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Cover Photo

Millcreek Butterfly, by Utah State Bar member Chad Grange.

CHAD GRANGE is a graduate of the J. Reuben Clark Law School at Brigham Young University. He is a member of the Utah State Bar and is a shareholder and the Chair of the International Section at Kirton McConkie in Salt Lake City. Chad took this issue's cover photo when "My daughter, Tessa, noticed a beautiful butterfly in Millcreek Canyon and asked me to 'catch it with my camera.' So, I did."

SUBMIT A COVER PHOTO

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

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The Editor of the *Utah Bar Journal* wants to hear about the topics and issues readers think should be covered in the magazine. If you have an article idea or would be interested in writing on a particular topic, please contact us by calling 801-297-7022 or by e-mail at barjournal@utahbar.org.

Guidelines for Submission of Articles to the Utah Bar Journal

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

ARTICLE LENGTH:

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

SUBMISSION FORMAT:

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

CITATION FORMAT:

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

NO FOOTNOTES:

Articles may not have footnotes. Endnotes will be permitted on a very limited basis, but the editorial board strongly discourages their use, and may reject any submission containing more than five endnotes. The *Utah Bar Journal* is not a law review, and articles that require substantial endnotes to convey the author's intended message may be more suitable for another publication.

ARTICLE CONTENT:

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

EDITING:

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

AUTHORS:

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

PUBLICATION:

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

Did You Know… You can earn Continuing Legal Education credit if an article you author is published in the *Utah Bar Journal?* Article submission guidelines are listed above. For CLE requirements see Rule 14-409 of the Rules of the Utah State Board of Continuing Legal Education.

Letter Submission Guidelines

1. Letters shall be typewritten, double spaced, signed by the author, and shall not exceed 300 words in length.

2. No one person shall have more than one letter to the editor published every six months.

3. All letters submitted for publication shall be addressed to Editor, *Utah Bar Journal*, and shall be emailed to BarJournal@UtahBar.org or delivered to the office of the Utah State Bar at least six weeks prior to publication.

4. Letters shall be published in the order in which they are received for each publication period, except that priority shall be given to the publication of letters that reflect contrasting or opposing viewpoints on the same subject.

5. No letter shall be published that (a) contains defamatory or obscene material, (b) violates the Rules of Professional Conduct, or (c) otherwise may subject the Utah State Bar, the Board of Bar Commissioners or any employee of the Utah State Bar to civil or criminal liability.

6. No letter shall be published that advocates or opposes a particular candidacy for a political or judicial office or that contains a solicitation or advertisement for a commercial or business purpose.

7. Except as otherwise expressly set forth herein, the acceptance for publication of letters to the Editor shall be made without regard to the identity of the author. Letters accepted for publication shall not be edited or condensed by the Utah State Bar, other than as may be necessary to meet these guidelines.

8. The Editor, or his or her designee, shall promptly notify the author of each letter if and when a letter is rejected.

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The site has been developed with both clients and lawyers in mind. All Bar members are included in a search-by-name option, similar to the Member Directory on UtahBar.org. Active attorneys in good standing who are accepting new clients may also choose to be included in specialized search options on the site, showing prospective clients their credentials, practice areas, and other details of interest to clients, such as the type of fee arrangements they offer.

Search results are displayed randomly, thereby providing the public with a reference that is appropriate for their problem, trustworthy, and unbiased. On your side, you will be able to track hits on your profile from within your account and adjust your profile to increase your results.

The Bar has worked closely with the Utah courts on the directory so that it will be the "go to" reference source for court staff who need a reliable and unbiased process to use in referring unrepresented parties to a lawyer. The Bar will be aggressively promoting the site to the public directly and online, as well as to civic, religious and community groups whose members may look to them for a lawyer referral.

Use your current Bar login to update your profile at www.licensedlawyer.org/login; select "My Dashboard" then "Update Profile." Your Bar public business information is already pre-loaded for your convenience. To be included in all search options for clients looking for a new attorney, be sure to **UNCHECK** the box to **"OPT-IN"** and **CHECK** the box for "accepting new clients" when you update your profile.

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Our Shared Journey

by Angelina Tsu

Just over a decade ago, someone went out on a limb and took a chance on me. He gave me my first legal job and changed my life. Looking back, I do not know why Judge Benson picked me to be a judicial clerk. I do know that I was unlike most of the other clerks whose parents include legal legends like Rex Lee, name partners at prestigious law firms, and prominent businessmen and women. The other clerks had perfect resumes and offers from fancy multinational law firms. They were charming, well mannered, and well traveled. I was enamored of their perfection.

Judge Benson did not just give me a chance. He included and mentored me. During the third week of my clerkship, Judge Benson was asked to open the 2003 Legislative Session. He brought me and my co-clerk Scott along when he arrived early to meet with House leadership. After Judge Benson introduced us, the Speaker motioned him towards a conference room at the back of the office. Scott and I followed, but we were immediately (and politely) asked to remain in the hallway. When Judge Benson saw us sitting outside, he simply said, "They're with me" and led us into the meeting.

This pattern continued for the rest of the year. Whether it was lunch with Senator Hatch, Judge Benson's heartwarming tribute to Rex Lee at the BYU homecoming celebration, or a long, long bike ride, Judge Benson included us in his life and his world. We did skits for his evidence class, attended his daughters' weddings, and looked at plans for the new federal courthouse.

In so many ways, my year as bar president has been like my year as a Benson clerk. Like Judge Benson, you took a chance on me. Demographically, I am not a typical bar president. In the eighty-five-year history of the bar, I am the fifth woman lawyer and the second attorney of color to serve in this capacity. I am the first woman lawyer of color to hold this office. I am told that I am the youngest person to undertake this endeavor. I cannot say that I have attempted to verify this, but I can say that I understand that it is a rare opportunity to have had in one's thirties and one for which I am very grateful.

