAP](http://texasbar.com/CAAP)

**Member Benefits & Services Program.** The State Bar of Texas offers a variety of resources to help members with the everyday practice of law, including insurance products through the Texas Bar Private Insurance Exchange; free legal research through Fastcase and Casemaker; and discounts on practice management and billing software, office supplies and equipment, and more. Contact: Cory Squires at [cory.squires@texasbar.com](mailto:cory.squires@texasbar.com). Website: [texasbar.com/benefits](http://texasbar.com/benefits)





### Western States Roll Call, March 2019

#### **State Bar of Nevada**

**Rick Pocker, President, [rpocker@bsfllp.com](mailto:rpocker@bsfllp.com)**

**Paul Matteoni, President-elect, [pmatteoni@lrrlaw.com](mailto:pmatteoni@lrrlaw.com)**

**Kim Farmer, Executive Director, [kimberlyf@nvbar.org](mailto:kimberlyf@nvbar.org)**

#### ***We Tried – Mandatory Malpractice Insurance***

Last year during this meeting we reported on the Board's petition to the Nevada Supreme Court for a rule change. This rule change would require all attorneys engaged in the private practice of law and representing Nevada clients to have minimal professional liability insurance in the amount of \$250,000 per occurrence/\$250,000 annual aggregate. After substantial research and discussion, we proposed the open market approach for attorneys to obtain insurance to comply with a mandatory insurance requirement as it allows attorneys to obtain competitive quotes and select a carrier with services and pricing that best meet their needs.

The Court received significant, and often passionate comment from attorneys regarding the proposed rule change. Unfortunately, we were unsuccessful in obtaining a rule change. However, we think the Court left the door open slightly in their ruling should the Board seek a rule change down the road.

#### ***We Also Tried – Mandatory Trust Account Audits***

Also last year the Board submitted a petition to the Nevada Supreme Court regarding implementation of a program for random trust account compliance audits. At any given time there are more than 3,000 trust accounts on record with the state bar holding more than \$400 million in IOLTA accounts alone. The central objective was to ensure the books and accounts of an attorney's practice comply with the rules. Additionally, this rule would serve as education on a lawyer's fiduciary obligations and early detection of deficiencies, and secondarily, as a deterrent from intentional acts. The Court received significant feedback from Nevada attorneys, for and against audits. In the end the Court deemed that a rule change was not appropriate.

### ***Score 0 for 2 With Petitions to the Court, Until . . .***

#### ***Board of Governors Term Increases – I Can Stay on the Board!***

Recently the Board of Governors petitioned Nevada's Supreme Court to amend the Supreme Court Rules regarding terms of the Board of Governors. The Court agreed with the Board's petition and has amended the Rules governing terms of the Board of Governors. The new Rule increases the lifetime term limit from eight years to twelve years and extends the term for which a governor may serve from two years to three years. Also, if elected as an officer (vice president, president-elect, or president) the term of office shall extend, without reelection, through the officer's presidential year. Effectively a Board member could potentially be on the Board for fifteen years.

#### ***The Regulatory World***

Many years ago (30 years), Nevada's Supreme Court moved the regulatory function of mandatory continuing education from the state bar and supervision by the Board of Governors to an independent agency. So today, the state bar does not operate the regulatory CLE function for Nevada attorneys -- it is managed by a separate and unique entity. This may change in the next 12 months as the Court reviews the administrative structure and effectiveness of the organization that manages regulation of Nevada's mandatory CLE requirement. The Court has reached out to the Board for feedback and advice to achieve an efficient and effective process to manage regulation of CLE.

It is interesting -- as we see several mandatory bars looking to decentralize their regulatory functions, Nevada is working to re-centralize it.

#### ***Practicing in Nevada***

Our Reciprocity Taskforce was formed to study the issues related to reciprocity in Nevada. Currently 27 states have some form of reciprocity, and another 16 states allow admissions on motion without requiring reciprocity. This taskforce is researching the issue of reciprocity and has submitted a petition to the Court to revise Nevada's limited admission certifications (government attorneys, in-house counsel). The proposed rule changes for limited admission increases the fees for application, sets forth a residency condition, and requires the attorney to have taken the Multistate Professional Responsibility Exam within three years of application for certification. This petition is pending before the Court.

#### ***Addressing Mental Health***

The Nevada Lawyer Assistance Program was established in 2013 and has grown since its first formation. Today, the program serves as the clinical support system to Nevada attorneys, supplementing the peer support offered through Lawyers Concerned for Lawyers. Until now, the focus of the bar's Nevada Lawyers Assistance Program has been geared toward those

attorneys who may have co-occurring substance abuse issues through our confidential Lawyers Concerned for Lawyers program and clinical support through the Nevada Lawyers Assistance Program.

We added to our lawyers' assistance program and have introduced a wellness component. The state bar has budgeted for a program expansion to address issues such as depression, anxiety, stress, and marital problems – all of which can have an impact on an attorney's practice.

Services unique to NLAP include:

- Free clinical assessments for lawyers who voluntarily seek help to identify issues related to abuse, addiction, or mental health issues. Services may be sought confidentially from one of four approved providers located in Las Vegas, Reno, and Carson City.
- Attorneys may seek up to three free confidential therapy sessions with a qualified therapist who has been vetted and pre-qualified to serve our members. More than 10 therapists now serve the program statewide, including options for secure online teletherapy.
  - In the first two months of 2019 alone, at least 7 attorneys have voluntarily sought these services. Combined, they have received 14 individual therapy sessions.
  - The State Bar is directly billed for these services, offered at a reduced rate to our members, but no identifying information is ever revealed.
- Beginning this year, NLAP formed a new closed-door support meeting at the State Bar's Las Vegas office. Attorneys may join this after-hours meeting to discuss stressors in their practices and personal life.



## State Bar of Arizona 2019 Programs and Projects

**Find-a-Lawyer** – Launched in May 2018 it's an online portal to connect clients with attorneys. Free for clients, attorneys who want to respond to paying cases must pay \$300 annual fee for unlimited number of cases. Lawyers responding to pro bono cases pay nothing. Moderately successful so far. **Website Redesign** – Currently on an outdated content management system, we're shifting to a current version which will require complete website overall. To be completed later this year.

**IT overhaul** – We're nearing the end of a massive IT overhaul. This involved everything from moving servers off site and to staff reengineering. Bar also eliminated member email service. We are beginning project to update website.

**Go Bold Initiative** – In 2018 staff and leadership identified several projects that we felt had low investment with strong potential rewards. These projects were specifically geared towards either increasing revenue or decreasing expenses:

- Practice 2.0 – Creating a new website and structure for practice management assistance
- Increase Find-a-Lawyer marketing efforts
- Board of Legal Specialization – Looking at whether we will expand the number of specialization areas.
- CLE Market Dominance – Having not increased our fees in quite some time, we had an across the board CLE fee increase. We have implemented a subscription plan we hope will create new customers and new revenues.
- Board Operations Savings – For example, the board's 2019 retreat will be held in Phoenix to save money.

**Lawyer Discipline Audit** – The Supreme Court is doing its first audit of our lawyer regulation department since 2008. Fortunately, this is not the result of problem, but merely to ensure that regulation is operating effectively.

**Attorney Ethics Advisory Committee** – In the past, the Bar had an Ethics committee that issued advisory opinions. The court has now taken over that function with a committee that will issue binding opinions on lawyer ethics, professionalism, and the unauthorized practice of law.

**Lawsuits** – We've seen an increase in the number of frivolous lawsuits filed by sanctioned attorneys. They appear to be copying information from other nuisance suites. Requires increased staff and outside counsel time and effort.

**Conservatorships** – We've seen an increase in the number attorney files that the bar takes after an attorney is disbarred, dies or simply goes missing.

**New contract management system** – Our legal services team now uses Concord for contract management. Much more efficient and effective way at handling and memorializing contracts.

**Lawyer Wellness** – In cooperation with the Arizona Supreme Court, the Bar is planning a 3-part free webcast series to being in the Fall of 2019 regarding lawyer wellness.

**Annual Fees** – The Bar proactively reached out to furloughed government employees who had trouble paying annual fee.

**Senior Lawyer Task Force** – The Bar is just wrapping up a 4 month task force looking at ways of engaging and assisting more seasoned and retired attorneys.

**Veterans Legal Services Summit** – Held March 22<sup>nd</sup>, the event brought together groups involved in this area.

# WASHINGTON STATE BAR ASSOCIATION

## March 2019 Updates

### *Successes*

- We have just completed another successful licensing season with almost 40,000 legal professionals meeting all requirements to continue to practice law in Washington.
- In the past five years, we have more than doubled the amount of annual practice-management consultations we provide for members, and we have greatly expanded our Practice Management Discount network, with services such as virtual assistants and law-payment software. We just added member benefits such as access to a private health-insurance exchange and a second free legal-research tool, Fastcase.
- This year—and for at least the past 30 years—WSBA has received a clean audit opinion, indicating that WSBA's finances are well managed and accurate in all material aspects.
- We have begun calling 110+ randomly selected members each quarter (a statistically significant sample) to get feedback on members' perceptions of our service. Overall, the news has been heartening: we have consistently received an average A grade for upholding high-quality standards for Washington's legal profession, for providing high-quality CLEs, and for supporting diversity and inclusion efforts. (See attached.)

### *Future of the Washington State Bar*

Several big events are unfolding that could significantly impact WSBA's future structure.

- First, the Washington Supreme Court has formed a work group, set to start meeting on March 28, that will evaluate the functions and structure of WSBA, in light of recent First Amendment and antitrust cases, and make a recommendation for structural change—or not—back to the full Court by July at the earliest.
- Simultaneously, a bill—ESHB 1788—is speeding through the state Legislature that would repeal the majority of the State Bar Act (which has mostly been superseded by Court action) and recognize the plenary authority of the Court to regulate the practice of law. Lawmakers have amended the bill to make it more explicit that they are clearing the way for the Court to implement the recommendation from its structure work group; they have also included language specifically to ensure the continued existence of the bar. Our Board of Governors has taken a stance of opposition to the bill, stating concerns about the timing (now rather than after the work group makes a recommendation), potential dismantling of the member-elected Board of Governors, and unknown questions about business functions.
- Rounding out the changes, the board in January notified long-time Executive Director Paula Littlewood that they want to go in a new direction, and her last day with WSBA is March 31.

### *Mandatory Malpractice Insurance*

After an 18-month process, including widespread effort to collect data and member feedback, the board's Mandatory Malpractice Insurance Task Force in January presented its report: The recommendation is to require malpractice insurance (purchased on the open market) as a condition of licensure, with specific exemptions. The board may take action on the recommendation at its May meeting.

### *MCLE requirements*

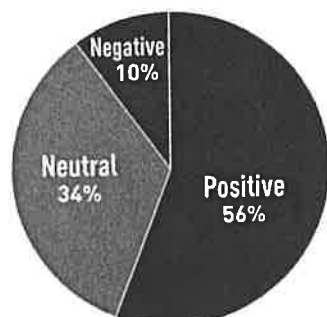
Upon the request of the WSBA Diversity Committee and several minority/specialty bars, the MCLE Board is considering an amendment to require that, of the six required ethics credits for legal professionals, one credit be required in each of these three topics: Inclusion and anti-bias, mental health and addiction, and technology security. The MCLE is currently seeking feedback on its initial recommended rule change.



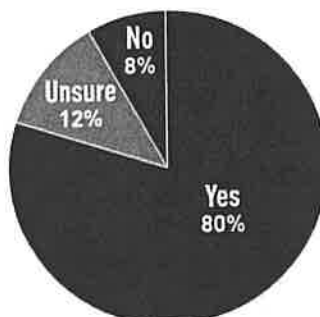
## WSBA Member Survey

Q1 FY19

What is your perception of the WSBA?



Do you know the ways you can be involved with the WSBA?



What is your main source of information about the WSBA?



How members grade the WSBA

WSBA REPORT CARD		FY18 Q3-Q4	FY19 Q1	FY19
✓ Upholding high-quality standards for Washington's legal profession		A	A	
✓ Providing high-quality CLEs		A	A	
✓ Supporting diversity and inclusion in the legal profession		A	A	
✓ Providing high-quality professional programs and services		A-	A-	
✓ Helping members expand access to justice in their communities		B+	A-	
✓ Preparing the legal profession for changes in the future		B+	B+	

Sample comments and themes:

Amazing! When I call with questions someone always answers, and they are very helpful.

I'd like more virtual meetings. It is hard for those of east of the mountains to participate in person.

The WSBA is inclusive. I am a solo practitioner and always feel included, even though I am not a "big law firm".

### Member Survey Participants

SIZE OF LAW FIRM			
Solo	18	100+	5
2-5	22	Govt/Public	25
6-10	11	In-house	11
11-20	8	Other	12
21-100	4		

MEMBER'S CONGRESSIONAL DISTRICT					
District 1	3	District 5	12	District 8	6
District 2	5	District 6	15	District 9	16
District 3	8	District 7S	23	District 10	4
District 4	5	District 7N	15	Out-of-state	4

### Explanation of member survey

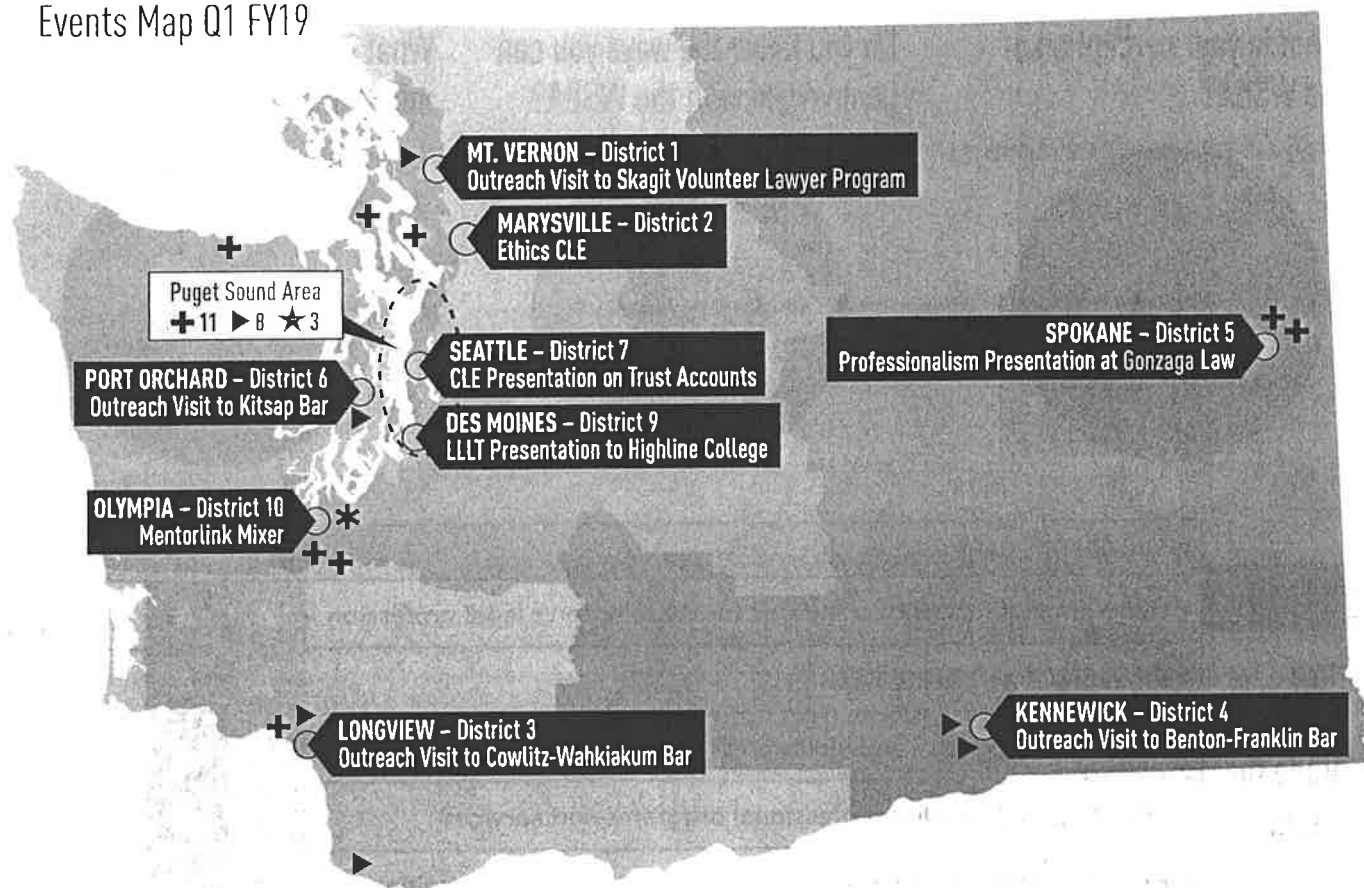
This phone survey will be conducted each quarter by randomly selecting members from the full membership and conducting 10-minute phone calls with them.

The goal for each quarter is to speak to 105 different members. 105 members constitutes a statistically significant sample. Our response rate for Q1 was 11%.



## WSBA Outreach Highlights

### Events Map Q1 FY19



### Select Highlights from Q1

Every quarter, WSBA aims to host an outreach event in each of Washington's ten Congressional districts.

### Events

	Q3-Q4 FY18	Q1 FY19	FY19 Total
▶ WSBA Ambassadorship	55	14	-
* Diversity & Inclusion	38	1	-
★ Professional Programs	11	3	-
◇ Access To Justice/Public Service	21	-	-
+ Ethics/Professional Education	30	19	-

### WSBA Call Center Volume Q1 FY19\*



\*Other groups and teams at WSBA have significant numbers of direct contacts with members that are not reflected in the call center volume.