Over the past year, you have become a part of my life. Together we have honored old traditions and started new ones, including the Breakfast of Champions, the Utah Leadership Academy, Courthouse Steps, Bar Review, and Fifty-year pins. Many have reached out with comments, concerns, and frustrations about the Bar and made suggestions on how we can make the organizations better for the members we serve. Your comments made a difference. Heather Thuet and Juliette White brought up accounting issues that resulted in an important personnel change in the bar staff. Jeremy Delicino shared concerns about OPC that provided the basis upon which we were able to justify the ABA Review of the OPC. Many others shared comments that prompted a third-party review of bar operations.

It has not all been official bar business. I received calls and emails from lawyers about the personal circumstances of their lives. Everything from respondents in OPC cases inviting me to participate in their discipline hearings to people with substance abuse issues seeking support. I was surprised when, on a flight home from San Diego, an old friend traded his seat in first class so he could sit by me to discuss an important bar issue. Thank you for being willing to pick up the phone, write an email, swap a seat, or stop me on the street. Our bar is better because of you.

I am thankful for your many thoughtful expressions of gratitude and support. Over the course of the year, I shared some very personal experiences in some very public places. Initially, I was apprehensive about doing it. But in the end, I did it because I realized that these experiences are not "my story" as much as they are our story. I have attempted to shed some light on what it is like to be a woman lawyer in Utah. I was surprised by the volume of messages that I received thanking me for sharing these experiences. I have tried to respond

to each message. Though I know I have surely fallen short, please know that your messages brightened my days. I am especially grateful to Alisa Wilkes and Sylvia Kralik whose messages of encouragement and support got me through two particularly difficult days.

If you have ever struggled to fit in; if you have ever been treated unfairly by someone who knew better; or if you have ever admired other lawyers for being all the things you wish you could be – you are not alone. I have been there too, and you will always have a friend in me. As we continue down this road together, I hope you will continue to contribute to the dialogue.

As this is my last article, I would like to thank Charlotte Miller, Paul Moxley, Judge Greenwood, and Rod Snow for taking time out of their very busy lives to share their knowledge as past bar presidents. Special thanks to Gabe White and Jen Tomchak for their efforts with the Leadership Academy and Bar Review; to Heather Farnsworth, Margaret Plane, and Judge Furse for a never-ending supply of great advice; and to Tammy Georgelas, Bill Marsden, Kat Judd, and Gabe White for agonizing over my President's Messages with me. Very special thanks to Judge Benson for taking a chance on me, for being the best mentor a person could ever ask for, and for teaching me many of the life lessons that I value the most.

I am looking forward to passing the baton to Rob Rice. He is an exceptional leader and a true friend. We are fortunate to have him.

The U Visa: Why Are State Prosecutors Involved in Federal Immigration Issues?

Has The U Visa Outlived Its Intended Purpose?

by Timothy L. Taylor

As a prosecutor for the State of Utah, I receive several requests every month to sign U Visa applications for illegal immigrants and their family members who are victims of certain crimes. Most of these requests come to my office months or years after the case involving the victims has been adjudicated. This article will briefly describe the history and purpose of the U Visa and then posit the following questions: Why are state prosecutors involved in federal immigration issues? Has the U Visa outlived its intended purpose?

In October 2000, Congress passed the Victims of Trafficking and Violence Protection Act "to combat trafficking in persons . . . whose victims are predominantly women and children [and] to ensure just and effective punishment of traffickers." Victims of Trafficking and Violence Protection Act of 2000, Pub L. No. 106-386, 114 Stat. 1491 (2000). In addition, Congress enacted the Battered Immigrant Women Protection Act of 1999. This legislation "frees [victims] to cooperate with law enforcement and prosecutors in criminal cases brought against their abusers and the abusers of their children without fearing that the abuser will retaliate by withdrawing or threatening withdrawal of access to an immigration benefit under the abuser's control." Battered Immigrant Women Protection Act of 1999, H.R. 3083, 106th Cong. (1999). Out of these pieces of legislation, the U Visa was born.

Basically, the U Visa was created to help law enforcement investigate and prosecute individuals whose victims were not U.S. citizens. The federal legislation encouraged victims to cooperate with law enforcement without fearing, for example, that the abuser would withdraw his immigration sponsorship for the victim, in which case the victim would be deported and unable to testify. The legislation also authorized the victim's family members to receive the U Visa benefits.

To qualify for a U Visa, a person must meet the following criteria: (1) the person is a victim of a qualifying criminal activity; (2) the victim possesses information about the crime; (3) the victim suffered substantial physical or mental abuse from the crime; (4) the victim was, is, or is likely to be helpful in assisting law enforcement in the investigation or prosecution of the crime; and (5) the U Visa application is signed by a certifying official.

The U Visa has several benefits for those not lawfully in the United States:

- Ability to initially remain in the U.S. for up to four years;
- After three years, eligibility to apply for lawful permanent residence;
- Ability to receive a work permit;
- Ability for family members to receive U Visas (spouse, unmarried children under the age of twenty-one, parents, and unmarried siblings under the age of eighteen); and
- (In some states) medical insurance, job development benefits, cash aid, and food stamps.

As you can see, the U Visa can grant a person and her family members a number of benefits. It is no wonder that attorneys

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work so hard to convince a police officer, a prosecutor, or a judge to sign the U Visa application.

Attorneys who submit U Visa applications to my office often claim that a purpose of the U Visa is to encourage illegal immigrants to report crimes without fearing that the police will report them to immigration officials. In my experience, this claim is without merit. I know of no cases where a local law enforcement officer has reported a victim of crime to immigration officials. In addition, the purpose and findings of the federal legislation demonstrate that Congress was not concerned about law enforcement officers reporting victims of crimes to immigration officials. In fact, Congress found that it was the abuser – the person who sponsored the victim to remain in the U.S. – who might threaten the victim by withdrawing the sponsor's support if the victim reported the crime to police. Therefore, it is clear that the U Visa was not created to protect illegal immigrants from the police.