## Programs & Projects

Mark W. Gifford  
Bar Counsel  
(307) 432-2106  
mgifford@wyobc.org

### Ethics Hotline

The Ethics Hotline is offered to help guide lawyers through the minefields of conflict dilemmas, confidentiality questions, communication concerns, trust accounting problems, and other ethics difficulties unique to the profession. On average, Bar Counsel fields between 5-10 real-time calls/e-mails per day, all from Wyoming lawyers who are trying to make sure they are doing the right thing or seeking ethical guidance in dealing with a tricky matter. These calls are returned within 24 hours, if not sooner. We continue to get very positive feedback from the members! Based on Wyoming's success with the Ethics Hotline, other states have recently adopted a similar approach, including Nebraska and Alaska.

Brandi Robinson  
Modest Means  
Program Coordinator  
(307) 432-2107  
brobinson@wyomingbar.org

### Modest Means Program

The Modest Means Program (MMP) provides low-cost legal assistance to individuals who do not qualify for free legal services, but cannot afford the expertise of attorneys at the standard rate. Attorneys participating in the program agree to assist Modest Means Program clients for no more than \$75 an hour and no more than a \$500 retainer (if necessary). Since its inception in November 2015, 81 lawyers have volunteered to provide services and 189 clients have been successfully placed with an attorney.

Sharon Wilkinson  
Executive Director  
(307) 432-2102  
swilkinson@wyomingbar.org

### Online Mentor Outreach Program

In recognition that Wyoming is a very large state and making mentor/mentee matches has proven difficult in the past, the staff pitched the idea of the Online Mentor Outreach Program. Launched in early 2019, this program is dedicated to providing assistance to new lawyers as they begin their legal careers. Young lawyers are encouraged to post their inquiries on a member-only page of the website. The inquiry will be routed to an experienced and knowledgeable Wyoming lawyer who will contact the young lawyer either by phone or e-mail to provide the guidance they seek.

Cathy Duncil  
Admissions Director  
(307) 432-2103  
cduncil@wyomingbar.org

### Improved Admissions Procedures

Since becoming the 11th UBE jurisdiction in 2012 (first administration in July 2013), significant efforts have gone into improving the admissions process in Wyoming. These include efforts to afford due process to applicants who request special testing accommodations, the adoption of a conditional admission rule for applicants who are in recovery or are working on debt resolution, and improved processes for character and fitness hearings.



Shannon Howshar  
Assistant to Bar Counsel  
(307) 432-2105  
showshar@wyobc.org

Sharon Wilkinson  
Executive Director  
(307) 432-2102  
swilkinson@wyomingbar.org

## Surrogate Lawyer Program

With Wyoming's aging lawyer population (nearly 40% of active-status lawyers in Wyoming are over the age of 60) have come more frequent instances of lawyers with active practices passing away or becoming incapacitated. In such cases, the Wyoming State Bar places a critical support role in recruiting a surrogate lawyer and assisting with practice transition issues, including running ads to let clients know that the lawyer is no longer practicing and facilitating in the transfer or destruction of client files.

## Practice Support Resources

The Wyoming State Bar has ramped up efforts to promote the professional practice of law through several practice management initiatives, including:

### 1 *The Law Office Self-Audit Checklist*

A self-assessment tool that promotes best practices in such areas as client relations, confidentiality, conflicts of interest, docket/calendaring, records management, staff management, financial management (timekeeping-billing-budgeting-financial record keeping and reporting) and professional practice and technology.

### 2 *The Trust Account Handbook*

A handbook which provides practical, easy-to-follow guidance on how to stay out of ethical hot water in opening, maintaining and administering lawyer trust accounts.

### 3 *The Planning Ahead Handbook*

A guide containing checklists and sample forms to help Wyoming lawyers assure that their clients will be protected in the event of the lawyer's passing while also minimizing the burden upon the lawyer's surrogate.

Each of these resources is available as a free download on the Bar's website at [www.wyomingbar.org](http://www.wyomingbar.org).



# 2019 Western States Bar Conference

## Bar Profiles

Bar / Executive Director	Members	Budget	Highest License Fee/Dues	Total Cost to Practice	Staff	Board Members	Board Meetings	Board Term	Sections	Committees
<b>Alaska Bar Association</b> Deborah O'Regan, ED	4,468	\$2.9M	\$650	\$660	17	12	4/Year	3 years	31	14
<b>State Bar of Arizona</b> Joel England, CEO/ED	24,520	\$16.5M	\$485	\$505	107.5	30	9/Year	3 years	30	8
<b>State Bar of California</b> Leah Tamu Wilson, ED	270,000	\$189.0M	\$315	\$430	583	13	6/Year	4 years	0	11
<b>Hawaii State Bar Association</b> Patricia Mau-Shimizu, ED	7,991	\$1.9M	\$210	\$559	13	21	12/Year	Variable	21	16
<b>Idaho State Bar</b> Diane Minnich, ED	5,195	\$3.0M	\$425	\$425	22.5	5	9/Year	3 years	21	10
<b>State Bar of Montana</b> John Mudd, ED	3,956	\$2.4M	\$300	\$495	14	16	4/Year	2 years	18	18
<b>State Bar of Nevada</b> Kimberly Farmer, ED	9,056	\$7.8M	\$450	\$490	49	15	5/Year	2 years	26	13
<b>State Bar of New Mexico</b> Richard Spinello, ED	7,400	\$2.9M	\$255	\$420	25	21	5/Year	3 years	20	9
<b>State Bar Association of North Dakota</b> Tony Weiler, ED	3,100	\$1.4M	\$244	\$380	5	15	6/Year	2 years	8	16
<b>Oregon State Bar</b> Helen Hierschbiel, CEO	15,185	\$21.0M	\$557	\$3857	90	19	5/Year	4 years	43	19
<b>State Bar of South Dakota</b> Andrew Fergel, ED	2,714	\$1.1M	\$315	\$415	4	15	5/Year	3 years	3	38
<b>State Bar of Texas</b> Trey Appfel III, ED	103,415	\$43.3M	\$235	\$300	260	46	4/Year	3 years	48	31

# 2019 Western States Bar Conference

## Bar Profiles

Bar / Executive Director	Members	Budget	Highest License Fee/Dues	Total Cost to Practice	Staff	Board Members	Board Meetings	Board Term	Sections	Committees
Utah State Bar John Baldwin, ED	12,800	\$6.7M	\$425	\$435	41	15	9/Year	3 years	16	12
Washington State Bar Association Paula Littlewood, ED	40,243	\$23.7M	\$453	\$483	141	18	6/Year	3 years	29	15
Wyoming State Bar Sharon Wilkinson, ED	3,019	\$1.7M	\$350	\$355	7	15	6/Year	3 years	10	8
American Bar Association Jack Rives, ED	411,490	\$96.5M	\$467	-	888	44	4/Year	3 years	35	36

## Uniform Certificate of Attendance

This certificate should be filed with the appropriate MCLE Board(s) or Commission(s) within 30 days of the conference.

**Sponsor:** Washington State Bar Association  
**Conference Title:** Western States Bar Conference  
**Date:** March 28 - 30, 2019  
**Location:** Kaua'i Marriott Resort, Lihu'e, HI  
**WA Activity ID:** 1102137

### Washington State CLE Credits

This program is approved in WA for a total of:

5.50 CLE Credit  
 2.75 Ethics Credits

**NOTE:** Introductory remarks, keynote addresses, business meetings, breaks, receptions, etc., are not included in the computation of credits.

Complete a certificate for each state in which you are required to file. Rules for CLE in some states require the provider to file attendance with the regulator as a service to lawyers. Please confirm jurisdictional reporting requirements with the provider or state regulator.

### TO BE COMPLETED BY ATTORNEY:

By signing below, I certify that I attended the activity described above and am entitled to claim

\_\_\_\_\_ CLE credit hours

\_\_\_\_\_  
 Attorney Name (Print)

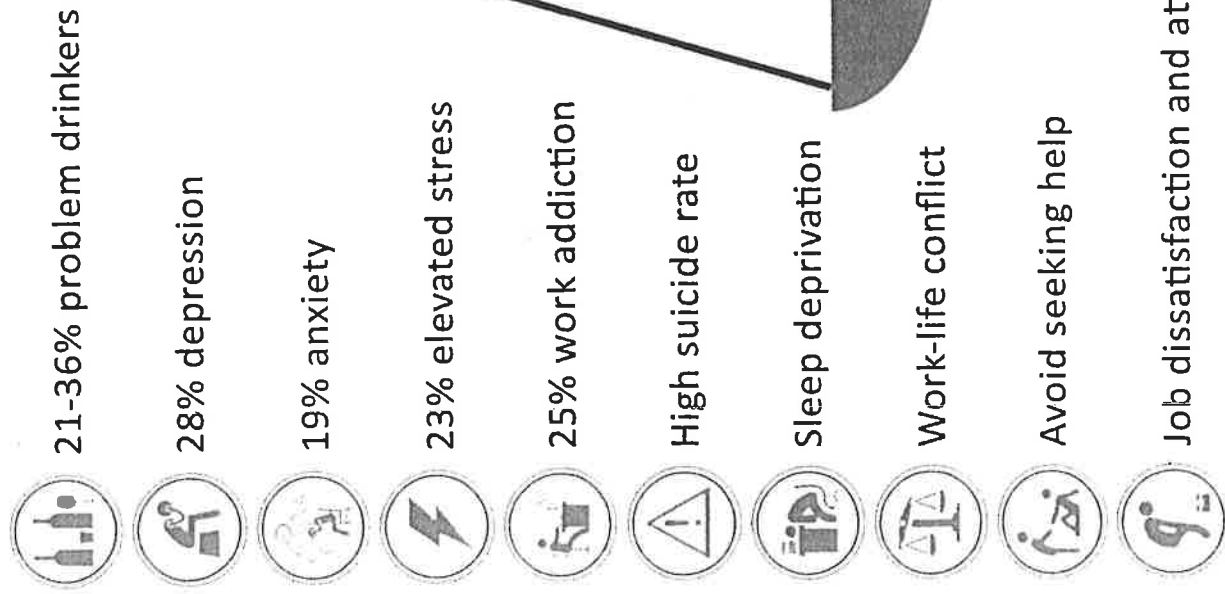
\_\_\_\_\_  
 Membership, Registration or Supreme Court Number