As mentioned, illegal immigrants who are victims of qualifying crimes can petition the federal government to become legal permanent residents (LPR). An LPR is a foreign national who is authorized to live and work in the United States on a permanent basis. The U Visa petition is officially referred to as USCIS Form I-918, Petition for U Nonimmigrant Status and Supplement B. Currently, Congress authorizes 10,000 U Visas per year. Family members of a person who petitions for a U Visa are also eligible to become LPRs. During 2014, 8,500 illegal immigrants were granted U Visas simply by being a family member of a crime victim. The following table demonstrates the number of U Visa petitions by victims and family members from 2009 through the first quarter of 2015.

During the five-year period from 2009 through the first quarter of 2015, the number of U Visa petitions from victims has increased four-fold, and the number of petitions received from family members has increased five-fold. *See* https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/I918u_visastatistics_fy2015_qtr2.pdf. Although Congress has limited the number of U Visas granted to victims at approximately 10,000 annually, there is not a similar ceiling for family members. In addition, if a person's petition is not approved in a certain year, the petition is simply rolled over to the next year until a decision is made. The table shows that there were 85,922 U Visa petitions pending at the end of the first quarter in 2015. It is apparent that U Visas are a hot commodity.

Although the U Visa petitions are a federal creation, private attorneys regularly ask local police officers, prosecutors, and judges to fill out and sign the U Visa petition as certifying officials. In fact, unless a certifying official signs the U Visa petition, the U Visa will not be processed. The U Visa instructions make it very clear that a police officer, prosecutor, or judge is under no obligation to sign a U Visa. However, due to the tremendous benefits that a U Visa grants to illegal immigrants, a private attorney will often "shop around" for a certifying official until he or she finds one who will sign the petition. The question I frequently ask is this: Why am I, as a county prosecutor, being asked to get involved in federal immigration issues? The private attorney will respond to this question by saying that the certifying official is not getting involved in federal immigration issues but is merely determining whether the victim has been helpful in the investigation or

U.S. Citizenship and Immigration Services

Number of I-918 Petitions for U Nonimmigrant Status (Victims of Certain Criminal Activities and Family Members) by Fiscal Year, Quarter, and Case Status 2009-2015

Period	Petitions by Case Status											
	Victims of Criminal Activities[1]				Family Members[1]				Total			
	Petitions Received[2]	Approved[3]	Denied[4]	Pending[5]	Petitions Received[2]	Approved[3]	Denied[4]	Pending[5]	Petitions Received[2]	Approved[3,7]	Denied[4]	Pending[5]
Fiscal Year - Total [6]												
2009	6,835	5,825	688	11,863	4,102	2,838	158	9,275	10,937	8,663	846	21,138
2010	10,742	10,073	4,347	7,403	6,418	9,315	2,576	6,242	17,160	19,388	6,923	13,645
2011	16,768	10,088	2,929	10,184	10,033	7,602	1,645	8,329	26,801	17,690	4,574	18,513
2012	24,768	10,122	2,866	19,899	15,126	7,421	1,465	15,592	39,894	17,543	4,331	35,491
2013	25,432	10,030	1,829	33,540	18,263	8,198	1,440	24,956	43,695	18,228	3,269	58,496
2014	26,039	10,020	4,056	45,898	19,229	8,500	3,017	33,111	45,268	18,520	7,073	79,009
Fiscal Year 2015 by Quarter												
Q1. October - December	7,469	10,008	570	42,995	5,618	6,664	405	31,774	13,087	16,672	975	74,769
Q2. January - March	7,235	4	818	49,598	5,541	549	579	36,324	12,776	553	1,397	85,922
Q3. April - June												
Q4. July - September												

prosecution of the case. I submit that because the U Visa, a federal immigration document, will not be processed without my cooperation, I am being asked to insert myself into federal immigration issues.

That is the first issue I have with the U Visa program: I am being asked to wade into federal waters to help determine whether a person should be permitted to live legally in the United States. The second issue I take with the U Visa program is this: Why is an illegal immigrant granted a substantial benefit for cooperating with police, whereas a citizen of the United States receives no reward other than helping to hold a criminal accountable? Is it unreasonable to expect all members of our community to assist in the prosecution of crimes without seeking a federal benefit? As mentioned previously, Congress's initial legislation in 2000 was meant to help women and children caught up in the wicked world of human trafficking – and where the abuser was often the immigrant's sponsor. In all of the years that I have reviewed U Visa applications, I have never received an application associated with human trafficking. Nowadays, the crimes for which a victim may apply for a U Visa have expanded – like most federal programs. The list of victim-crimes now include, among others, blackmail, obstruction of justice, perjury, witness tampering, and any type of domestic violence. In addition to increasing the list of victim-crimes, there is no statute of limitations for which a person may seek a U Visa. I recently received a request to sign a U Visa for a crime that occurred in 1997. According to the *U Visa Law Enforcement Certification Resource Guide* prepared by the Department of Homeland Security, "[t]he U Visa provides eligible victims with nonimmigration status in order to temporarily remain in the United States while assisting law enforcement." *Id.* at p. 2. I still believe that the true purpose of the U Visa program is to prevent illegal immigrants from being deported during the pendency of a criminal prosecution. When petition requests are received months or years after a case is closed (as is often the case), law enforcement no longer needs assistance and the U Visa should not be a part of the picture. In addition, in those few cases where I have received a U Visa request while the case is still open, not a single person was under the threat of deportation. Why is the U Visa even available when a case is closed and the victim is not under the threat of deportation?