\_\_\_\_\_  
 Attorney Signature

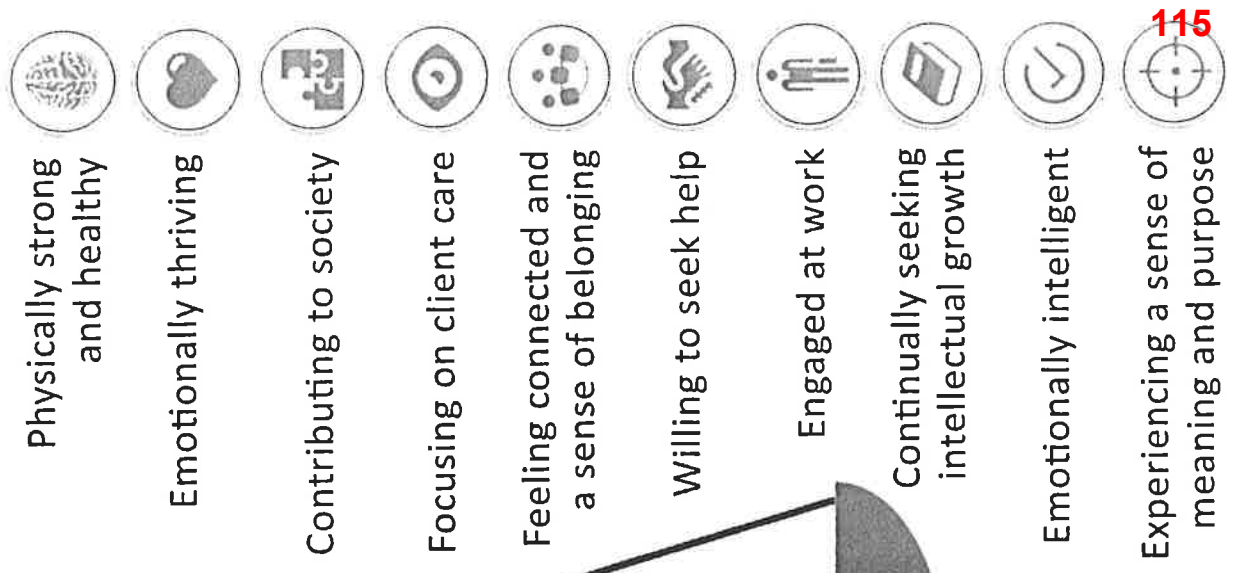
\_\_\_\_\_  
 Date

\_\_\_\_\_  
 State where credits are to be registered

## OUR CHALLENGES



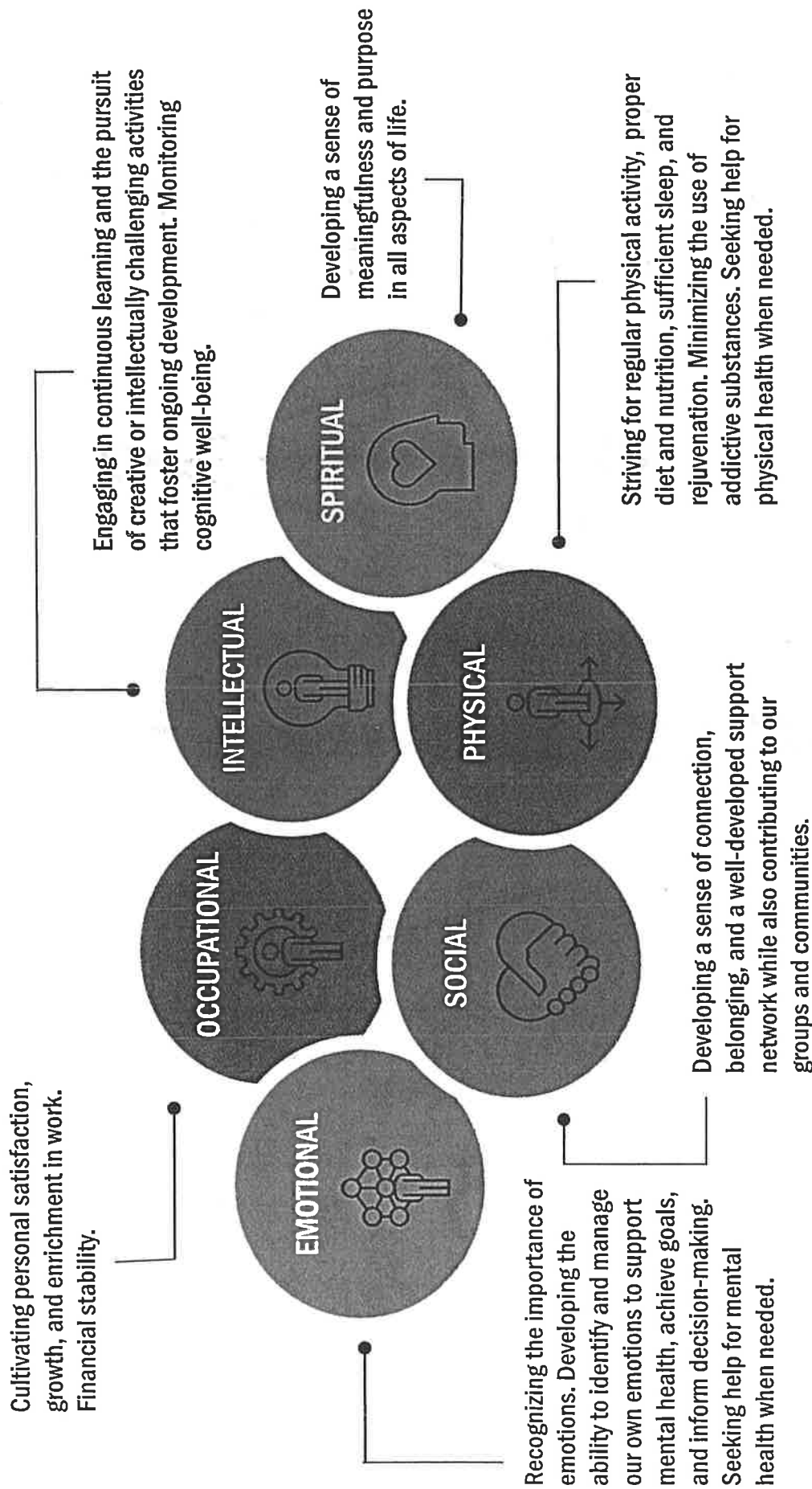
## OUR POTENTIAL



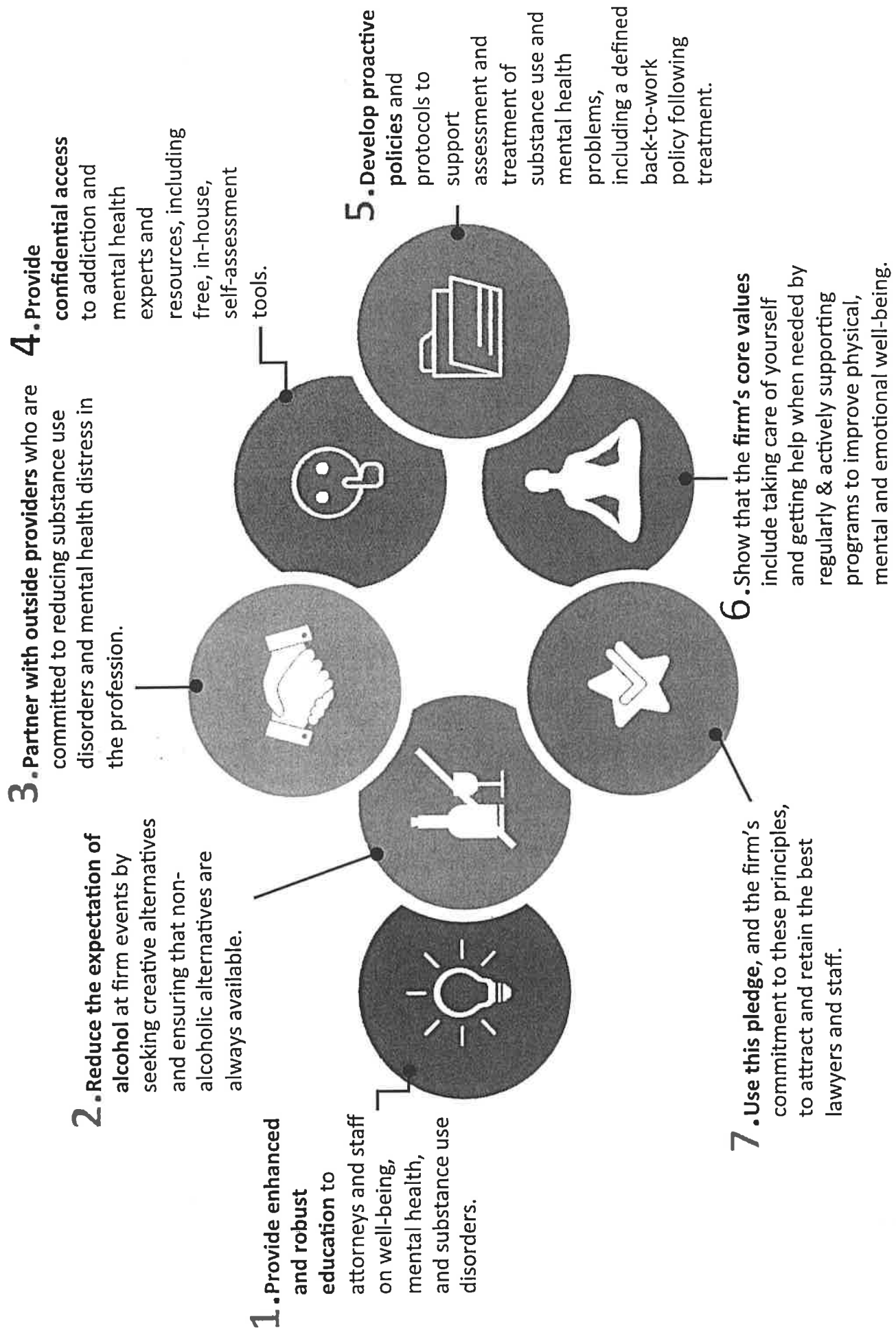


## Defining Lawyer Well-Being

A continuous process in which lawyers strive for thriving in each dimension of their lives:



# The Well-Being Pledge for Legal Employers



# ☺ You've got what it takes ☺

**Ask  
R U OK?**

**or something like this:**

"How you travelling?"

**No, I'm not OK.**

**Dig a bit deeper:**

"What's been happening?"

"How long has that  
been the case?"

"I'm ready to listen  
if you want to talk."

**Yes, I'm fine.**

**But your gut says  
they're not:**

"It's just that you don't seem  
your old self lately."

"I'm always here if  
you want to chat."

"Is there someone else  
you'd rather talk to?"

**Listen; don't judge**

**Encourage action and offer support:**

"How can I help?"

"What would help take the pressure off?"

"What do you enjoy doing? Making time for that can really help."

"Have you thought about seeing a professional?"

**Make time to check in:**

"Let's chat again next week."



# WSBC 2019

First Name	Last Name	Affiliation	Title	Email	Phone
Billie	Addleman	Wyoming State Bar	Vice President	<a href="mailto:baddleman@hirstapplegate.com">baddleman@hirstapplegate.com</a>	307.632.0541
Nathan	Alder	Christensen & Jensen, P.C.		<a href="mailto:nathan.alder@chrisjen.com">nathan.alder@chrisjen.com</a>	801-323-5000
Trey	Apffel	Satate Bar of Texas	Executive Director	<a href="mailto:tapffel@texasbar.com">tapffel@texasbar.com</a>	512-427-1500
John	Bachofner	Oregon State Bar	Governor	<a href="mailto:john.bachofner@jordanramis.com">john.bachofner@jordanramis.com</a>	503-431-6386
John	Baldwin	Utah State Bar	Executive Director	<a href="mailto:jbaldwin@utahbar.org">jbaldwin@utahbar.org</a>	801-531-9077
Kris	Becker	State Bar of New Mexico	Director of Governance & Admin	<a href="mailto:kbecker@nmbar.org">kbecker@nmbar.org</a>	505-797-6038
Brent	Bennett	Alaska Bar Association	President	<a href="mailto:brent.bennett@alaska.gov">brent.bennett@alaska.gov</a>	907-451-3097
Dan	Bridges	Washington State Bar Association	Governor	<a href="mailto:dan@mcdblaw.com">dan@mcdblaw.com</a>	425-462-4000
Dickson	Burton	State Bar of New Mexico	President	<a href="mailto:hdburton@traskbritt.com">hdburton@traskbritt.com</a>	801-532-1922
Bob	Carlson	American Bar Association	President	<a href="mailto:BCarlson@cplawmt.com">BCarlson@cplawmt.com</a>	406-782-5800
Dan	Clark	Washington State Bar Association	Governor	<a href="mailto:DandlarkBOG@yahoo.com">DandlarkBOG@yahoo.com</a>	509-969-4731
Chris	Costantino	Oregon State Bar	President	<a href="mailto:ccostantino@osbar.org">ccostantino@osbar.org</a>	503 226-2966
Steve	Crossland	Washington State LLLT Board	Chair	<a href="mailto:steve@crosslandlaw.net">steve@crosslandlaw.net</a>	509.782.4418
Tina	Cruz	State Bar of New Mexico	President-Elect	<a href="mailto:tina.cruz@cruzlaw-nm.com">tina.cruz@cruzlaw-nm.com</a>	575-758-7958

Richard	Dibblee	Utah State Bar	Associate Director	<a href="mailto:Richard.dibblee@utahbar.org">Richard.dibblee@utahbar.org</a>	801-531-9077
Jerry	Dixon	State Bar of New Mexico	President	<a href="mailto:jdixon@dsc-law.com">jdixon@dsc-law.com</a>	505-244-3890
Cassandra	Dyke	Oregon State Bar	Executive Assistant	<a href="mailto:cdyke@osbar.org">cdyke@osbar.org</a>	503-431-6386
Joel	England	State Bar of Arizona	Executive Director	<a href="mailto:joel.england@staff.azbar.org">joel.england@staff.azbar.org</a>	602-340-7200
Kimberly	Farmer	State Bar of Nevada	Executive Director	<a href="mailto:gales@nvbar.org">gales@nvbar.org</a>	702-382-2200
Heather	Farnsworth	Utah State Bar	Commissioner	<a href="mailto:heather@matchfarnsworth.com">heather@matchfarnsworth.com</a>	801-532-4556
Andy	Fergel	State Bar of South Dakota	Executive Director	<a href="mailto:andrew.fergel@sdbar.net">andrew.fergel@sdbar.net</a>	605-224-7554
Aubrey	Fiebel Korn - Zuger	State Bar Association of North Dakota	President-Elect	<a href="mailto:azuger@fredlaw.com">azuger@fredlaw.com</a>	701-237-8200
Eric	Foster	Oregon State Bar	Governor	<a href="mailto:efoster@osbar.org">efoster@osbar.org</a>	541-324-4759
Mauricio	Fronseca	MemberCentral	Sponsor	<a href="mailto:mfonseca@membercentral.com">mfonseca@membercentral.com</a>	800-701-4728
Weston T.	Graham	Wyoming State Bar	President	<a href="mailto:wes@barneygrahamlaw.com">wes@barneygrahamlaw.com</a>	307-763-4483
Helen	Hershbiel	Oregon State Bar	CEO/Executive Director	<a href="mailto:hhierschbiel@osbar.org">hhierschbiel@osbar.org</a>	503-431-6361
Kim	Hunter	Washington State Bar Association	Governor	<a href="mailto:kim@khunterlaw.com">kim@khunterlaw.com</a>	253-397-3520
Robert	Jarosh	Wyoming State Bar	Immediate Past President	<a href="mailto:riarosh@hirstaplegate.com">riarosh@hirstaplegate.com</a>	307-632-0541
Dave	Kerrick	Idaho State Bar	Commissioner	<a href="mailto:srose@isb.idaho.gov">srose@isb.idaho.gov</a>	208.334.4500
Russell	Knight	Washington State Bar Association	Governor	<a href="mailto:rknightbog@gmail.com">rknightbog@gmail.com</a>	253-627-1091
Derek	Kobayashi	Hawaii State Bar Association	President	<a href="mailto:dkobayashi@schlackito.com">dkobayashi@schlackito.com</a>	808-523-6060



Paula	Littlewood	Washington State Bar Association	Executive Director	<a href="mailto:PaulaL@wsba.org">PaulaL@wsba.org</a>	206.727.8244
Rajeev D.	Majumdar!	Washington State Bar Association	President-Elect	<a href="mailto:rajeev@northwhatcomlaw.com">rajeev@northwhatcomlaw.com</a>	206-214-5177
Paul	Matteoni	State Bar of Nevada	President-Elect	<a href="mailto:gales@nvbar.org">gales@nvbar.org</a>	702-382-2200
Melinda	McCorkle	Wyoming State Bar	Commissioner	<a href="mailto:melinda@kmpilaw.net">melinda@kmpilaw.net</a>	307-761-0569
Eddie	Medina	Oregon State Bar	Governor	<a href="mailto:emedina@osbar.org">emedina@osbar.org</a>	503 336-4007
Chris	Meserve	Washington State Bar Association	Governor	<a href="mailto:meservebog@yahoo.com">meservebog@yahoo.com</a>	360-943-6717
Diane	Minnich	Idaho State Bar	Executive Director	<a href="mailto:dminich@isb.idaho.gov">dminich@isb.idaho.gov</a>	208-334-4500
Brandi	Monger	U.S. Federal Courts		<a href="mailto:bmonger2@yahoo.com">bmonger2@yahoo.com</a>	307-214-1144
Pam	Moore	State Bar of New Mexico	Judges & Lawyers Assistance Program Director	<a href="mailto:pmoore@nmbar.org">pmoore@nmbar.org</a>	505-797-6003
John	Mudd	State Bar of Montana	Executive Director	<a href="mailto:jmudd@montanabar.org">jmudd@montanabar.org</a>	406-447-2203
Kelly	Neville	Wyoming State Bar	Commissioner	<a href="mailto:kneville@brownandhiser.law">kneville@brownandhiser.law</a>	307-760-8973
Eric	Nord	State Bar of Montana	President	<a href="mailto:enord@cristlaw.com">enord@cristlaw.com</a>	406-255-0400
Herm	Olsen	Utah State Bar	President-Elect		435-752-2610
Deborah	O'Regan	Alaska Bar Association	Executive Director	<a href="mailto:oregan@alaskabar.org">oregan@alaskabar.org</a>	907-272-7469
Hon. Michael	Oths	Idaho State Bar	Commissioner	<a href="mailto:moths@adaweb.net">moths@adaweb.net</a>	
Patrick	Palace	Palace Law	Attorney-WA	<a href="mailto:toni@palacelaw.com">toni@palacelaw.com</a>	253-627-3095

Athan	Papailiou	Washington State Bar Association	Governor	athan.papailiou@pacificallawgroup.com	206-602-1245
Joe	Patz	Fastcase	Sponsor	Joe@Fastcase.com	202.999.4981
Tom	Peachey	Oregon State Bar	Governor	tpeachey@osbar.org	541 296-6375
Zachary	Pelham	State Bar Association of North Dakota	President	zep@pearce-durick.com	701-223-2890
Judy	Perry Martinez	American Bar Association	President-Elect	erin.kresse@amaricanbar.org	312-988-5308
Bill	Pickett	Washington State Bar Association	Governor	bill@wbpickett-law.com	509-952-1450
Rick	Pocker	State Bar of Nevada	President	gales@nvbar.org	702-382-2200
Reed	Rasmussen	State Bar of South Dakota	President	rrasmussen@sbslaw.net	
Liani	Reeves	Oregon State Bar	President-Elect	lreeves@osbar.org	503 721-2645
Pamela	Reiter	WSBC	President	pamela@janklowabdallah.com	605.338.4304
Phil	Rosenthal	Fastcase	Sponsor	phil@fastcase.com	
Traci	Rossi	Oregon State Bar	Governor	trossi@osbar.org	503-358-4318
Lauren	Shurman	Salt Lake County Bar Association	President-Elect	laren.shurman@stoel.com	801-703-4469
Lisa	Smith-Crissey	Casemaker	Sponsor	lisasmith-crissy@casemakerlegal.com	434.284.0057
Richard	Spinello	State Bar of New Mexico	Executive Director	rspinello@nmbar.org	505-797-6090
Alec	Stephens	Washington State Bar Association	Governor	Alecstephensjr@gmail.com	206-941-5690
Frank	Stevenson	State Bar of Texas	Past President	fstevenson@lockelord.com	214-740-8469

Rob	Stone	Alaska Bar Association	President-Elect	<a href="mailto:rob@stonelawalaska.com">rob@stonelawalaska.com</a>	(907) 276-4190
Cara	Tangaro	Utah State Bar	Commissioner	<a href="mailto:cara@tangarolaw.com">cara@tangarolaw.com</a>	801-673-9984
Teresa	Thybo	Wyoming State Bar	Commissioner	<a href="mailto:thybot@sweet.wy.us">thybot@sweet.wy.us</a>	307-630-3317
Alex	Vakula	State Bar of Arizona	Past President	<a href="mailto:alex@vakulalaw.net">alex@vakulalaw.net</a>	928-445-3500
Tom	Vick	State Bar of Texas	Immediate Past President	<a href="mailto:tvick@vickcarneylaw.com">tvick@vickcarneylaw.com</a>	817-235-4272
Tony	Weiler	State Bar Association of North Dakota	Executive Director	<a href="mailto:tony@sband.org">tony@sband.org</a>	701-220-5846
Shawn	Wilde	Wyoming State Bar	Commissioner	<a href="mailto:swildelaw@gmail.com">swildelaw@gmail.com</a>	307-333-3840
Jeff	Willis	State Bar of Arizona	President	<a href="mailto:iwillis@swlaw.com">iwillis@swlaw.com</a>	520-884-1294
Katie	Woods	Utah State Bar	Commissioner	<a href="mailto:katie@woodslawyer.com">katie@woodslawyer.com</a>	435-673-1882



## **State Bar of New Mexico**

Mandatory Bar

7,400 active members

**2019 President:** Gerald G. Dixon, 505-244-3890, [jdixon@dsc-law.com](mailto:jdixon@dsc-law.com)

**Executive Director:** Richard B. Spinello, Esq., 505-797-6090, [rspinello@nmbar.org](mailto:rspinello@nmbar.org)

### **Member Database Evaluation**

*Richard B. Spinello, Esq., Executive Director, 505-797-6090, [rspinello@nmbar.org](mailto:rspinello@nmbar.org)*

We have begun a Member Association Software Evaluation to improve the membership database and data collection and reporting capabilities. For the first time, this project will include the Supreme Court's internal database, the Disciplinary Board, and Board of Bar Examiners. If feasible, New Mexico may establish a single database for all attorneys and the judiciary. The feasibility report is due at the end of 2019.

### **Member Communication and Outreach**

*Evann Kleinschmidt, Director of Communications, 505-797-6087, [ekleinschmidt@nmbar.org](mailto:ekleinschmidt@nmbar.org)*

For almost 60 years, the State Bar has published a weekly newsletter-style publication (containing announcements, articles, court content, opinions, and advertising). In January, we changed the frequency of this publication to every other week. We added online content and a digital publishing platform to help with the transition. We are considering whether to continue printing every other week or move to electronic only in 2020.

### **Member Diversity Survey**

For the fourth time in 40 years, the State Bar of New Mexico is conducting a decennial diversity study to continue to provide information and recommendations on improving the diversity of the bar membership. The 2019 decennial survey will include a second report updating a previous Task Force on Women in the Legal Profession report. These two reports will include a survey of the membership and focus groups and should be completed by the end of 2019.

### **State Bar / Bar Foundation Relationship**

*Richard Spinello, Esq., Executive Director, 505-797-6090, [rspinello@nmbar.org](mailto:rspinello@nmbar.org)*

The State Bar of New Mexico and the New Mexico State Bar Foundation have interlocutory boards, and we are currently undertaking an effort to review the relationship between the two organizations, document the relationship and establish more independence between the two organizations. This effort will include a Memorandum of Understanding between the two organizations as well as updated policies and bylaws.

### **CLE: How to Practice Series**

*Christine Morganti, Assistant Executive Director of the New Mexico State Bar Foundation, 505-797-6028, [cmorganti@nmbar.org](mailto:cmorganti@nmbar.org)*

In 2017, our Bar Foundation's Center for Legal Education debuted the How to Practice Series, a CLE series dedicated to providing practitioners with hands-on basic skills they can use right away. It is

intended for new lawyers and those changing or adding practice areas. Attendees receive an overview of substantive law, hands-on training and sample forms, and ethics and professionalism credits. We have offered courses on Estate Planning, Family Law, Probate Law, Guardianship Law and Civil Litigation. The program has been well received and is very successful.

#### **Judges and Lawyers Assistance Program**

*Pamela Moore, MA, LPCC, JLAP Program Director, 505-797-6003, pmoore@nmbar.org*

You heard all about this program during the Thursday *How to Build a Well-being Movement* panel, and we're excited to see this program grow.

### **New Collaboration with the New Mexico Supreme Court**

#### **MCLE Transition**

*Stormy Ralstin, Esq., General Counsel, 505-797-6050, sralstin@nmbar.org*

In 2018, the State Bar assumed regulation of the Minimum Continuing Legal Education program in New Mexico (previously administered by the Supreme Court). The transition was successful and we are excited to grow the program. Our goals include providing exceptional customer service; certifying courses on relevant legal topics and emerging areas of law practice management; investing in new technology; and encouraging modern training and delivery methods.

#### **Legal Specialization**

*Stormy Ralstin, Esq., General Counsel, 505-797-6050, sralstin@nmbar.org*

The Supreme Court decided to eliminate its Legal Specialization Program at the end of 2018. The State Bar stepped up to assist the Court in winding down the current program, which includes monitoring the Supreme Court specialists through 2023. In addition, the Supreme Court gave the State Bar permission to begin a Legal Specialization program of its own design and the Board of Bar Commissioners is currently studying that issue through its regulatory committee.

#### **Judicial Conclave and State Bar Annual Meeting**

*Kris Becker, Director of Governance & Administration, 505-797-6038, kbecker@nmbar.org*

In 2020, New Mexico will see a historic gathering of judges and lawyers in the state. We will be holding our State Bar Annual Meeting in coordination with the annual Judicial Conclave. We are excited to give our members a chance to socialize and network with judges while examining issues that affect both groups.

#### **Licensed Legal Technicians (LLTs)**

*Richard Spinello, Esq., Executive Director, 505-797-6090, rspinello@nmbar.org*

New Mexico is looking at LLTs as we consider what place licensed legal technicians have in our legal system. We are participating in a Supreme Court Working Group researching the issues, and an implementation plan which will be due to the Supreme Court at the end of 2019.

#### **Online Dispute Resolution (ODR)**

*Richard Spinello, Esq., Executive Director, 505-797-6090, rspinello@nmbar.org*

A pilot project for Online Dispute Resolution has begun in several New Mexico Judicial Districts. The State Bar is working with the Supreme Court's Innovation Team in establishing, implementing and evaluating this exciting pilot project. The program has been established for all consumer debt cases in the pilot jurisdictions and if successful, will expand statewide.



## **Report of Oregon State Bar 2019 Western States Bar Conference**

### **Diversity Action Plan**

Adopted in January 2018 by the Board of Governors, the OSB Diversity Action Plan is an ambitious undertaking to infuse equity and inclusion throughout all the work of the Oregon State Bar—in our service to the public, the members, and in our operations. The draft 2018 DAP Implementation Report was received by the BOG at its meeting in February, and the results are impressive.

The plan can be found here: <https://www.osbar.org/docs/diversity/2018-20DAP.pdf>

The report can be found starting on page 4 of the February 22, 2019 BOG agenda, here: <http://www.osbar.org/docs/leadership/bog/agendas/BOGAgendaOPEN20190222.pdf>.

### **Civil Legal Needs Study**

In 2018, the Oregon State Bar, the Campaign for Equal Justice, the Oregon Law Foundation, the Judicial Department of the State of Oregon and the Oregon Department of Justice, partnered to commission a study measuring the civil legal needs of low-income Oregonians. The last time such an assessment was done was in 2000. The results of the study were released last month and are stark, but not surprising. The data is crucial to building and maintaining support for adequate funding of legal aid and has been picked up by a number of media outlets in Oregon.

An executive summary of the report can be found here:

<https://olf.osbar.org/files/2019/02/Barriers-to-Justice-2018-OR-Civil-Legal-Needs-Study.pdf>.

### **Citizens' Campaign for Court Funding**

The Oregon Legislature is in full session in 2019, and Oregon courts are in dire need of a higher appropriation of funds from the state budget. The Citizens' Campaign for Court Funding is a bar-sponsored initiative carried out in partnership with the Chief Justice of the Oregon Supreme Court, that is designed to engage Oregon business and community leaders to advocate for adequate funding of Oregon courts.

The Citizens' Campaign webpage is here: <https://publicaffairs.osbar.org/court-funding/>.

### Referral and Information Services

In 2018, the OSB Board of Governors began its review of the Oregon State Bar Referral and Information Services Department (RIS) to ensure that it is aligned with OSB mission and operating efficiently and effectively. The RIS offers a number of programs designed to increase the public's ability to access the justice system. Perhaps the most widely known and successful RIS program is the Lawyer Referral Service (LRS), which fields nearly 80,000 calls and 6,500 online referral requests each year.

In addition to the LRS, the RIS Department includes the following programs that help both the people and the lawyers of Oregon:

- Referrals to other community and pro bono resources
- Modest Means Program (MMP) (reduced-fee legal services for low and moderate-income clients in the areas of family law, landlord-tenant disputes, foreclosure, and criminal defense)
- Problem Solvers (pro bono program offering legal advice for youth ages 13-17)
- Military Assistance Panel (MAP) (connects military personnel and their families in Oregon with pro bono legal assistance)
- Lawyer to Lawyer (connects Oregon lawyers working in unfamiliar practice areas with experienced lawyers willing to offer informal advice at no charge)

The basic LRS operating systems (e.g., staffed call center, computer hardware and software), as well as the its revenue, support the other RIS programs. In September 2012, LRS began assessing panelists a percentage fee on the amount earned from the referral. Today the RIS Department is funded entirely by fees remitted to the bar from LRS panel members. In fact, since implementation of the percentage fee model, the LRS has collected revenue that has exceeded budget projections for the department.

At its meeting in February 2019, the BOG decided to use the excess LRS revenue to fund other access to justice programming at the bar, including the development of on-line public information videos and publications, additional modest means and pro bono panels, the development of an app for tenants who receive eviction notices, and the exploration of remote facilitation services in partnership with the Oregon courts.



## State Bar of South Dakota

President  
Reed Rasmussen  
PO Box 490  
Aberdeen, SD 57042  
(605) 255-5420  
[rrasmussen@sbslaw.net](mailto:rrasmussen@sbslaw.net)

President Elect  
Steven K. Huff  
PO Box 667  
Yankton, SD 57078  
(605) 665-5009  
[steve@mwhlawyers.com](mailto:steve@mwhlawyers.com)

Executive Director & Secretary-Treasurer  
Andrew L. Fergel  
222 E. Capitol Ave. #3  
Pierre, SD 57501  
(605) 224-7554  
[andrew.fergel@sdbar.net](mailto:andrew.fergel@sdbar.net)

Board of Bar Commissioners  
Dennis L. Duncan    Rodrick L. Tobin  
Dusty Ginsbach    Kellen B. Willert  
Arthur M. Hopper    Jennifer M. Williams  
Edward S. Hruska III    Richard M. Williams  
Aaron P. Pitcher    Joshua Wurgler  
Jason R.F. Sulton    Colleen M. Zea  
McLean A. Thompson Kerver

### SOUTH DAKOTA REPORT

Pursuant to the request of Pamela Reiter, this constitutes a report regarding developments in South Dakota over the past year.

This has been a year of transition in South Dakota. After serving as the Executive Director for 29 years, Tom Barnett resigned last summer. He was replaced by Andy Fergel. Andy has spent the last nine months familiarizing himself with the operation of the State Bar. He has instituted some changes and is doing a great job. It has been a pleasure working with him.

The University of South Dakota Law School just recently hired a new dean. The Bar was involved in this process as the Chief Justice of the Supreme Court and I were part of the Search Committee. We had a number of excellent applicants. In the end, the University made a bold decision to hire Neil Fulton, a longtime member of the South Dakota Bar. Neil previously worked in private practice, served as Governor Mike Rounds Chief of Staff and, most recently, has been serving as the Public Defender for the States of South Dakota and North Dakota. We look forward to working with Neil when he takes over as Dean of the Law School in June.

The South Dakota Bar achieved a significant milestone during the recently completed session of the South Dakota Legislature. For the first time ever, the Legislature provided funding for legal services. The Legislature provided \$50,000 for ongoing funding. For the first time, the Bar hired outside lobbyists this year. The efforts of the lobbyists, along with those of Andy Fergel, other members of the Bar, and supportive legislators were key to obtaining the funding from the Legislature.

South Dakota has been a leader in the nation in the development of a rural practice program. Another favorable development in the Legislature this year was approval for the continuation of the Rural Attorney Recruitment Program. This came about due to the joint efforts of the Chief Justice and the Bar.

During Pamela Reiter's term as president, the Bar developed a new lawyer referral service. We are still working to increase the number of attorneys participating in the service. Plans are being made to advertise the service to the general public.

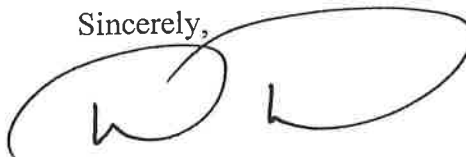
Other activities that have occurred over the past year include a CLE retreat facilitated by Jennifer Lewin from the ABA. We are attempting to address issues with declining participation

in CLE programs. We have a Strategic Planning Retreat scheduled for May which will address a reboot of the Strategic Plan for the Bar. We have also been involved in ongoing upgrades to the Bar's website utilizing in-house resources.

One of the issues the Bar Commission is struggling with this year is Model Rule 8.4(g). A few years ago the Bar Commission rejected adoption of the Model Rule adopted by the ABA but tasked the Ethics Committee with proposing some alternative rules to address the issues of harassment and discrimination. The Ethics Committee proposed three alternatives to the Bar Commission last October, none of which were accepted. Further discussion concerning this issue is anticipated for our upcoming meeting in April.

It has been an interesting year to serve as President of the South Dakota Bar. If you have any questions about anything going on in South Dakota, please feel free to contact me, Executive Director Andy Fergel or President-elect Steve Huff at either the e-mails or phone numbers listed above.

Sincerely,

A handwritten signature in black ink, appearing to be 'RR', enclosed within a large, loopy oval shape.

Reed Rasmussen  
President, State Bar of South Dakota

RR:ko

## **Roll Call 2019: CURRENT ACTIVITIES AND CONCERNS**

- Should the Bar buy a building?
- Likely moving annual convention to the fall to coincide with judicial conference
- Nov. 30 earthquake: disaster legal aid / Outside lawyers allowed to do pro bono
- Scholarship program re-instituted
- Will be hiring new Bar Counsel
- 10<sup>th</sup> annual MLK Day clinic in Anchorage, Juneau, Fairbanks and Palmer
- This year reciprocity & UBE score transfer admissions were more than bar exam admissions
- Supreme Court asked Bar to review bar exam cut score
- First year with electronic bar cards; hard copy on request
- Revised bylaws on resignation /reinstatement; phasing out senior lawyer discount

Brent Bennett, President  
[Brent.bennett@alaska.gov](mailto:Brent.bennett@alaska.gov)

Rob Stone, President-elect  
[rob@stonelawalaska.com](mailto:rob@stonelawalaska.com)

Deborah O'Regan, Executive Director  
[oregan@alaskabar.org](mailto:oregan@alaskabar.org)



# STATE BAR OF MONTANA 131

Western States Bar Conference  
March 2019

## STRATEGIC PLAN

The State Bar of Montana (SBM) adopted a two-year strategic plan in September 2018 focused on improving external communication with members and the public, as well as improving internal processes and operations, including the bar's information technology and digital infrastructure. Chris Newbold of ALPS facilitated the planning process. Toward the goals of the plan, SBM recently completed an in-depth digital consulting project and is in the process of examining the consultants' recommendations and choosing which projects to adopt and focus on during the next year.

## DUES INCREASE

In early 2018, SBM received approval from the Montana Supreme Court to increase member dues - the first dues increase since 2009 - which raised member dues by \$100 for active members (slightly less for inactive) and brought the total cost to practice in Montana for active members to \$495. There was little public opposition to the increase, with just three members filing public comments opposed to the increase.

## LAWYER WELL-BEING TASK FORCE

Montana is launching its own well-being task force with leaders from the Montana legal community, including its chair, Hon. James J. Shea of the Montana Supreme Court. Plans include a survey of the Montana bar, as well as close work with the state's lone law school to examine law student well-being. SBM also continues to focus on well-being issues of particular importance in rural parts of the state, including retirement/career transitions for the bar's significant graying demographic.

## ACCESS TO JUSTICE

A bill to increase court filing fees to fund access to justice efforts, championed by the Montana Supreme Court's Access to Justice Commission, which was supported by SBM, was defeated in committee during the 2019 Montana Legislature. SBM continues to support efforts such as local self-help law centers, which are an important part of the access to justice framework in Montana. For example, the self-help center in Billings, Montana handled 600 inquiries in January 2019 with only 3 employees in a community of 125,000 people.

## UPDATE TO MONTANA RULES OF PROFESSIONAL CONDUCT

The SBM Ethics Committee has proposed a major overhaul of the Montana Rules of Professional Conduct to align more of Montana's rules with the ABA Model Rules. The Montana Supreme Court has put the proposal out for public comment.

## AMERICAN BAR ASSOCIATION PRESIDENCY

Finally, SBM is wrapping up a historic and busy year with member Bob Carlson's presidency of the American Bar Association. Montana is honored to be hosting both a meeting of the American Bar Association Board of Governors and the 2019 Jackrabbit Bar Conference later this spring.

Western States Bar Conference  
Report of the State Bar Association of North Dakota  
President Zachary Pelham

We have been busy in North Dakota, as you know, defending the Unified Bar in *Fleck v. Wetch*. We will continue to do so, and our brief in response to Fleck's is due this Friday. We have worked closely with many of you, and also the State Bar of Michigan and Missouri who plan to draft Amicus Briefs.

Other Projects of Note:

1. Adequate funding for our state's only Law School. Proposed an increase to our state's civil filing fee which is currently \$80. Our proposal was to increase the fee by \$100, which would raise about \$2.3 million per year, which is about the average short fall the SOL is facing.
2. Outreach to Local Bars. This is an ongoing priority, driven by our Strategic Plan.
3. Disaster Plan. The plan will be utilized by both our members, and the public should a disaster strike.

**TAB**  
**9**

**UTAH STATE BAR  
BOARD OF BAR COMMISSIONERS  
MINUTES**

**MARCH 7, 2019**

**ST. GEORGE, UTAH**

- In Attendance:** President H. Dickson Burton and President-elect Herm Olsen.  
Commissioners: Grace Acosta, Steven Burt, Heather Farnsworth, Chrystal Mancuso-Smith, Mark Morris, Mark Pugsley, Tom Seiler, Cara Tangaro, Heather Thuet, and Katie Woods.
- Ex-Officio Members:** Dean Robert Adler, Nate Alder, Abby Dizon-Maughan, John Lund, Sky Lazaro (for Women Lawyers), Grant Miller (for YLD), and Lorraine Wardle.
- Not in Attendance:** Mary Kay Griffin. Ex-Officio Members: Erik Christiansen, Amy Fowler, Margaret Plane, Robert Rice, Dean Gordon Smith and Sarah Starkey.
- Also in Attendance:** Executive Director John C. Baldwin and General Counsel Elizabeth A. Wright.

**Minutes: 1:15 p.m. start**

**1. President's Report: H. Dickson Burton**

- 1.1 Review Spring Convention Schedule:** Herm Olsen reviewed the schedule and highlights of the convention. Convention has 447 registrants, a record number for the convention.
- 1.2 Report on Legislative Session and Meeting with Governor Herbert.** Dickson Burton reported on the meeting he, Herm Olsen and John Baldwin had with Governor Herbert three weeks ago. The Commission discussed the proposed tax bill (H.B.441) and the Bar's efforts to oppose the bill on access to justice grounds. Mark Pugsley pointed out that many members may not be aware of the limitations on the Bar's ability to lobby the legislature.
- 1.3 Report on national Conference of Bar Presidents Meeting.** Dickson Burton reported on the meeting which took place in Las Vegas in January 2019.
- 1.4 Report on Wellbeing Committee Recommendations.** Dickson Burton noted that Justice Petersen will be presenting the Wellbeing Committee's report and Recommendations on Saturday at the Spring Convention. Recommendations for the Bar will be to assist with a baseline study of lawyer wellbeing and to provide more wellbeing CLE programming.

- 1.5 **Confirm Next Commission Meeting Changed to April 19<sup>th</sup>.** Meeting will be in Provo at a location to be determined.
- 1.6 **Report on Summer Convention in Park City.** Dickson Burton reported that Co-Chairs Judge Eve Furse and Jonathan Hafen have put together an excellent program that will take place in July at the Canyons in Park City.
- 1.7 **Reminder of Need to Make Park City Hotel Reservation.** Commissioners were reminded to make hotel reservation for the July 2019 Summer Convention.

## 2. Action Items

- 2.1 **Select Nominees to First District Nominating Commission.** After discussing the applicants, **Grace Acosta moved to nominate Janette White, Jonathan M. Nash, Brandon Baxter and Miles P. Jensen to serve on the First District Judicial Nominating Commission.** Tom Seiler seconded the motion which passed unopposed.
- 2.2 **Select Nominees to Third District Nominating Committee.** After discussing the applicants, the Commission conducted two rounds of secret balloting. **Cara Tangaro and Sky Lazaro recused themselves because they were both applicants.** After the votes, the Commission nominated **Cara Tangaro, Lauren Barros, Lesley Manley, Jesse Nix, Daphne Oberg, and Michael J. Langford** to serve on the Third District Judicial Nominating Commission
- 2.3 **Access to Justice Committee Report.** Heather Thuet reported on the Committee's desire to change its name to the "Access to Justice Commission." Heather also reported on the Utah Bar Foundation's offer to provide tiered, three-year funding for a full-time staff lawyer to work in the Bar's Access to Justice office. **Grace Acosta moved to accept the Committee's recommendation for a name change and to accept the funding proposal for the new employee.** Cara Tangaro seconded the motion which passed unopposed.
- 2.4 **Approve LPP License Fees.** Grace Acosta moved to approve the proposed **Licensed Paralegal Practitioner application and licensing fees.** Chrystal Mancusco-Smith seconded the motion which passed unopposed.