As mentioned, the attorneys representing individuals seeking U Visa applications often will shop around to find a certifying official to sign the document. I recently dealt with an attorney who was seeking a U Visa application for a person who alleged she was a victim of a crime in 2006 and had reported the crime to the police in 2008. After investigating the criminal allegation, the police department forwarded the report to our office. Our office screened the case in 2008 and declined to file charges. In 2015, the victim's attorney asked the police department to sign the U Visa application, but the police department denied the request. The attorney then submitted the paperwork to our office to sign the U Visa application; because no charges were ever filed, we also denied the request. The attorney then filed a request with the district court asking the judge to act as the certifying official. After the parties briefed the issue, the judge determined that because no criminal charges were ever filed, the judge had no authority to act as a certifying official. Because the U Visa provides substantial benefits to the recipient, I understand this attorney's diligence. However, once again, the U Visa was being sought for an individual who was not under the threat of deportation and whose assistance was not needed by law enforcement because criminal charges were never even filed. It seems clear that in cases like this one, the U Visa is seen as a mechanism for an illegal immigrant to be granted legal status, regardless of the tenuous connection of criminal activity. I submit that such an application has drifted from the original intent of the U Visa.

After learning about the stated purposes behind the enabling U Visa legislation, our office has decided to consider U Visa applications under the following circumstances: (1) the case must be currently under investigation or prosecution; (2) the victim must be an essential witness to prove the elements of our case; and (3) the victim is under the threat of deportation, and we need the victim's attendance at a critical hearing or trial. If an illegal immigrant victim does not fall within these parameters, we will probably deny a request to sign the U Visa application. This may not be a popular position among some attorneys, but at least our position is clear.

I submit that Congress should review the U Visa program and consider whether it has outlived its intended purpose. In today's environment, federal immigration officials are focusing their deportation efforts on criminals and not victims of crimes. Is there really a need for the U Visa? Finally, immigration issues are ostensibly a federal matter and it would be helpful if local police officers, prosecutors, and judges were not pulled into this federal quagmire.

An Owner's Guide to the Utah Fit Premises Act

by Kimball A. Forbes

Many of my clients who own residential rental property manage the properties themselves rather than using a property-management company. Most of the time, things are fine. If the renter has a problem, like a broken furnace, the renter calls the owner, and the problem gets fixed. But sometimes owner-renter relations sour. Consequently, I tell my clients, "Hope for the best, but plan for the worst." There is no better way for an owner of residential rental property to follow this advice than by having a written rental agreement and knowing and following the Utah Fit Premises Act (the Act). Every attorney who practices landlord-tenant law should be familiar with the Act. This article provides a review of the main provisions of the Act and practical suggestions on how to advise clients. There are provisions in the Act regarding possession of a residential rental property and also crime victims' rights that this article does not cover.

The Act codifies duties of owners and renters to maintain residential rental units in a habitable condition and provides specific remedies to renters for violations of the Act by property owners. Utah Code Ann. §§ 57-22-1 to -7; *Carlie v. Morgan*, 922 P.2d 1, 6 (Utah 1996). The Act applies to all owners, lessors, sublessors, and renters of residential rental property, regardless of whether there is a written rental agreement. *See* Utah Code Ann. § 57-22-2. The Act calls residential rental property a "residential rental unit" and defines it as the "renter's principal place of residence and includes the appurtenances, grounds, and facilities held out for the use of the residential renter generally, and any other area or facility provided to the renter in the rental agreement." *Id.* § 57-22-2(4). The Act does not apply to "facilities contained in a boarding or rooming house or similar facility, mobile home lot, or recreational property rented on an occasional basis." *Id.*

Generally, the Act requires the owner of a residential rental unit to "maintain that unit in a condition fit for human habitation and in accordance with local ordinances and the rules of the board of health having jurisdiction." *Id.* § 57-22-3(1). At a minimum, a residential unit must have "electrical systems, heating, plumbing, and hot and cold water." *Id.* However, the Act does not impose any duties on an owner regarding the "breakage, malfunctions, or other conditions which *do not materially affect the physical health or safety* of the ordinary renter." *Id.* § 57-22-3(3) (emphasis added).

The Act also imposes duties on the renter. In general, a renter must "cooperate in maintaining his [or her] residential rental unit in accordance with [the Act]." *Id.* § 57-22-3(2). But owners and renters can reallocate any duties identified in the Act in a signed written agreement. *Id.* § 57-22-3(4). This, of course, should take the form of a written rental agreement (sometimes called a lease). Anybody renting property without a written rental agreement is asking for trouble.

In this article, I will first identify the duties of an owner of a residential rental unit under the Act. I will then identify a renter's duties. Finally, I will discuss the remedies the Act provides renters and how an owner should respond to a renter who invokes those remedies.

Owner's Duties

The Act imposes specific requirements on an owner to maintain a residential rental unit "[t]o protect the physical health and safety of the ordinary renter." Utah Code Ann. § 57-22-4(1). An owner cannot rent property that is not "safe, sanitary, and fit for human occupancy." *Id.* § 57-22-4(1)(a). Thus, an owner must,

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(i) maintain common areas of the residential rental unit in a sanitary and safe condition;

(ii) maintain electrical systems, plumbing, heating, and hot and cold water;

(iii) maintain any air conditioning system in an operable condition; and

(iv) maintain other appliances and facilities as specifically contracted in the rental agreement.

Id. § 57-22-4(1)(b)(i)–(iv). If a property consists of more than one residential rental unit, the owner must provide and maintain garbage cans and garbage removal, unless the renter and owner agree otherwise. *Id.* § 57-22-4(1)(b)(v). Fortunately, as a matter of common sense, most owners comply with these provisions of the Act without knowing it.

The Act also imposes certain duties on an owner before a rental agreement is signed. Specifically, before entering into a rental agreement, the Act requires an owner to do one of three things: (i) "provide the prospective renter a written inventory of the condition of the residential rental unit, excluding ordinary wear and tear"; (ii) "furnish the renter a form to document the condition of the residential rental unit and then allow the resident a reasonable time after the renter's occupancy of the residential rental unit to complete and return the form"; or (iii) "provide the prospective renter an opportunity to conduct a walkthrough inspection of the residential rental unit." *Id.* § 57-22-4(3). However, an owner's failure to provide an inventory, a form, or a walkthrough does not excuse a renter from complying with a rental agreement, and it does not "give rise to any cause of action against the owner." *Id.* § 57-22-4(5).

Even though in most cases the prospective renter walks through the residential rental unit before renting, an owner should still provide the renter a written inventory, a form for the renter to fill out, or both. That way if a dispute later arises, a renter will have a difficult time successfully claiming something was wrong when the renter moved into the unit. Also, immediately before allowing the renter to move in, an owner should thoroughly photograph the unit.

Sometimes problems arise when an owner enters a residential rental unit to make repairs without giving the renter prior notice. Ideally, the specifics of when an owner can enter a unit and what prior notice must be given should be explicit in the written rental agreement. If it is not, however, the Act requires an owner to give the renter at least twenty-four hours' notice. *Id.* § 57-22-4(2). Nevertheless, failure to give twenty-four hours' notice does not excuse a renter from complying with a rental agreement and does not provide a basis for a cause of action. *Id.* § 57-22-4(5).

Renter's Duties

The Act imposes duties on the renters, which are identified in Utah Code Section 57-22-5. These duties are especially important because a renter cannot take advantage of the remedies under the Act unless the renter complies with each of these duties. Utah Code Ann. § 57-22-6(4)(b). The Act first identifies a renter's affirmative duties as follows: A renter must (i) follow the rules of the local board of health that "materially affect physical health and safety"; (ii) keep the premises "clean and safe" and not "unreasonably burden any common area"; (iii) dispose of all garbage "in a clean and safe manner"; (iv) "maintain all plumbing fixtures in as sanitary a condition as the fixtures permit"; and (v) "use all electrical, plumbing, sanitary, heating, and other facilities and appliances in a reasonable manner." *Id.* § 57-22-5(1)(a)–(e). Further, a renter must use the rental unit "in the manner for which it was designed," and a renter must have written permission of the owner before increasing "the number of occupants above that specified in the rental agreement." *Id.* § 57-22-5(1)(f). Also, a renter must be in compliance with any rental agreement and must be current on the rent. *Id.* § 57-22-5(1)(g)–(h).

The Act then identifies things a renter cannot do. Specifically, a renter cannot "intentionally or negligently destroy, deface, damage, impair, or remove any part of the residential rental unit or knowingly permit any person to do so." *Id.* § 57-22-5(2)(a). A renter also cannot "interfere with the peaceful enjoyment of the residential rental unit of another renter." *Id.* § 57-22-5(2)(b). Finally, a renter cannot "unreasonably deny access to, refuse entry to, or withhold consent to enter the residential rental unit to the owner, agent, or manager for the purpose of making repairs to the unit." *Id.* § 57-22-5(2)(c).

Renter's Remedies

The Act provides a renter specific remedies if the residential rental unit has either a deficient condition or a dangerous condition. A "deficient condition" is a condition that "violates a standard of habitability or a requirement of the rental agreement." *Id.* § 57-22-6(1)(b)(i). However, the condition is not deficient if it is caused by "the renter, the renter's family, or the renter's guest or invitee" and by "a use that would violate… the rental agreement; or…a law applicable to the renter's use of the residential rental unit." *Id.* § 57-22-6(1)(b)(ii). A "dangerous condition" is a condition "that poses a substantial risk of: (i) imminent loss of life; or (ii) significant physical harm." *Id.* § 57-22-6(3)(a). The remedies available to a renter under the Act depend on the type of condition, and to seek the remedies, a renter must first give proper notice to the owner of the condition. *Id.* § 57-22-6(2)–(5). I will first discuss the procedure for providing notice of a deficient condition, and then I will discuss the procedure for providing notice of a dangerous condition.

If a renter believes his or her residential rental unit has a deficient condition, the renter must give the owner written notice. *Id.* § 57-22-6(2)(a). The purpose of the written notice is to give the owner a chance to fix the problem before a renter has a right to the remedies in the Act. *See id.* § 57-22-6. The written notice must contain four things. The first item is a description of each deficient condition. *Id.* § 57-22-6(2)(b)(i). Though the Act does not explicitly say so, it is reasonable that this description be detailed enough for the owner to be able to identify and fix the condition.

The second required item is a statement that the owner has a corrective period, "stated in terms of the applicable number of days, to correct each deficient condition." *Id.* § 57-22-6(2)(b)(ii). The corrective period depends on the deficient condition. If the deficient condition is a violation of the standard of habitability, the corrective period is three calendar days. *Id.* § 57-22-6(1)(a)(i). If the deficient condition is a violation of the rental agreement, the corrective period is ten calendar days. *Id.* § 57-22-6(1)(a)(ii).

The Act's definition of "standard of habitability" requires an owner to ensure that a residential rental unit meets the requirements of "Subsection 57-22-3(1) or Subsection 57-22-4(1)(a) or (b)(i), (ii), or (iii)" of the Act. Utah Code Ann. § 57-22-6(1)(g). As mentioned above, Subsection 57-22-3(1) requires a residential rental unit to be "fit for human habitation" and to comply with "local ordinances and the rules of the [local] board of health." It also requires that a rental unit have electricity, heating, plumbing, and hot and cold water. *Id.* § 57-22-3(1). Also mentioned above, Subsections 57-22-4(1)(a) and (b)(i), (ii), and (iii) require that a rental unit be "safe, sanitary, and fit for human occupancy"; have "safe and sanitary" common areas; have functioning electricity, plumbing, heating, and hot and cold water; and have an operable air conditioner (if an air conditioner exists in the unit).