## 3. Discussion Items.

- 3.1 **Supreme Court Task Force on Regulatory Reform.** John Lund reported that he and Justice Himonas are heading up a task force to change the way legal services are regulated in Utah. The Task Force is made up of Utah lawyers and Stanford Law School academics who study the regulation of the lawyers. The Task Force is planning a two-tiered approach to changing legal services regulation in Utah. The first tier will change rules around advertising and fee sharing. The second tier will create a



“regulatory sandbox” in which regulations will be relaxed for entities who will propose novel solutions to provide faster and more accessible legal services. Finding from the sandbox could result in sweeping changes in the way in which legal services are regulated in Utah including more non-lawyer provision of legal services.

- 3.2 Bar Survey Report.** Mark Morris reported that he has been studying the 2011 survey of Bar members as part of his planning to shepherd the next survey of Bar members. Mark is thinking about the questions that will be asked, which company will conduct the survey and asked for volunteers to work on the survey.

#### **4. Information Items.**

- 4.1 ABA Delegates Report.** Erik Christiansen, appearing by phone, and Nate Alder reported on the work of the ABA House of Delegates at the mid-year meeting in Las Vegas in January 2019. Erik also noted that the ABA is changing its dues structure to make dues more affordable to young lawyers.

**The meeting adjourned at 4:30 p.m.**

#### **Consent Agenda**

1. Approved Minutes from the January 18, 2019 Commission Meeting.
2. Approved a Resolution replacing Bar 401(k) Plan Trustee Kellie Bartz with Lauren Stout.
3. Approved changes to the NLTP Mentoring Plan to add more practical experience.

#### **Handouts:**

1. Additional First District Judicial Nominating Commission applicants.
2. Spring Convention Program.

**TAB**  
**10**

**UTAH STATE BAR**  
**Budget and Finance Committee**  
**Highlights of the March 2019 Financial Statements**

**FINANCIAL STATEMENT HIGHLIGHTS**

**Notable Trends:**

- The results of the first eight months of the fiscal year were, for the most part, as expected. Licensing and Admissions revenues were under budget but only by a little making them very close to their budgeted revenues. Licensing expenses continue to be under budget but Admissions expenses are above budget. As such, the Licensing revenues YTD have easily covered expenses YTD, resulting in a net profit that is just slightly under the budgeted net profit. However, the under-budget Admissions revenues YTD have not covered the over-budget expenses YTD, resulting in a higher net loss than budgeted.

**Year-to-Date (YTD) Net Profit – Accrual Basis:**

	<b>Actual</b>	<b>Budget</b>	<b>Fav(unfav) \$ Variance</b>	<b>Fav(unfav) % Variance</b>
YTD revenue	6,212,339	6,164,766	47,573	1%
YTD expenses	4,810,084	5,020,856	210,772	4%
<b>YTD net profit</b>	<b>1,402,256</b>	<b>1,143,910</b>	<b>258,346</b>	<b>23%</b>

YTD net profit is \$1.4 million, which is \$258,000 (23%) ahead of budget. YTD revenue is \$48,000 above the budget mainly due to higher revenues from OPC, CLE, Bar Journal and Interest Income, which are offset by the lower than budgeted NLTP, Fall Forum, Summer Convention Public Services and Facilities revenues. YTD expenses are under budget mainly due to lower than budgeted staff expenses.

**YTD Net Profit –Cash Basis:** Adding back year-to-date depreciation expense of \$177,000 and deducting capital expenditures of \$122,000, the cash basis year-to-date net profit is approximately \$166,000 higher.

**Explanations for Departments with Net Profit Variances \$10k and 5% Over/Under Budget and/or significant activity:**

**Admissions:** YTD Admissions revenue is \$368,000, which is \$11,000 below budget and \$10,000 below last year's revenue at this time due to higher than anticipated applicants by motion. Admissions expenses are \$387,000, or \$10,000 (3%) over budget and \$16,000 over last year's expenses at this time due to higher than budgeted staff, G&A expenses and overhead expenses that appear to be timing related, which is consistent with variances noted in the prior year.

**NLTP:** YTD NLTP revenue is \$55,000, which is \$3,700 (6%) below budget and \$3,30 over last year's revenue at this time. NLTP expenses are \$38,000, or \$16,000 (35%) under

**UTAH STATE BAR**  
**Budget and Finance Committee**  
**Highlights of the March 2019 Financial Statements**

budget and \$15,000 under last year's expenses at this time due to lower than budgeted staff, G&A expenses and overhead.

**OPC:** OPC YTD net expenditures are \$1M, which is \$94,000 (8%) under budget. The main reason for the favorable variance is lower than budgeted staff-related and overhead expenses. It is anticipated that the net profit will align more closely to budget as the year progresses.

**CLE:** CLE YTD net loss is \$60,000, which is \$23,000 (28%) below budget. While CLE registration revenue is ahead of budget, online video revenue is running considerably under budget and last year's revenue. This could be a function of fewer online CLE. Also note that CLE Program Services Expense is over budget by more than \$69,000, which is causing the lower than expected net revenue.

**Summer Convention:** With all known revenue and expenses booked for the July 2018 Summer Convention in Sun Valley, the YTD net loss is \$3,000 which is approximately \$12,000 below budget. Revenue from the convention was \$25,000 lower than budgeted due to lower than expected attendance which also resulted in expenses being under budget by \$14,000. For the 2019 Summer Convention in Park City, total expenses included in this report are approximately \$1,700.

**Fall Forum:** With all known revenue and expenses booked for the November 2018 Fall Forum, the YTD net loss is approximately \$4,300, which is \$9,000 over budget. Total Fall Forum revenues were approximately \$15,000 less than budgeted, which were offset by expenditures that were \$6,000 below budget.

**Spring Convention:** The YTD net expenditures for the Spring Convention are currently \$33,000 ahead of budget. This favorable variance is mostly the result of lower expenses (in all categories) than were budgeted. We expect additional expenses in the coming months leading up to the Convention, which will resolve this variance.

**Member Services:** Member Services YTD net spending is \$251,000 vs. budgeted net spending of \$268,000. Lower net spending is due to higher than budgeted revenue in almost all categories, which is offset by higher than expected spending in almost all categories. It is anticipated that the net profit will align more closely to budget as the year progresses.

**Bar Operations:** Bar Operations (Management, Finance, General Counsel, IT, and Commission/Special Projects) generated net expenditures of \$1,091,000 YTD compared to YTD budgeted net spending of \$1,274,000. The lower than projected net spending is mainly due to higher than budgeted interest income and Tybera e-filing revenue.

**UTAH STATE BAR**  
**Budget and Finance Committee**  
**Highlights of the March 2019 Financial Statements**

**ADDITIONAL COMMENTS**

**Board Designated Reserves:** In consultation with Bar management and the Budget & Finance Committee, the Commission informally targeted the following reserve amounts:

Operations Reserve (3 months' operations)	\$1,661,000
Capital Replacement Reserve (equipment)	200,000
Capital Replacement Reserve (building)	<u>650,000</u>
Total	\$2,511,000
Estimated cash reserve at March 31, 2019	<u>\$3,900,000</u>
Excess of current cash reserve over board-designated reserve	<u>\$1,389,000</u>



## 141

\\USB-QB\Dept\_Finance\DepartmentFiles\Kellie\Monthly FS\Monthly financial statement workbook FY19, Income Statement by dept

**March 31, 2019**

Net Profit (Loss)

\\USB-QB\Dept\_Finance\DepartmentFiles\Kellie\Monthly FS\Monthly financial statement workbook FY19, Licensing

**March 31, 2019**

Net Profit (Loss)

# Utah State Bar NLTP

March 31, 2019

	Actual Mar-18	Actual Mar-19	Budget Mar-19	Fav (Unfav) variance	% of Budget	Actual LYTD	Actual YTD	Budget YTD	Fav (Unfav) variance	% of Budget	Total Budget	YTD % of Tot Budget
<b>Revenue</b>												
4020 • NLTP Fees	450	2,250	509	1,741	442%	52,200 (833)	54,600	59,052 (700)	(4,452) 700	92% 0%	71,100 (700)	77%
4200 • Seminar Profit/Loss	-	-	-	-	-	-	-	-	-	-	-	-
Total Revenue	450	2,250	509	1,741	442%	51,367	54,600	58,352	(3,752)	94%	70,400	78%
<b>Expenses</b>												
Program Services	1,421	248	606	358	41%	8,400	2,972	7,049	4,077	42%	9,349	32%
Salaries & Benefits	3,086	2,575	3,954	1,379	65%	36,447	27,516	41,449	13,933	66%	53,585	51%
General & Administrative	185	298	184	(114)	162%	3,604	3,637	4,739	1,102	77%	5,781	63%
Building Overhead	472	426	515	89	83%	4,383	3,830	4,760	930	80%	6,224	62%
Total Expenses	5,164	3,547	5,259	1,712	67%	52,834	37,956	57,997	20,041	65%	74,939	51%
<b>Net Profit (Loss)</b>	<b>\$ (4,714)</b>	<b>\$ (1,297)</b>	<b>\$ (4,750)</b>	<b>\$ 3,453</b>	<b>27%</b>	<b>\$ (1,467)</b>	<b>\$ 16,644</b>	<b>\$ 355</b>	<b>\$ 16,289</b>	<b>4689%</b>	<b>\$ (4,539)</b>	<b>-367%</b>

# Utah State Bar OPC

March 31, 2019

Revenue	Actual Mar-18	Actual Mar-19	Budget Mar-19	Fav (Unfav) variance	% of Budget
	1,050	800	623	177	128%
	-	7,820	-	7,820	-
	1,050	8,620	623	7,997	1384%
Expenses	1,310	3,833	1,755	(2,078)	218%
	95,240	98,420	108,669	10,249	91%
	6,660	6,677	6,710	33	100%
	7,488	6,752	7,992	1,240	84%
	110,698	115,682	125,126	9,444	92%
Total Expenses					

145



# Utah State Bar CLE

March 31, 2019

	Actual Mar-18	Actual Mar-19	Budget Mar-19	Fav (Unfav) variance	% of Budget	Actual LYTD	Actual YTD	Budget YTD	Fav (Unfav) variance	% of Budget	Total Budget	YTD % of Tot Budget
<b>Revenue</b>												
4052 · Meeting - Sponsor Revenue	-	-	-	-	-	13,500	15,000	17,420	(2,420)	86%	20,000	75%
4053 · Meeting - Vendor Revenue	-	-	-	-	-	-	1,000	-	1,000	-	-	-
4054 · Meeting - Material Sales	1,900	-	-	-	-	2,185	-	-	-	-	-	-
4081 · CLE - Registrations	37,663	26,980	42,646	(15,666)	63%	280,703	278,838	276,049	2,789	101%	475,000	59%
4082 · CLE - Video Library Sales	2,246	3,863	2,114	1,749	183%	77,516	66,295	83,172	(16,877)	80%	105,000	63%
4084 · Business Law Book Sales	-	-	-	-	-	3,619	3,315	-	3,315	-	-	-
4095 · Miscellaneous Income	-	-	-	-	-	-	-	-	-	-	-	-
4200 · Seminar Profit/Loss	14,694	(4,504)	-	(4,504)	-	15,819	25,262	472	24,790	5352%	(10,000)	-253%
Total Revenue	56,502	26,339	44,760	(18,421)	59%	393,341	389,710	377,113	12,597	103%	590,000	66%
<b>Expenses</b>												
Program Services	25,321	25,694	25,553	(141)	101%	156,896	189,625	120,562	(69,063)	157%	312,434	61%
Salaries & Benefits	7,459	6,888	8,202	1,314	84%	102,900	89,568	110,296	20,728	81%	142,694	63%
General & Administrative	4,978	3,706	6,038	2,332	61%	47,864	39,498	44,788	5,290	88%	54,690	72%
Building Overhead	1,440	1,128	1,609	481	70%	16,497	11,442	18,817	7,375	61%	23,562	49%
Total Expenses	39,198	37,417	41,402	3,985	90%	324,157	330,133	294,463	(35,670)	112%	533,380	62%
<b>Net Profit (Loss)</b>	<b>\$ 17,303</b>	<b>\$ (11,078)</b>	<b>\$ 3,358</b>	<b>\$ (14,436)</b>	<b>-330%</b>	<b>\$ 69,185</b>	<b>\$ 59,577</b>	<b>\$ 82,650</b>	<b>\$ (23,073)</b>	<b>72%</b>	<b>\$ 56,620</b>	<b>105%</b>

146

# Utah State Bar Summer Convention

March 31, 2019

	Actual Mar-18	Actual Mar-19	Budget Mar-19	Fav (Unfav) variance	% of Budget	Actual LYTD	Actual YTD	Budget YTD	Fav (Unfav) variance	% of Budget	Total Budget	YTD % of Tot Budget
<b>Revenue</b>												
4051 - Meeting - Registration	-	-	-	-	-	234,820	199,695	222,000	(22,305)	90%	222,000	90%
4052 - Meeting - Sponsor Revenue	-	-	-	-	-	20,550	25,500	25,000	500	102%	25,000	102%
4053 - Meeting - Vendor Revenue	-	-	-	-	-	13,100	9,800	13,000	(3,200)	75%	13,000	75%
4055 - Meeting - Sp Ev Registration	-	-	-	-	-	14,270	15,470	15,000	470	103%	15,000	103%
Total Revenue	-	-	-	-	-	282,740	250,465	275,000	(24,535)	91%	275,000	91%
<b>Expenses</b>												
Program Services	362	-	245	245	0%	240,553	224,431	233,509	9,078	96%	233,611	96%
Salaries & Benefits	211	271	238	(33)	114%	20,377	16,874	23,140	6,266	73%	27,600	61%
General & Administrative	24	12	19	7	-	17,471	16,758	13,443	(3,315)	125%	13,538	124%
Building Overhead	-	-	-	-	-	1,383	-	-	-	-	-	-
Total Expenses	596	283	502	219	56%	279,783	258,062	270,092	12,030	96%	274,749	94%
<b>Net Profit (Loss)</b>	<b>\$ (596)</b>	<b>\$ (283)</b>	<b>\$ (502)</b>	<b>\$ 219</b>	<b>56%</b>	<b>\$ 2,957</b>	<b>\$ (7,597)</b>	<b>\$ 4,908</b>	<b>\$ (12,505)</b>	<b>-155%</b>	<b>\$ 251</b>	<b>-3027%</b>

Utah State Bar  
Fall Forum

March 31, 2019

Revenue	4051 · Meeting - Registration	Actual Mar-18	Actual Mar-19	Budget Mar-19	Fav (Unfav) variance	% of Budget	Actual LYTD	Actual YTD	Budget YTD	Fav (Unfav) variance	% of Budget	Actual LYTD	Actual YTD	Budget YTD	Fav (Unfav) variance	% of Budget	Total Budget	YTD % of Tot Budget
	4052 · Meeting - Sponsor Revenue	-	-	-	-	-	73,178	72,360	85,000	(12,640)	85%	-	-	85,000	-	85%	85,000	85%
	4053 · Meeting - Vendor Revenue	-	-	-	-	-	-	-	-	-	-	10,150	6,400	10,000	(3,600)	64%	10,000	64%
	4055 · Meeting - Sp Ev Registration	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	Total Revenue	-	-	-	-	-	83,328	78,760	95,000	(16,240)	83%	-	-	95,000	-	83%	95,000	83%
Expenses	Program Services	-	-	-	-	-	68,108	64,058	70,261	6,203	91%	-	-	70,261	-	91%	70,261	91%
	Salaries & Benefits	-	41	-	(41)	-	10,493	8,263	12,731	4,468	65%	-	-	12,900	-	64%	12,900	64%
	General & Administrative	-	-	-	-	-	10,862	11,211	11,850	639	95%	-	-	11,850	-	95%	11,850	95%
	Building Overhead	-	-	-	-	-	1,383	-	-	-	-	-	-	-	-	-	-	-
	Total Expenses	-	41	-	(41)	-	90,846	83,532	94,842	11,310	88%	-	-	95,011	-	88%	95,011	88%
Net Profit (Loss)		\$ -	\$ (41)	\$ -	\$ (41)	-	\$ (7,518)	\$ (4,772)	\$ 158	\$ (4,930)	-3020%	\$ -	\$ -	\$ (11)	\$ -	43380%	\$ (11)	43380%