The third item required in a notice of deficient condition is a statement of "the renter remedy that the renter has chosen if the owner does not, within the corrective period, take substantial action toward correcting each deficient condition." *Id.* § 57-22-6(2)(b)(iii).

A renter has two renter remedies to choose from under the Act: the rent abatement remedy or the repair and deduct remedy. *Id.* § 57-22-6(1)(e). I will explain each remedy in more detail below.

The fourth and final item required in a notice of a deficient condition is permission for the owner "to enter the residential rental unit to make corrective action." *Id.* § 57-22-6(2)(b)(iv). The renter has to serve the notice of deficient condition on the owner either as provided for in the rental agreement or in Utah Code Section 78B-6-805. *Id.* § 57-22-6(2)(b)(v). Utah Code Section 78B-6-805 identifies the requirements for service of a notice to quit in an unlawful detainer action.

When an owner receives a properly served notice of a deficient condition, the owner either must fix the deficient condition or determine whether the residential rental unit is fit for occupancy and, based on that determination, terminate the rental agreement. *Id.* § 57-22-6(4)(c)(i)(A)–(B). The Act does not define the phrase "fit for occupancy." *See id.* §§ 57-22-2, -6. Consequently, it becomes a judgment call by the owner. Certainly, if the unit does not meet the standards of habitability and extensive repairs or renovations are necessary, the unit is probably not fit for occupancy. However, I advise my clients that a determination of fitness for occupancy should not be used as a pretext to terminate a rental agreement with a troublesome or unwanted renter.

If the residential rental unit is not fit for occupancy and the owner decides to terminate the rental agreement instead of fixing the deficient condition, the owner must "notify the renter in writing no later than the end of the [applicable] corrective period." *Id.* § 57-22-6(4)(c)(ii)(A)(I). The Act does not say exactly when the rental agreement terminates. Consequently, an owner should identify the date in the notice to the renter. If the owner does not identify the date, one can reasonably conclude that the termination date is the date of the notice. Within ten calendar days after termination of the rental agreement, the owner must pay the renter "any prepaid rent, prorated…to the date the owner terminates the rent agreement" and "any deposit due the renter." *Id.* § 57-22-6(4)(c)(ii)(A)(II), (4)(c)(ii)(B). Under this procedure, a "renter may not be required to vacate the residential rental unit sooner than 10 calendar days" after the written notice from the owner. *Id.* § 57-22-6(4)(c)(ii)(C).

Alternatively, if the owner determines the unit is fit for

occupancy, the owner must "take substantial action" by the end of the applicable corrective period (either three or ten calendar days) to correct the deficient condition. Utah Code Ann. § 57-22-6(1)(a), (4)(a). The Act does not define "substantial action." *See id.* §§ 57-22-2, -6. Thus, I advise my clients to get as much done on the requested repairs as reasonably possible within the applicable corrective period.

An owner's failure to take timely and substantial action triggers the remedy that the renter identified in the notice of deficient condition. *Id.* § 57-22-6(4)(a). If the renter chose the rent abatement remedy, the rental agreement terminates, and the "rent is abated as of the date of the notice of deficient condition." *Id.* § 57-22-6(4)(a)(i)(A)-(B). The owner must "immediately" pay the renter the "entire security deposit that the renter paid under the rental agreement" and "a prorated refund for any prepaid rent, including any rent the renter paid for the period after the date on which the renter gave the owner the notice of deficient condition." *Id.* § 57-22-6(4)(a)(i)(C). The renter then must vacate the rental unit "within 10 calendar days after the expiration of the corrective period." *Id.* § 57-22-6(4)(a)(i)(D).

> *"[T]he Act provides a procedure for resolving certain disputes between owners and renters, especially when there is not a well-written rental agreement."*

If the renter chose the repair and deduct remedy, the renter can fix the deficient condition and "deduct from future rent the amount the renter paid to correct the deficient condition, not to exceed an amount equal to two months' rent." *Id.* § 57-22-6(4)(a)(ii)(A). To take advantage of this remedy, a renter must keep all receipts documenting how much the renter actually paid to fix the deficient condition. *Id.* § 57-22-6(4)(a)(ii)(B)(I). The renter must also "provide a copy of those receipts to the owner within five calendar days after the beginning of the next rental period." *Id.* § 57-22-6(4)(a)(ii)(B)(II).

If a renter believes his or her unit has a dangerous condition, i.e., "a substantial risk of…imminent loss of life…or… significant physical harm," "the renter may notify the owner of the dangerous condition by any means that is reasonable under the circumstances." *Id.* § 57-22-6(3)(a)–(b). The owner must, within twenty-four hours of receiving notice, begin "remedial action to correct the dangerous condition…and…diligently pursue remedial action to completion." *Id.* § 57-22-6(3)(c). However, a notice of a dangerous condition cannot also act as and contain an effective notice of a deficient condition unless the notice is in writing, properly served, and meets the four requirements for a notice of deficient condition discussed above. *Id.* § 57-22-6(3)(d).

Though the Act never explicitly says to, the Act seems to suggest that if a renter wants to use the rent abatement or repair and deduct remedies when an owner does not repair a dangerous condition, the renter should have first provided notice of a dangerous condition the same way the Act requires a renter to provide notice of a deficient condition. However, the Act never explicitly ties the owner's action upon receiving a notice of a dangerous condition to a particular corrective period the way it does upon receipt of a deficient condition. *See id.* § 57-22-6(3)–(4). I advise my clients that the corrective period is the twenty-four hours an owner has to begin "remedial action to correct the dangerous condition." *See id.* § 57-22-6(3)(c)(i). And the remedy trigger would be, instead of failure to take substantial action within three or ten days, failure to begin "remedial action" within twenty-four hours and failure to "diligently pursue remedial action to completion." *See id.* § 57-22-6(3)(c).

Enforcement of Remedies

After the corrective period ends, "a renter may bring an action in district court to enforce the renter remedy that the renter chose in the notice of deficient condition." Utah Code Ann. § 57-22-6(5)(a). The court must "endorse on the summons that the owner is required to appear and defend the action within three business days." *Id.* § 57-22-6(5)(b). If the court decides that "the owner unjustifiably refused to correct a deficient condition or failed to use due diligence to correct a deficient condition," the renter "is entitled" to the applicable renter remedy, damages, court costs, and a reasonable attorney fee. *Id.* § 57-22-6(5)(c).

However, Subsection 57-22-6(5)(c) begs the question: Why, when there are specific out-of-court remedies provided, does an owner's failure to fix a condition entitle a renter to damages, court costs, and an attorney fee? The plain language of the Act suggests that the purpose of the rent abatement and repair and deduct remedies is to avoid court action. Certainly, if an owner

blocks a renter from a chosen remedy, the renter should be entitled to judicial relief to enforce the chosen remedy. But why, if a remedy solves the problem, can a renter still file a lawsuit?

I infer from the Act that if a renter's notification of a deficient or dangerous condition is not in writing, properly served, and in compliance with the other requirements of Subsection 57-22-6(2), the renter is left without a remedy under the Act. However, the renter may still have a remedy for breach of contract under the rental agreement and also remedies under common law. Specifically, a renter can seemingly sue for breach of the implied warranty of habitability. *See Myrah v. Campbell*, 2007 UT App 168, ¶ 21 & n.3, 163 P.3d 679 (noting the recognition of the common law implied warranty of habitability). A renter also can claim constructive eviction if an owner does not timely make necessary repairs. *Brugger v. Fonoti*, 645 P.2d 647, 648 (Utah 1982); *see also Kenyon v. Regan*, 826 P.2d 140, 142 (Utah Ct. App. 1992) (noting that constructive eviction occurs when an owner drives a renter out through the owner's inaction).

It is important to note that the Act forecloses any suffering claims by a renter by providing that "[a]n owner may not be held liable under [the Act] for a claim for mental suffering or anguish." Utah Code Ann. § 57-22-6(6). This is a common claim by renters. Eliminating it streamlines litigation.

The Act allows an owner to respond to a renter's lawsuit by filing a counterclaim if the suing renter "disputes that a condition of the residential rental unit violates a requirement of the rental agreement." *Id.* § 57-22-6(5)(d). If the owner has grounds to evict the renter, then the owner should also file a counterclaim for unlawful detainer. *See Koerber v. Mismash*, 2015 UT App 237, ¶ 4, 359 P.3d 701 (noting the district court's consolidation of an owner's unlawful detainer complaint as a counterclaim in a suit brought by renter under the Act).

A key provision of the Act is that "[a] renter is not entitled to a renter remedy if the renter is not in compliance with *all requirements* under Section 57-22-5." *Id.* § 57-22-6(4)(b) (emphasis added). As discussed above, Section 57-22-5 identifies a renter's duties under the Act, which includes being current on the rent and in compliance with the rental agreement. Thus, for example, if a renter attempts to use an owner's lack of zeal or failure to fix a deficient condition as an affirmative defense or a counterclaim in an eviction action, but the renter is behind in rent, the Act will not help the renter. *See id.* §§ 57-22-5(1)(g)-(h), -6(4)(b).

However, I tell my clients not to completely rely on this provision and to follow the Act as much as reasonably possible, even when the renter has not fully complied with the notice requirements or may be partially at fault for a deficient or dangerous condition. For example, when a renter has not stated a corrective period or elected a remedy, the owner should still attempt to fix the deficient condition. The owner must decide which corrective period applies and act accordingly. I advise this out of an abundance of caution because a judge may decide that a renter has complied or even substantially complied with the Act. It also gives a judge less of a reason to grant a renter some sort of equitable relief if the renter does not comply with the Act.

Conclusion

In sum, the Act provides a procedure for resolving certain disputes between owners and renters, especially when there is not a well-written rental agreement or any rental agreement to define the owner's and renter's respective duties. Every owner of residential property, and his or her attorney, should be familiar with the Utah Fit Premises Act.

Community Development and Renewal Agencies Act Revisions, Title 17C

by Adam Long

Introduction

The "Limited Purpose Local Government Entities – Community Reinvestment Agency Act" (Senate Bill 151, 2016 General Session, sponsors: Sen. Wayne Harper, Rep. Steven Handy) is the latest revision to Utah's "redevelopment" statutes – laws enabling the use of tax increment financing and local point-of-sale sales taxes to help local governments address problems of underdeveloped, unproductive, or blighted property. Put simply, tax increment financing allows local governments to redirect, for a fixed period, future increased tax revenues toward specific areas where the money can help achieve targets and planned development goals such as job creation, increased tax base, or enhanced quality of life. This process and its associated tools are more generally referred to as "redevelopment."

History of Redevelopment in Utah

Redevelopment first came to Utah in 1969 as the Utah Neighborhood Development Act, which was modeled after California's Community Redevelopment Law. The Neighborhood Development Act was designed to address growing concerns about urban decay and blight that had been plaguing many American cities since before World War II through the establishment of local redevelopment Agencies and the establishment of tax increment financing. Utah's redevelopment laws went through significant revisions in the ongoing years, including changes such as allowing agencies to issue bonds (1977), limiting the size and length of redevelopment projects (1983), limiting tax increment collection to twenty-five years (1983), and granting agencies the power of eminent domain (1983). In 1993, the Utah State Legislature created another redevelopment track called "economic development" intended specifically to facilitate job creation (rather than addressing urban blight). Although a variety of aspects of the laws were tweaked over the years, the next major change came in the form of a full rewrite of the redevelopment statutes in 1993.