# Utah State Bar Spring Convention

March 31, 2019

	Actual Mar-18	Actual Mar-19	Budget Mar-19	Fav (Unfav) variance	% of Budget	Actual LYTD	Actual YTD	Budget YTD	Fav (Unfav) variance	% of Budget	Total Budget	YTD % of Tot Budget
<b>Revenue</b>												
4051 · Meeting - Registration	25,465	19,380	30,495	(11,115)	64%	96,410	120,770	115,455	5,315	105%	115,000	105%
4052 · Meeting - Sponsor Revenue	-	-	-	-	-	15,850	13,500	17,000	(3,500)	79%	17,000	79%
4053 · Meeting - Vendor Revenue	900	900	1,028	(128)	88%	10,500	10,950	12,000	(1,050)	91%	12,000	91%
4055 · Meeting - Sp Ev Registration	289	130	452	(322)	29%	2,046	1,829	3,200	(1,371)	57%	3,200	57%
Total Revenue	26,654	20,410	31,975	(11,565)	64%	124,806	147,049	147,655	(606)	100%	147,200	100%
<b>Expenses</b>												
Program Services	64,103	61,288	78,936	17,648	78%	73,697	66,635	88,354	21,719	75%	93,157	72%
Salaries & Benefits	10,616	12,504	19,215	6,711	65%	14,266	16,072	25,762	9,690	62%	26,008	62%
General & Administrative	2,236	1,739	3,361	1,622	52%	12,121	12,661	14,566	1,905	87%	14,707	86%
Building Overhead	-	-	-	-	-	1,383	-	-	-	-	-	-
Total Expenses	76,955	75,531	101,512	25,981	74%	101,468	95,368	128,682	33,314	74%	133,872	71%
<b>Net Profit (Loss)</b>	<b>\$ (50,301)</b>	<b>\$ (55,121)</b>	<b>\$ (69,537)</b>	<b>\$ 14,416</b>	<b>79%</b>	<b>\$ 23,339</b>	<b>\$ 51,681</b>	<b>\$ 18,973</b>	<b>\$ 32,708</b>	<b>272%</b>	<b>\$ 13,328</b>	<b>388%</b>

## 150

\\USB-QR\Dept Finance\DepartmentFiles\Kellie\Monthly FS\Monthly financial statement workbook FY19, Member Services



**Utah State Bar  
Public Services  
March 31, 2019**

**(Committees, Consumer Assistance, Access to Justice, Tuesday Night Bar)**

	Mar-18		Mar-19		Budget		Fav (Unfav)		Actual		Budget		Fav (Unfav)		Actual		YTD		Budget		YTD		% of		Total		YTD % of	
	Mar-18	Mar-18	Mar-19	Mar-19	Mar-19	Mar-19	Mar-19	Mar-19	YTD	YTD	YTD	YTD	YTD	YTD	YTD	YTD	YTD	YTD	YTD	YTD	YTD	YTD	YTD	YTD	Budget	Budget	YTD	Tot Budget
<b>Revenue</b>																												
4063 · Modest Means revenue	975		900		1,045	(145)			7,725	8,813			(1,088)						8,813						12,000			64%
4093 · Law Day Revenue	300		600		336	264			600	336			264						336						4,000			15%
4095 · Miscellaneous Income	-		-		-	-			10	50			(40)						50						50			20%
4200 · Seminar Profit/Loss	-		-		-	-			-	-			-						-						-			-
<b>Total Revenue</b>	<b>1,275</b>		<b>1,500</b>		<b>1,381</b>	<b>119</b>			<b>8,335</b>	<b>9,199</b>			<b>(864)</b>						<b>9,199</b>						<b>16,050</b>			<b>52%</b>
<b>Expenses</b>																												
Program Services	5,449		4,284		5,223	939			107,973	101,985			(5,988)						101,985						124,468			87%
Salaries & Benefits	20,852		21,439		22,995	1,556			205,403	209,140			3,737						209,140						288,078			71%
General & Administrative	3,292		2,744		3,537	793			27,441	33,587			6,146						33,587						41,795			66%
Building Overhead	1,392		1,255		1,531	276			11,289	15,503			4,214						15,503						19,898			57%
<b>Total Expenses</b>	<b>30,984</b>		<b>29,723</b>		<b>33,286</b>	<b>3,563</b>			<b>352,105</b>	<b>360,215</b>			<b>8,110</b>						<b>360,215</b>						<b>474,239</b>			<b>74%</b>
<b>Net Profit (Loss)</b>	<b>\$ (29,709)</b>		<b>\$ (28,223)</b>		<b>\$ (31,905)</b>	<b>\$ 3,682</b>			<b>\$ (343,770)</b>	<b>\$ (351,016)</b>			<b>\$ 7,246</b>						<b>\$ (351,016)</b>						<b>\$ (458,189)</b>			<b>75%</b>

**Utah State Bar  
Bar Operations  
March 31, 2019  
(Bar Management, General Counsel, IT, Commission/Special Projects)**

	Mar-18		Mar-19		Budget		Fav (Unfav)		Actual		Budget		Fav (Unfav)		% of		Total	
	Mar-18	Mar-19	Mar-19	Mar-19	Mar-19	Mar-19	variance	% of Budget	LYTD	YTD	YTD	YTD	variance	% of Budget	% of Budget	% of Budget	Budget	YTD % of Tot Budget
<b>Revenue</b>																		
4060 · E-Filing Revenue	-	-	-	-	-	-	-	-	15,343	27,156	15,600	11,556	11,556	174%			22,174	122%
4103 · In - Kind Revenue - UDR	146	-	-	145	145	(145)	0%		1,390	914	1,374	(460)	(460)	67%			1,785	51%
4095 · Miscellaneous Income	48	93	93	69	69	24	134%		619	1,125	888	237	237	127%			1,188	95%
4200 · Seminar Profit/Loss	-	-	-	-	-	-	-	-	-	67	-	67	67	-			-	-
Investment Income	8,375	14,887	14,887	7,932	7,932	6,955	106%		81,367	143,356	71,423	71,933	71,933	201%			95,297	85%
Total Revenue	8,569	14,980	14,980	8,146	8,146	6,834	184%		98,719	172,619	89,285	83,333	83,333	193%			120,444	82%
<b>Expenses</b>																		
Program Services	27,150	17,825	17,825	37,306	37,306	19,481	48%		220,051	201,083	230,844	29,761	29,761	87%			259,423	78%
Salaries & Benefits	85,094	77,164	77,164	101,136	101,136	23,972	76%		822,033	828,468	902,527	74,059	74,059	92%			1,215,983	68%
General & Administrative	46,395	20,305	20,305	17,936	17,936	(2,369)	113%		200,632	186,448	187,224	776	776	100%			246,139	76%
In Kind	303	376	376	411	411	35	91%		2,802	3,270	3,799	529	529	86%			5,000	65%
Building Overhead	5,493	4,953	4,953	5,436	5,436	483	91%		38,639	44,540	39,148	(5,392)	(5,392)	114%			54,664	81%
Total Expenses	164,435	120,623	120,623	162,225	162,225	41,602	74%		1,284,158	1,263,810	1,363,542	99,732	99,732	93%			1,781,209	71%
<b>Net Profit (Loss)</b>	<b>\$ (155,867)</b>	<b>\$ (105,643)</b>	<b>\$ (105,643)</b>	<b>\$ (154,079)</b>	<b>\$ (154,079)</b>	<b>\$ 48,436</b>	<b>69%</b>		<b>\$ (1,185,439)</b>	<b>\$ (1,091,192)</b>	<b>\$ (1,274,257)</b>	<b>\$ 183,065</b>	<b>\$ 183,065</b>	<b>86%</b>			<b>\$ (1,660,765)</b>	<b>66%</b>

**Utah State Bar  
Facilities  
March 31, 2019**

	Actual Mar-18	Actual Mar-19	Budget Mar-19	Fav (Unfav) variance	% of Budget	Actual LYTD	Actual YTD	Budget YTD	Fav (Unfav) variance	% of Budget	Total Budget	YTD % of Tot Budget
<b>Revenue</b>												
4039 · Room Rental-All parties	9,311	9,031	9,529	(499)	95%	80,840	71,451	82,734	(11,283)	86%	112,500	64%
4042 · Food & Beverage Rev-All Parties	9,828	12,349	9,951	2,398	124%	77,732	78,930	78,712	218	100%	117,254	67%
4043 · Setup & A/V charges-All parties	-	-	-	-	-	1,044	1,195	1,264	(69)	95%	1,264	95%
4090 · Tenant Rent	1,806	1,806	1,806	-	100%	16,254	15,668	16,254	(586)	96%	21,672	72%
4095 · Miscellaneous Income	12	5	15	(10)	32%	91	66	115	(49)	57%	133	50%
<b>Total Revenue</b>	<b>20,957</b>	<b>23,191</b>	<b>21,301</b>	<b>1,890</b>	<b>109%</b>	<b>175,961</b>	<b>167,310</b>	<b>179,079</b>	<b>(11,769)</b>	<b>93%</b>	<b>252,823</b>	<b>66%</b>
<b>Expenses</b>												
Program Services	9,790	13,088	9,742	(3,346)	134%	76,585	78,179	77,037	(1,142)	101%	113,023	69%
Salaries & Benefits	11,183	11,245	11,680	435	96%	112,727	110,489	118,627	8,138	93%	156,275	71%
General & Administrative	(2,077)	4,763	309	(4,454)	1541%	2,930	5,315	7,530	2,215	71%	7,585	70%
In Kind	643	855	666	(189)	128%	12,631	11,080	13,079	1,999	85%	17,426	64%
Building Overhead	21,628	19,274	22,411	3,137	86%	172,035	175,064	179,163	4,099	98%	243,618	72%
<b>Total Expenses</b>	<b>41,167</b>	<b>49,225</b>	<b>44,808</b>	<b>(4,417)</b>	<b>110%</b>	<b>376,908</b>	<b>380,127</b>	<b>395,436</b>	<b>15,309</b>	<b>96%</b>	<b>537,927</b>	<b>71%</b>
<b>Net Profit (Loss)</b>	<b>\$ (20,210)</b>	<b>\$ (26,035)</b>	<b>\$ (23,507)</b>	<b>\$ (2,528)</b>	<b>111%</b>	<b>\$ (200,947)</b>	<b>\$ (212,818)</b>	<b>\$ (216,357)</b>	<b>\$ 3,539</b>	<b>98%</b>	<b>\$ (285,104)</b>	<b>75%</b>

153

**Utah State Bar**  
**Income Statement - Consolidated By Account**  
**March 31, 2019**

	Actual Mar-18	Actual Mar-19	Budget Mar-19	Fav (Unfav) variance	% of Budget	Actual LYTD	Actual YTD	Budget YTD	Fav (Unfav) variance	% of Budget	Total Budget	YTD % of Tot Budget
<b>Revenue</b>												
4001 - Admissions - Student Exam Fees	39,600	33,550	39,029	(5,479)	86%	130,025	120,725	128,150	(7,425)	94%	128,150	94%
4002 - Admissions - Attorney Exam Fees	19,550	11,900	20,260	(8,360)	59%	49,350	47,600	51,143	(3,543)	93%	49,200	97%
4003 - Admissions - Retake Fees	2,200	4,200	1,973	2,227	213%	27,175	32,650	24,374	8,276	134%	36,975	88%
4004 - Admissions - Laptop Fees	13,250	11,700	13,142	(1,442)	89%	50,450	48,900	50,040	(1,140)	98%	54,950	89%
4006 - Transfer App Fees	1,700	3,100	890	2,210	348%	16,300	28,300	8,533	19,767	332%	17,250	164%
4008 - Attorney - Motion	3,400	1,700	3,993	(2,293)	43%	64,100	39,100	75,275	(36,175)	52%	89,250	44%
4009 - House Counsel	850	850	880	(30)	97%	17,850	16,150	18,487	(2,337)	87%	24,650	66%
4010 - Section/Local Bar Support fees	735	936	736	200	127%	98,697	99,474	98,772	702	101%	98,957	101%
4020 - NLTP Fees	450	2,250	509	1,741	442%	52,200	54,600	59,052	(4,452)	92%	71,100	77%
4021 - Lic Fees > 3 Years	7,120	5,100	7,284	(2,184)	70%	3,547,435	3,616,425	3,628,909	(12,484)	100%	3,654,125	99%
4022 - Lic Fees < 3 Years	250	500	252	248	198%	213,290	208,865	215,161	(6,296)	97%	225,500	93%
4023 - Lic Fees - House Counsel	-	-	-	-	-	32,065	36,580	32,829	3,751	111%	35,875	102%
4025 - Pro Hac Vice Fees	2,000	5,750	2,183	3,567	263%	47,250	44,500	51,561	(7,061)	86%	71,750	62%
4026 - Lic Fees - Inactive/FS	(715)	(450)	(743)	293	61%	112,230	117,175	116,694	481	100%	116,850	100%
4027 - Lic Fees - Inactive/NS	(630)	(315)	(648)	333	49%	205,170	210,270	210,987	(717)	100%	212,175	99%
4029 - Prior Year Lic Fees	1,290	-	977	(977)	0%	3,985	1,275	3,017	(1,742)	42%	4,305	30%
4030 - Certs of Good Standing	1,930	1,580	1,878	(298)	84%	17,990	20,380	17,506	2,874	116%	24,600	83%
4039 - Room Rental-All parties	9,311	9,031	9,529	(499)	95%	80,840	71,451	82,734	(11,283)	86%	112,500	64%
4042 - Food & Beverage Rev-All Parties	9,828	12,349	9,951	2,398	124%	77,732	78,930	78,712	218	100%	117,254	67%
4043 - Setup & A/V charges-All parties	-	-	-	-	-	1,044	1,195	1,264	(69)	95%	1,264	95%
4051 - Meeting - Registration	25,465	19,380	30,495	(11,115)	64%	404,408	392,825	422,455	(29,630)	93%	422,000	93%
4052 - Meeting - Sponsor Revenue	-	240	-	240	-	50,950	54,590	59,910	(5,320)	91%	63,050	87%
4053 - Meeting - Vendor Revenue	900	900	1,028	(128)	88%	33,750	28,150	35,000	(6,850)	80%	35,000	80%
4054 - Meeting - Material Sales	1,900	-	-	-	-	2,185	-	-	-	-	-	-
4055 - Meeting - Sp Ev Registration	289	130	452	(322)	29%	16,316	17,299	18,200	(901)	95%	18,200	95%
4060 - E-Filing Revenue	-	-	-	-	-	15,343	27,156	15,600	11,556	174%	22,174	122%
4061 - Advertising Revenue	25,153	29,505	23,758	5,747	124%	123,573	156,894	116,767	40,127	134%	140,000	112%
4062 - Subscriptions	-	-	-	-	-	60	90	110	(20)	82%	110	82%
4063 - Modest Means revenue	975	900	1,045	(145)	86%	8,225	7,725	8,813	(1,088)	88%	12,000	64%
4071 - Mem Benefits - Lexis	-	-	-	-	-	351	1,110	-	1,110	-	-	-
4072 - Royalty Inc - Bar J, MBNA, LM, M	2,230	3,103	1,468	1,635	211%	6,146	6,601	4,000	2,601	165%	4,000	165%
4081 - CLE - Registrations	37,663	26,980	42,646	(15,666)	63%	280,753	278,838	276,049	2,789	101%	475,000	59%
4082 - CLE - Video Library Sales	2,246	3,863	2,114	1,749	183%	77,516	66,295	83,172	(16,877)	80%	105,000	63%
4084 - Business Law Book Sales	-	-	-	-	-	3,619	3,315	-	3,315	-	-	-
4090 - Tenant Rent	1,806	1,806	1,806	-	100%	16,254	15,668	16,254	(586)	96%	21,672	72%
4093 - Law Day Revenue	300	600	336	264	179%	300	600	336	264	179%	4,000	15%
4095 - Miscellaneous Income	1,315	1,387	885	502	157%	5,730	17,736	4,678	13,058	379%	6,881	258%
4096 - Late Fees	12,900	15,800	13,041	2,759	121%	91,350	56,530	71,298	(14,768)	79%	76,350	74%
4103 - In - Kind Revenue - UDR	146	-	145	(145)	0%	1,390	914	1,374	(460)	67%	1,785	51%
4200 - Seminar Profit/Loss	14,694	3,316	-	3,316	-	21,433	40,103	6,127	33,976	655%	5,300	757%
Investment income	8,375	14,887	7,932	6,955	188%	81,367	143,356	71,423	71,933	201%	95,297	150%
<b>Total Revenue</b>	<b>248,474</b>	<b>226,528</b>	<b>239,226</b>	<b>(12,698)</b>	<b>95%</b>	<b>6,086,195</b>	<b>6,212,339</b>	<b>6,164,766</b>	<b>47,573</b>	<b>101%</b>	<b>6,654,499</b>	<b>93%</b>
<b>Program Service Expenses</b>												
5001 - Meeting Facility-external only	4,203	4,899	4,392	(507)	112%	29,593	31,391	29,006	(2,385)	108%	46,512	67%
5002 - Meeting Facility-internal only	7,448	6,056	7,705	1,650	79%	49,162	43,275	50,215	6,940	86%	69,566	62%
5013 - ExamSoft	5,687	5,234	5,880	646	89%	20,311	20,232	21,000	768	96%	21,000	96%
5014 - Questions	11,678	11,346	11,750	404	97%	42,736	40,701	43,000	2,299	95%	43,000	95%
5015 - Investigations	25	50	17	(33)	294%	225	275	227	(48)	121%	300	92%
5016 - Credit Checks	27	27	27	-	100%	930	857	911	54	94%	2,229	38%
5017 - Medical Exam	-	-	-	-	-	-	-	-	-	-	-	-
5025 - Temp Labor/Proctors	-	293	-	(293)	-	4,300	5,993	4,300	(1,693)	139%	4,300	139%
5030 - Speaker Fees & Expenses	1,500	-	6,000	6,000	0%	27,735	9,250	35,489	26,239	26%	38,100	24%
5031 - Speaker Reimb. - Receipt Req'd	7,840	5,558	4,758	(800)	117%	12,345	7,364	7,273	(91)	101%	11,241	66%
5035 - Awards	244	145	100	(45)	145%	3,527	2,968	2,168	(800)	137%	6,657	45%
5037 - Grants/ contributions - general	1,000	-	1,129	1,129	0%	10,300	5,170	10,919	5,749	47%	12,500	41%
5040 - Witness & Hearing Expense	(19)	1,458	209	(1,249)	698%	622	1,665	3,384	1,719	49%	3,950	42%
5041 - Process Serving	92	-	168	168	0%	416	1,146	698	(448)	164%	1,276	90%
5046 - Court Reporting	-	-	-	-	-	1,552	2,995	2,107	(888)	142%	2,417	124%
5047 - Casemaker	6,013	5,972	5,972	(0)	100%	53,356	53,748	53,748	(0)	100%	72,000	75%
5055 - Legislative Expense	3,500	3,500	3,503	3	100%	31,510	32,262	31,537	(725)	102%	44,158	73%
5060 - Program Special Activities	-	-	-	-	-	-	-	-	-	-	-	-
5061 - LRE - Bar Support	-	-	-	-	-	65,000	65,000	65,000	-	100%	65,000	100%
5062 - Law Day	9	-	7	7	0%	9	1,763	7	(1,756)	25192%	10,000	18%
5063 - Special Event Expense	4,065	2,140	11,150	9,010	19%	80,079	78,934	86,665	7,731	91%	91,813	86%
5064 - MCLE Fees Paid	-	11,131	-	(11,131)	-	17,509	26,352	16,014	(10,338)	165%	38,500	68%
5070 - Equipment Rental	5,475	3,935	4,078	143	96%	32,985	33,102	29,275	(3,827)	113%	37,305	89%
5075 - Food & Bev-external costs only	67,218	49,083	69,805	20,722	70%	360,568	358,497	342,953	(15,544)	105%	467,204	77%
5076 - Food & beverage - internal only	8,268	6,789	10,164	3,375	67%	47,525	45,541	46,799	1,258	97%	69,627	65%
5079 - Soft Drinks	499	1,367	445	(922)	307%	7,668	7,912	8,104	192	98%	10,492	75%
5085 - Misc. Program Expense	580	505	832	327	61%	4,582	4,066	4,447	381	91%	14,032	29%
5090 - Commission Expense	313	656	284	(372)	231%	20,838	23,930	18,906	(5,024)	127%	26,000	92%
5095 - Wills for Heroes	-	-	-	-	-	1,044	225	1,067	842	21%	1,712	13%
5096 - UDR Support	-	-	-	-	-	-	-	-	-	-	-	-
5099 - Blomquist Hale	6,161	6,150	6,249	99	98%	55,462	55,397	56,253	856	98%	75,000	74%
5702 - Travel - Lodging	6,614	8,256	7,277	(979)	113%	52,438	52,741	42,495	(10,246)	124%	49,475	107%
5703 - Travel - Transportation/Parking	1,253	1,824	3,924	2,100	46%	11,935	14,405	14,938	533	96%	20,026	72%
5704 - Travel - Mileage Reimbursement	530	3,491	428	(3,063)	816%	11,476	15,349	8,577	(6,772)	179%	9,931	155%
5705 - Travel - Per Diems	-	1,257	-	(1,257)	-	4,606	3,907	5,580	1,674	70%	6,484	60%
5706 - Travel - Meals	358	17	549	532	3%	782	627	863	236	73%	1,049	60%
5707 - Travel - Commission Mtgs	7,043	9,019	7,543	(1,476)	120%	37,654	52,879	40,309	(12,570)	131%	42,163	125%
5805 - ABA Annual Meeting	-	-	-	-	-	21,007	19,714	22,591	2,877	87%	23,135	85%
5810 - ABA Mid Year Meeting	-	-	-	-	-	18,131	11,780	13,155	1,375	90%	17,246	68%
5815 - Commission/Education	7,353	250	6,966	6,716	4%	23,783	20,393	22,532	2,139	91%	23,450	87%
5820 - ABA Annual Delegate	1,137	-	1,080	1,080	0%	12,945	9,151	12,327	3,176	74%	15,500	59%
5830 - Western States Bar Conference	5,610	-	10,541	10,541	0%	10,539	11,946	19,527	7,581	61%	25,353	47%
5840 - President's Expense	1,500	2,000	1,524	(476)	131%	15,187	15,688	15,430	(258)	102%	20,000	78%
5841 - President's Reimbursement	90	-	66	66	0%	4,593	860	3,353	2,493	26%	4,000	21%
5845 - Reg Reform Task Force	-	1,174	-	(1,174)	-	-	5,912	-	(5,912)	-	-	-

**Utah State Bar**  
**Income Statement - Consolidated By Account**  
**March 31, 2019**

	Actual Mar-18	Actual Mar-19	Budget Mar-19	Fav (Unfav) variance	% of Budget	Actual LYTD	Actual YTD	Budget YTD	Fav (Unfav) variance	% of Budget	Total Budget	YTD % of Tot Budget
5850 - Leadership Academy	1,569	1,813	2,531	718	72%	9,982	11,327	14,486	3,159	78%	20,000	57%
5855 - Bar Review	-	73	-	(73)	-	2,131	1,229	1,664	435	74%	2,083	59%
5865 - Retreat	-	-	-	-	-	37,428	31,413	26,000	(5,413)	121%	26,000	121%
5960 - Overhead Allocation - Seminars	-	-	2,266	2,266	0%	-	-	4,640	4,640	0%	(1,775)	0%
5970 - Event Revenue Sharing - 3rd Pty	419	10,271	416	(9,855)	2469%	27,403	34,223	25,518	(8,705)	134%	55,466	62%
<b>Total Program Service Expenses</b>	<b>175,302</b>	<b>165,737</b>	<b>199,735</b>	<b>33,998</b>	<b>83%</b>	<b>1,282,909</b>	<b>1,273,554</b>	<b>1,265,457</b>	<b>(8,097)</b>	<b>101%</b>	<b>1,645,477</b>	<b>77%</b>
<b>Salaries &amp; Benefit Expenses</b>												
5510 - Salaries/Wages	214,966	220,105	248,585	28,480	89%	2,001,096	2,066,381	2,208,160	141,779	94%	2,943,600	70%
5605 - Payroll Taxes	16,804	17,579	19,435	1,856	90%	147,534	153,013	165,188	12,175	93%	220,616	69%
5610 - Health Insurance	20,203	21,055	24,124	3,069	87%	179,227	184,380	213,555	29,175	86%	279,723	66%
5620 - Health Ins/Medical Reimb	700	500	1,106	606	45%	1,998	4,990	3,804	(1,186)	131%	7,257	69%
5630 - Dental Insurance	1,218	1,236	1,267	31	98%	11,158	10,968	11,544	576	95%	14,887	74%
5640 - Life & LTD Insurance	1,429	1,441	1,461	20	99%	12,762	12,699	13,160	461	96%	17,329	73%
5645 - Workman's Comp Insurance	221	218	212	(6)	103%	1,985	1,965	1,908	(57)	103%	2,439	81%
5650 - Retirement Plan Contributions	18,646	18,401	21,697	3,296	85%	179,553	175,205	200,417	25,212	87%	264,151	66%
5655 - Retirement Plan Fees & Costs	5,000	-	5,208	5,208	0%	15,509	9,631	16,009	6,378	60%	21,212	45%
5660 - Training/Development	2,400	-	2,300	2,300	0%	15,421	18,000	14,276	(3,724)	128%	15,680	115%
<b>Total Salaries &amp; Benefit Expenses</b>	<b>281,586</b>	<b>280,535</b>	<b>325,395</b>	<b>44,860</b>	<b>86%</b>	<b>2,566,243</b>	<b>2,637,232</b>	<b>2,848,021</b>	<b>210,789</b>	<b>93%</b>	<b>3,786,894</b>	<b>68%</b>
<b>General &amp; Administrative Expenses</b>												
7025 - Office Supplies	1,290	2,054	1,940	(114)	106%	15,669	18,897	15,606	(3,291)	121%	20,932	90%
7033 - Operating Meeting Supplies	1,775	1,962	1,738	(224)	113%	16,316	17,473	15,974	(1,499)	109%	21,538	81%
7035 - Postage/Mailing, net	3,765	11,004	6,130	(4,874)	180%	41,249	42,287	40,384	(1,903)	105%	54,018	78%
7040 - Copy/Printing Expense	18,783	14,080	19,200	5,120	73%	130,660	118,552	129,991	11,439	91%	160,704	74%
7041 - Copy/Print revenue	(2,564)	(1,988)	(2,416)	(428)	82%	(18,586)	(18,573)	(17,514)	1,059	106%	(24,746)	75%
7045 - Internet Service	1,583	1,785	1,720	(65)	104%	15,304	9,317	16,719	7,402	56%	21,768	43%
7050 - Computer Maintenance	2,276	2,276	2,253	(23)	101%	21,303	30,689	21,057	(9,632)	146%	27,918	110%
7055 - Computer Supplies & Small Equip	214	867	214	(653)	405%	4,889	11,298	5,172	(6,126)	218%	6,909	164%
7089 - Membership Database Fees	8,327	-	8,240	8,240	0%	40,170	28,437	40,679	12,242	70%	48,976	58%
7100 - Telephone	3,736	5,046	3,750	(1,296)	135%	36,280	36,537	36,932	395	99%	48,440	75%
7105 - Advertising	3,468	1,715	1,521	(194)	113%	5,328	25,745	2,803	(22,942)	918%	21,860	118%
7106 - Public Notification	-	68	-	(68)	-	531	1,149	659	(490)	174%	753	153%
7110 - Publications/Subscriptions	725	817	711	(106)	115%	14,616	15,469	14,882	(587)	104%	18,964	82%
7115 - Public Relations	25,140	-	6,000	6,000	0%	50,280	-	12,000	12,000	0%	12,000	0%
7120 - Membership/Dues	-	555	-	(555)	-	10,255	9,588	10,182	594	94%	11,399	84%
7135 - Bank Service Charges	58	60	65	5	93%	772	701	872	171	80%	1,331	53%
7136 - ILM Service Charges	1,310	168	1,293	1,125	13%	13,289	12,695	13,115	420	97%	16,670	76%
7138 - Bad debt expense	-	-	-	-	-	-	-	-	-	-	-	-
7140 - Credit Card Merchant Fees	5,271	5,319	5,401	82	98%	45,831	46,878	43,437	(3,441)	108%	103,275	45%
7141 - Credit Card surcharge	(78)	(74)	(76)	(2)	98%	(14,625)	(15,841)	(14,161)	1,680	112%	(55,075)	29%
7145 - Commission Election Expense	3,250	1,905	3,494	1,589	55%	3,250	1,905	3,494	1,589	55%	3,500	54%
7150 - E&O/Off & Dir Insurance	4,246	4,293	4,335	42	99%	38,211	38,639	39,019	380	99%	52,026	74%
7160 - Audit Expense	-	-	-	-	-	31,363	33,546	32,000	(1,546)	105%	32,000	105%
7170 - Lobbying Rebates	7	-	49	49	0%	140	111	182	71	61%	182	61%
7175 - O/S Consultants	33,414	6,670	4,167	(2,503)	160%	63,784	48,227	40,718	(7,509)	118%	60,500	80%
7176 - Bar Litigation	1,589	-	1,280	1,280	-	21,618	4,033	17,405	13,372	23%	18,000	22%
7177 - UPL	-	3,190	-	(3,190)	-	644	3,465	5,654	2,189	61%	10,000	35%
7178 - Offsite Storage/Backup	346	180	327	148	55%	3,116	3,569	2,943	(626)	121%	4,000	89%
7179 - Payroll Adm Fees	235	244	236	(8)	103%	2,123	2,150	2,133	(17)	101%	2,838	76%
7180 - Administrative Fee Expense	90	81	72	(9)	113%	835	536	675	139	79%	947	57%
7190 - Lease Interest Expense	-	-	-	-	-	-	-	-	-	-	209	0%
7191 - Lease Sales Tax Expense	-	-	-	-	-	88	-	167	167	0%	167	0%
7195 - Other Gen & Adm Expense	128	1,075	86	(989)	1250%	2,427	10,966	2,461	(8,505)	446%	4,262	257%
<b>Total General &amp; Administrative Expenses</b>	<b>118,312</b>	<b>63,352</b>	<b>71,657</b>	<b>8,305</b>	<b>68%</b>	<b>597,058</b>	<b>538,449</b>	<b>535,567</b>	<b>(2,882)</b>	<b>101%</b>	<b>706,195</b>	<b>85%</b>
<b>In Kind Expenses</b>												
7103 - InKind Contrib-UDR & all other	946	1,231	1,077	(154)	114%	15,433	14,350	16,878	2,528	85%	22,426	64%
<b>Total In Kind Expenses</b>	<b>946</b>	<b>1,231</b>	<b>1,077</b>	<b>(154)</b>	<b>114%</b>	<b>15,433</b>	<b>14,350</b>	<b>16,878</b>	<b>2,528</b>	<b>85%</b>	<b>22,426</b>	<b>69%</b>
<b>Building Overhead Expenses</b>												
6015 - Janitorial Expense	2,687	2,486	2,700	214	92%	22,880	22,522	22,912	390	98%	30,228	75%
6020 - Heat	2,361	2,124	2,336	212	91%	16,627	16,526	16,396	(130)	101%	21,297	78%
6025 - Electricity	3,134	2,926	3,245	319	90%	32,600	33,962	33,628	(334)	101%	45,574	75%
6030 - Water/Sewer	230	273	222	(51)	123%	4,125	6,000	3,983	(2,017)	151%	5,245	114%
6035 - Outside Maintenance	6,130	-	6,533	6,533	0%	8,756	9,959	9,335	(624)	107%	13,258	75%
6040 - Building Repairs	-	1,297	-	(1,297)	-	4,604	14,834	7,291	(7,543)	203%	15,716	94%
6045 - Bldg Mtncn Contracts	2,401	2,457	2,555	98	96%	28,733	24,272	30,551	6,279	79%	41,300	59%
6050 - Bldg Mtncn Supplies	3	3,192	3	(3,189)	106933%	5,272	4,430	5,795	1,365	76%	5,805	76%
6055 - Real Property Taxes	3,018	2,155	3,150	995	68%	28,154	23,708	29,387	5,679	81%	38,838	61%
6060 - Personal Property Taxes	42	37	46	9	81%	378	335	412	77	81%	520	64%
6065 - Bldg Insurance/Fees	1,374	1,442	1,386	(56)	104%	12,368	12,922	12,424	(498)	104%	16,576	78%
6070 - Building & Improvements Depre	4,298	4,370	4,376	6	100%	38,684	39,328	39,231	(97)	100%	52,513	75%
6075 - Furniture & Fixtures Depre	1,292	1,132	1,304	172	87%	11,628	10,188	11,685	1,497	87%	15,697	65%
7065 - Computers, Equip & Sftwre Depre	15,859	14,157	16,123	1,966	88%	130,138	127,515	131,903	4,388	97%	178,774	71%
<b>Total Building Overhead Expenses</b>	<b>42,830</b>	<b>38,048</b>	<b>43,979</b>	<b>5,931</b>	<b>87%</b>	<b>344,947</b>	<b>346,499</b>	<b>354,933</b>	<b>8,434</b>	<b>98%</b>	<b>481,341</b>	<b>72%</b>
<b>Total Expenses</b>	<b>618,975</b>	<b>548,903</b>	<b>641,843</b>	<b>92,940</b>	<b>86%</b>	<b>4,806,590</b>	<b>4,810,084</b>	<b>5,020,856</b>	<b>210,772</b>	<b>96%</b>	<b>6,642,333</b>	<b>72%</b>
<b>Net Profit (Loss)</b>	<b>\$ (370,501)</b>	<b>\$ (322,375)</b>	<b>\$ (402,617)</b>	<b>\$ 80,242</b>	<b>80%</b>	<b>\$ 1,279,605</b>	<b>\$ 1,402,256</b>	<b>\$ 1,143,910</b>	<b>\$ 258,346</b>	<b>123%</b>	<b>\$ 12,166</b>	



## Utah State Bar Balance Sheets

	3/31/2019	6/30/2018
<b>ASSETS</b>		
Current Assets		
Petty Cash	\$ 625	\$ 625
Cash in Bank	101,877	383,265
Invested Funds	5,609,516	6,866,991
Total Cash/Investments	5,712,018	7,250,881
Accounts Receivable	57,783	12,429
Prepaid Expenses	120,703	96,732
A/R - Sections	30,530	18,169
Total Other Current Assets	209,016	127,330
Total Current Assets	5,921,034	7,378,211
Fixed Assets		
Property & Equipment	4,977,337	4,854,937
Accumulated Depreciation	(4,164,918)	(3,987,886)
Land	633,142	633,142
Total Fixed Assets	1,445,561	1,500,192
<b>TOTAL ASSETS</b>	<b>\$ 7,366,595</b>	<b>\$ 8,878,404</b>
<b>LIABILITIES &amp; EQUITY</b>		
Liabilities		
Current Liabilities		
AP Trade	\$ 75,380	\$ 77,906
Other Accounts Payable	16,737	130,437
Accrued Payables	392,993	408,435
Cap Lease Oblig - ST	3,485	3,485
A/P - Sections	(45)	192,780
Deferred Revenue		2,586,400
Total Current Liabilities	488,550	3,399,443
Long Term Liabilities		
Capital Lease Oblig	8,495	11,686
Total Long Term Liabilities	8,495	11,686
Total Liabilities	497,044	3,411,129
Equity		
Unrestricted Net Assets (R/E)	5,467,275	5,327,916
Fund Balance - Current Year	1,402,276	139,359
Total Equity	6,869,551	5,467,275
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<b>\$ 7,366,595</b>	<b>\$ 8,878,404</b>

**UTAH STATE BAR**  
**Membership Statistics**  
**March 31, 2019**

<u>STATUS</u>	<u>03/31/18</u>	<u>03/31/19</u>	<u>Change</u>
Active	8,348	8,544	196
Active under 3 years	960	914	(46)
Active Emeritus	181	216	35
In House Counsel	79	95	16
Foreign Legal Counsel	2	3	1
Subtotal - Active	9,570	9,772	202
Inactive - Full Service	778	806	28
Inactive - No Service	1,919	1,938	19
Inactive Emeritus	291	296	5
Inactive House Counsel	-	3	3
Subtotal - Inactive	2,988	3,043	55
Total Active and Inactive	12,558	12,815	257
<u>Supplemental Information</u>			
Paralegals	138	163	25
Associate Section Members	116	119	3
Journal Subscribers	125	125	-
<u>Active Attorneys by Region</u>			
1st Division (Logan - Brigham)	178	179	1
2nd Division (Davis - Weber)	863	895	32
3rd Division (Salt Lake)	5,584	5,619	35
4th Division (Utah)	1,230	1,264	34
5th Division (Southern Utah)	478	501	23
Out of State	1,237	1,314	77
Total Active Attorneys	9,570	9,772	202

Balance Sheet Classification

Base Currency: USD As of 03/31/2019

ILM-UT ST BAR (3176)

Dated: 04/11/2019

CE

Identifier	Description	Current Units	Rating	Coupon	Effective Maturity	Book Yield	Yield	Base Book Value	Base Net Total Unrealized Gain/Loss	Market Price	Base Accrued Balance	Base Market Value + Accrued
38141W232	GOLDMAN:FS MM INST	1,247,471.53	AAA	2.600	03/31/2019	2.610	2.610	1,247,882.82	87.70	1.0004	0.00	1,247,970.51
CCYUSD	Cash	4,249.37	AAA	0.000	03/31/2019	0.000	0.000	4,249.37	0.00	1.0000	0.00	4,249.37
--	--	1,251,720.90	AAA	--	03/31/2019	2.601	2.601	1,252,132.19	87.70	--	0.00	1,252,219.88

ST

Identifier	Description	Current Units	Rating	Coupon	Effective Maturity	Book Yield	Yield	Base Book Value	Base Net Total Unrealized Gain/Loss	Market Price	Base Accrued Balance	Base Market Value + Accrued
02006L3L5	Ally Bank	250,000.00	NA	1.650	06/24/2019	1.701	1.692	249,971.27	0.00	99.9885	1,130.14	251,101.41
795450B53	Sallie Mae Bank	250,000.00	A-2	1.650	06/28/2019	1.701	1.693	249,969.82	0.00	99.9879	1,062.33	251,032.15
13607RAB6	CANADIAN IMPERIAL BANK OF COMMERCE	220,000.00	AA	1.600	09/06/2019	2.858	2.757	218,828.45	71.77	99.5001	244.44	219,144.66
65557CAV5	NORDEA BANK AB	200,000.00	AA-	1.625	09/30/2019	3.039	2.849	198,622.58	164.22	99.3934	9.03	198,795.83
20271RAH3	COMMONWEALTH BANK OF AUSTRALIA	300,000.00	AA-	2.300	09/06/2019	2.866	2.839	299,281.41	16.29	99.7659	479.17	299,776.87
05565EAD7	BMW US CAPITAL LLC	250,000.00	A+	1.500	04/11/2019	2.480	1.472	249,933.52	67.98	100.0006	1,770.83	251,772.33
17325FAF5	CITIBANK NA	250,000.00	AA-	1.850	09/18/2019	2.873	2.737	248,835.54	134.71	99.9881	167.01	249,137.26
74153WCK3	PRICOR GLOBAL FUNDING I	300,000.00	AAA	1.450	09/13/2019	2.865	2.758	298,123.44	108.36	99.4106	217.50	298,449.30
30216BFA5	EXPORT DEVELOPMENT CANADA	350,000.00	AAA	1.750	08/19/2019	2.595	2.650	348,870.78	-90.18	99.6516	714.58	348,495.18
03783CBA4	APPLE INC	280,000.00	AA+	1.100	08/02/2019	2.479	2.602	278,703.70	-131.98	99.4899	487.67	279,059.39
89236TBP9	TOYOTA MOTOR CREDIT CORP	300,000.00	AA-	2.125	07/18/2019	2.571	2.635	299,605.93	-75.43	99.8435	1,292.71	300,823.21
48127HAA7	JPMORGAN CHASE & CO	100,000.00	A+	1.500	04/11/2019	2.595	2.716	99,970.31	30.29	99.7122	3,408.83	352,393.53
05565EAD7	BMW US CAPITAL LLC	350,000.00	AA	2.400	01/15/2020	2.896	1.472	348,654.19	165.61	99.6628	708.33	100,708.93
94988JL7	WELLS FARGO BANK NA	400,000.00	AA-	1.600	08/19/2019	2.668	2.715	398,370.35	-94.35	99.5590	1,773.33	350,593.13
961214CY7	WESTPAC BANKING CORP	4,150,000.00	AA-	--	08/24/2019	2.612	2.499	4,136,574.28	527.01	--	14,204.58	4,151,305.86
--	--	4,150,000.00	AA-	--	08/24/2019	2.612	2.499	4,136,574.28	527.01	--	14,204.58	4,151,305.86

LT

Identifier	Description	Current Units	Rating	Coupon	Effective Maturity	Book Yield	Yield	Base Book Value	Base Net Total Unrealized Gain/Loss	Market Price	Base Accrued Balance	Base Market Value + Accrued
525ESC1Y5	LEHMAN ESCROW	300,000.00	NA	0.000	01/01/2049	0.000	--	0.00	5,700.00	1.9000	0.00	5,700.00
00182EBE8	ANZ NEW ZEALAND (INTL) LTD	200,000.00	AA-	2.200	07/17/2020	3.297	2.920	197,241.18	932.22	99.0867	904.44	199,077.84
--	--	500,000.00	AA-	--	05/02/2021	3.297	2.920	197,241.18	6,632.22	--	904.44	204,777.84

Summary

Identifier	Description	Current Units	Rating	Coupon	Effective Maturity	Book Yield	Yield	Base Book Value	Base Net Total Unrealized Gain/Loss	Market Price	Base Accrued Balance	Base Market Value + Accrued
--	--	5,901,720.90	AA	--	08/14/2019	2.633	2.537	5,685,947.64	7,246.93	--	16,109.02	5,608,303.59

\* Grouped by: BS Class 2. \* Groups Sorted by: BS Class 2. \* Weighted by: Base Market Value + Accrued, except Book Yield by Base Book Value + Accrued. \* Holdings Displayed by: Lot

## Article

## Responding To The Diversity And Inclusion Challenge In Utah

by Aida Neimarlija

Utah's population is changing but the legal profession is not keeping up. 2016 census data show that 22.8% of Utahns belong to one or more racial minority groups and that number is projected to increase to 30% by 2050. Women now constitute half of law school graduates. This demographic shift is certainly not peculiar to Utah. Nationwide, issues around diversity and inclusion are becoming increasingly important in government, business, and the professions.

Despite these trends, however, Utah's bar and bench remain largely homogenous and do not reflect these numbers. The *Deseret News* reported last July that "79% of judges are white men, making the Beehive State the least diverse in the country." Dennis Romboy, *Utah State Courts Lack Diversity Among Judges*, DESERET NEWS (July 21, 2018), available at <https://www.deseretnews.com/article/900025600/utah-state-courts-lack-diversity-among-judges.html>.

The term "D&I" (diversity and inclusion) is most commonly used to describe the effort to advance traditionally underrepresented groups defined by race/ethnicity, gender, sexual orientation, disability, and age. Experts in D&I teach that the two concepts — diversity and inclusion — are vastly different. While diversity is defined as a range of identifiers used to differentiate groups and individuals one from another, inclusion refers to intentional efforts on the part of organizations to reach their full potential, along with practices in which individuals or groups from different backgrounds are welcomed and treated equally. Inclusion has been described as creating a sense of belonging, of having a seat at the table, and having access to leadership positions.

Most proponents of D&I consider both ideals to be moral imperatives. And in the legal field in particular, many view both concepts as inherently tied to access-to-justice issues. The American Bar Association reported last August that our profession and the judiciary are struggling with decreased public confidence in the justice system. The report suggests that with a more diverse and inclusive legal profession, we are more likely to have the

capacity to critically examine issues such as potential bias, racism, sexism, inequities, and cultural and language barriers. Earlier this year, the ABA House of Delegates passed Resolution 113 called "Promoting Diversity in the Legal Profession," which launched a detailed survey of hundreds of national law firms and urged all providers of legal services, and particularly law firms, to expand and create opportunities for diverse talents to thrive in the profession. See <https://www.americanbar.org/groups/diversity/DiversityCommission/> (last accessed April 2, 2019).

Investing in D&I is also becoming widely recognized as a smart business decision. This trend toward greater diversity and inclusion is already affecting Utah's businesses and legal employers. While some are quicker to adapt, all would be wise to prepare and carefully develop their policies and practices in order to ensure long-term viability.

This article examines some of the national D&I trends and the impetus behind them. It further discusses how the national trends are affecting the Utah legal community. Finally, the article introduces the Utah Center for Legal Inclusion ("UCLI") and its state-wide effort to prepare organizations to effectively respond to demographic changes and client requirements.

### Business and Governmental Interest in D&I

Research suggests that diversity in the workplace can be a key advantage over competitors as it improves the work-product and the bottom line. In a recent interview with the author, Sara

AIDA NEIMARLIJA is Executive Director of the new Utah Center for Legal Inclusion.



Dansie Jones, a business and technology expert in D&I, explained, "In the global climate we live in, . . . customers and clients are requiring businesses to build products and provide services using a wider range of empathy, understanding, perspectives and problem-solving. Research also shows that when diversity and inclusion happen in leadership and through all areas of the company, the company achieves better team performance, productivity, profits, and revenue."

A recent whitepaper by Cisco Systems, Inc. on the return on investment of D&I summarizes studies showing that "diverse teams exhibited a higher level of creativity and a broader thought process" compared to work teams that were more homogeneous.<sup>1</sup> Sandy Hoffman et al., *Measurement: Proving the ROI of Global Diversity and Inclusion Efforts*, GLOBAL DIVERSITY PRIMER (2009), available at [https://www.cisco.com/c/dam/en\\_us/about/ac49/ac55/docs/Global\\_Diversity\\_Primer\\_Cisco\\_Chapter.pdf](https://www.cisco.com/c/dam/en_us/about/ac49/ac55/docs/Global_Diversity_Primer_Cisco_Chapter.pdf).

The whitepaper further noted that in "a study of 506 U.S.-based businesses, each 1 percent increase in the rate of gender diversity [of employees] resulted in an approximately 3 percent increase in sales revenues." *Id.* at 130. This should not be surprising given that women are "the world's most powerful consumers."

Bridget Brennan, *Top 10*

*Things Everyone Should Know about Women Consumers*, FORBES (Jan. 21, 2015), available at <https://www.forbes.com/sites/bridgetbrennan/2015/01/21/top-10-things-everyone-should-know-about-women-consumers/#4db2b7f76a8b>. In 2013, The Harvard Business Review found that women account for at least 41% of employees with authority to make purchasing decisions. Cathy Benko & Bill Pelster, *How Women Decide*, HARVARD BUSINESS REVIEW (Sept. 2013), available at <https://hbr.org/2013/09/how-women-decide>. "Women are now the biggest buyers of legal services through the growing prominence of legal operations executives" said Connie Brenton, president and CEO of the Corporate Legal Operations Consortium ("CLOC"). Brenna Goth, *Companies Push Diversity Goals for Outside Law Firms*, BLOOMBERG (April 25, 2018), <https://www.bna.com/companies-push-diversity-n57982091486/>.

As part of their own mission to promote D&I, businesses and

government agencies are looking to their vendors to demonstrate a similar commitment. According to the ABA and another recent article for the Illinois Bar, almost two hundred of the top U.S. companies have already agreed to require and report tracking of the diversity and inclusion efforts of their legal vendors. Bloomberg and other news outlets have reported that many large corporations, including Amazon, Walmart, Microsoft, Facebook, HP, AT&T, and NBC, are specifically requiring both diversity and inclusion from their outside counsel.

### Business Effect on the Utah Legal Community

National business and demographic trends are already driving significant changes in the legal industry. The American Bar Association, Federal Bar Association, and others have made D&I a priority. National law firms are also joining the D&I effort and forming organizations such as the CLOC, the Diversity Lab (a

collaboration of over 500 national law firms) and the Leadership Council on Legal Diversity, to tackle the challenges of keeping up with client demands.

Many Utah legal employers are also recognizing the need to invest in D&I. The Utah economy is one of the strongest in the country and there has been a significant influx of national and

international companies opening offices in Utah and employing thousands of Utahns. As part of their effort to maximize D&I, companies in Utah are hiring women and attorneys of color as their in-house counsel and requiring diversity in their outside counsel as well. Over the last year, several Utah law firms reported that they have been asked by national clients to provide information regarding diversity, hiring, retention and inclusion-related policies.

Local businesses are also exhibiting a strong commitment to D&I. For example, Zions Bank recently invested hundreds of thousands of dollars to form the Women Leadership Institute, whose mission is to prepare women to become business leaders and CEOs. Similarly, Gail Miller of the Larry H. & Gail Miller Family Foundation has been a significant contributor to women and other diverse students, funding projects such as the David Eccles School of Business "Elevate U" women's business executive program and other diversity scholarship programs.

#### VISIT UTAHCLI.ORG TO LEARN MORE ABOUT:

- The UCLI Certification Program
- How to become a Founding UCLI Sponsor
- Funding or Volunteering for UCLI's Projects & Committees
- Serving as a Mentor or Mentee

Practitioners can also donate to UCLI during the bar licensing period.



### Utah Center for Legal Inclusion

To make the Bench and Bar more reflective of Utah demographics, a group of distinguished leaders from Utah courts, law firms, law schools, government agencies, bar organizations, and affinity groups identified a need for a centralized, state-wide effort focused on advancing the goals of diversity and inclusion. To that end, they formed the Utah Center for Legal Inclusion ("UCLI"), a 501(c)(3) organization.

UCLI strives to enhance organizational inclusion, facilitate educational opportunities and professional advancement for students and attorneys with diverse backgrounds, assist in eliminating bias in Utah's justice system, and track the progress of legal inclusion efforts throughout the state.

### The organizational diversity and inclusion challenge

UCLI appreciates the unique challenges Utah legal employers face when trying to hire, retain and promote diverse attorneys. Hiring and promoting attorneys from diverse backgrounds to leadership positions and the judiciary is difficult when there are few in the applicant pool to begin with. UCLI's mission is to increase the size of that pool.

UCLI's Education Committee is developing a comprehensive education and mentoring initiative that will serve students in achieving academic and professional goals in the law, beginning in K-12 schools and continuing through undergraduate institutions and law schools.

The Advancement Committee supports and encourages professional advancement for all attorneys. As a continuation of the mentoring efforts developed by the Education Committee, UCLI is developing an initiative that supports attorneys by providing mentoring and

advancement opportunities from the time an attorney enters the legal profession in Utah and throughout her or his legal career. As a particular area of focus, UCLI will promote inclusion on Utah's bench by identifying and preparing qualified judicial candidates with diverse backgrounds and assisting the candidates during the appointment process.

UCLI's Organizational Inclusion Committee is working with the legal and business community to develop a UCLI Certification Program for Utah legal employers, which will provide law firms and other organizations an opportunity to demonstrate their commitment to D&I to potential clients, potential hires, as well as their own employees, even if their organizations' biography pages do not yet reflect that commitment due to factors outside their control. The Program, which will launch this fall, will provide legal employers with innovative evidence-based tools to meet their individual needs and the existing and future challenges they may face due to increasing client demands for diversity and the changing demographics.

### Conclusion

Diversity and inclusion have become important issues for the legal community in Utah. With a deep understanding of Utah's unique history and challenges, UCLI will strive to serve the interests of the bar, the bench, employers, and educators to accomplish the mission of increasing diversity and enhancing the vibrancy, effectiveness, and legitimacy of the Utah legal community.

1. This is sometimes referred to as the Medici Effect, based on the book of the same title by Frans Johansson. Frans Johansson, *The Medici Effect: Breakthrough Insights At The Intersection Of Ideas, Concepts, And Cultures* (2004). Johansson examines how the collaboration of people with diverse backgrounds creates disruptive innovation and produces better solutions to complex problems.

**UCLI welcomes your feedback and ideas for achieving UCLI's objectives.**

**Contact us!**



Law & Justice Center | 645 South 200 East | Salt Lake City, Utah 84111  
801-746-5221 | [Utah.ucli@gmail.com](mailto:Utah.ucli@gmail.com)

Linked  

# Thank you

## UTAH STATE BAR

for making a difference with Blue Sky

In 2018, you reduced your carbon footprint by...



37,965

pounds of carbon  
dioxide

by supporting...



42,000

kilowatt hours of  
renewable energy

that's how  
much energy...



62

solar panels would  
generate in a year



Energy  
CERTIFIED

Blue Sky products are Green-e Energy certified, and meet the environmental and consumer-protection standards set forth by the nonprofit Center for Resource Solutions. Learn more at [www.green-e.org](http://www.green-e.org).



Environmental benefits derived by comparing the Blue Sky mix with Green-e Residual Mix Emission Rates for US Customers (WECC) April 2017. Green-e Energy does not certify or verify carbon emissions claims or methodologies for calculating emissions related to biomass. Solar panel generation based on a 300W solar panel operating at the EIA's 2017 average capacity factor for the U.S. of 25.7% ([https://www.eia.gov/electricity/monthly/lepm\\_table\\_grapher.php?t=epmt\\_6\\_07\\_b](https://www.eia.gov/electricity/monthly/lepm_table_grapher.php?t=epmt_6_07_b))