The 1993 Redevelopment Agencies Act streamlined and (relatively) simplified the redevelopment process in Utah. Again, various changes were made over the years in response to specific needs of Utah communities and the demands of various interested parties – particularly public entities levying property taxes from which agencies could use funds to finance redevelopment projects.

Utah's redevelopment statutes were again entirely rewritten in 2006, and redevelopment agencies were rebranded as Community Development and Renewal Agencies, although the "redevelopment agency" moniker has remained in common use. This rewrite maintained the two existing redevelopment tracks – urban renewal focusing on blight, and economic development focusing on job creation – but added a third track called "community development." The community development project area concept was intended as a much more flexible and less restrictive approach to redevelopment and relied heavily on negotiation and cooperation between an agency and the respective taxing entities rather than on specific statutory procedures and requirements. Due to the flexibility designed into the community development project area concept, a significant majority of new redevelopment projects created in the state since the 2006 revisions have been community development project areas or "CDAs."

Community Reinvestment Projects

Although a significant portion of the 200-plus page bill is dedicated to changing the nomenclature from "community development and renewal agency" to "community reinvestment agency," S.B. 151 makes significant changes to the redevelopment

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procedures found in Title 17C. Significantly, the three types of project areas – urban renewal areas for addressing urban blight, economic development areas for promoting job creation, and community development areas based on negotiations between agencies and individual taxing entities – have been replaced with a new "community reinvestment project area" (CRA). Existing project areas will be allowed to continue, but all new project areas will be CRAs as addressed in Title 17C, chapter 5. The new CRA track retains much of the flexibility of the community development project area, while incorporating key aspects of the other current project area types.

Existing agencies may be renamed as Community Reinvestment Agencies (but are not required to do so). An agency board begins the process of creating a CRA by adopting a survey area resolution that identifies the areas to be studied by the agency to determine the feasibility of creating one or more CRAs and authorizes the agency to create a draft plan for each CRA. Utah Code Ann. § 17C-5-103. If the agency desires limited powers of eminent domain in the project area, the agency must also include a statement that the survey area requires study to determine whether blight exists and must authorize the agency to conduct a blight study. *Id.* § 17C-5-103(2). The requirements that a community must satisfy prior to adopting a CRA plan, including notice and publication requirements, are substantially the same as under the previous project area types. *Id.* § 17C-5-104. The public hearing requirement prior to a plan adoption, *see id.* § 17C-5-104(3)(e), and the requirements that an agency mail and publish notice once a plan is adopted, *see id.* §§ 17C-5-110, 111, likewise carry over substantially unchanged from the previous version of the redevelopment statutes.

This bill adds a requirement that every project area have a written budget setting forth the agency's predictions for the project area as well as the financial details about the project area and the agency's expected activities. *Id.* § 17C-5-303. Previously, a written budget was only required for urban renewal areas and economic development areas and was not required for CDAs. For receiving funds from taxing entities, this bill gives an agency the ability to choose between creating a taxing entity committee, *see id.* § 17C-5-203, and entering into interlocal agreements with individual taxing entities, *see id.* § 17C-5-204. In most cases, this approval will likely be given as part of the interlocal agreements between an agency and the various taxing entities

that control the sharing of tax increment with the agency. In CRAs where the agency seeks to eliminate blight and exercise limited powers of eminent domain, the budget must be approved by the taxing entity committee, much like the budget approval process for the old urban renewal project track.

Eminent Domain

Although the community reinvestment project area is the sole type of project area under this bill, an agency must meet significant additional requirements in order to use the limited power of eminent domain in a project area – essentially the same requirements for use of eminent domain in an urban renewal project area under the old redevelopment statutes. As noted earlier, the process for enabling the power of eminent domain in a CRA begins with the survey resolution requesting the study of blight passed by an agency as the initial step in the CRA creation process. An agency must also complete a blight study to determine whether blight exists in the proposed project area, hold a properly noticed blight hearing, and receive approval of the blight findings from the taxing entity committee. *Id.* § 17C-5-402. The blight study continues to require a parcel-by-parcel survey of the property within the survey area, along with other requirements. The portions of the revised statutes governing the blight study, blight hearing, and conditions on the agency's determination of blight, and use of eminent domain are effectively the same as the current statutes governing the use of eminent domain in urban renewal areas. There will also be limited eminent domain power to address stalled projects.

Miscellaneous Provisions

The bill makes an allocation of housing funds *mandatory* for all project areas from which an agency expects to collect more than $100,000 of tax increment annually. *Id.* § 17C-5-307. For project areas for which tax increment distribution is governed by interlocal agreements, this allocation must be at least 10% of the amounts collected by the agency from the project area and cannot be waived. *Id.* For a project area in which tax increment distribution is governed by a taxing entity committee, the allocation is at least 20% of the funds the agency collects from the project area, but that allocation can be reduced to not less than 10% upon approval by the taxing entity committee. *Id.* The bill also gives more flexibility to the use of housing funds received by an agency for all types of project areas.

It also clarifies and simplifies the ability of an agency to create a project in a neighboring municipality, with the consent of the municipality, or to transfer a project area to a successor agency following an annexation or incorporation. The important issue of making sure that new growth created in a project area is paid to the taxing entities at the end of payment to an agency is addressed as well as creating a formal process to terminate a project area. It also provides for participation agreements as the vehicle to memorialize the terms and conditions of the payment of tax increment or other benefits to a property owner or developer. A single November report designed to provide more useful information will replace the current twice-a-year reporting requirement. Annual taxing entity committee meetings remain optional.

Conclusion

S.B. 151 represents significant changes to the redevelopment process in Utah and will require redevelopment agencies across the state to relearn significant portions of the redevelopment process. Although some teething pains are likely, the replacement of the three separate project area types with the new CRA track will simplify the process while allowing redevelopment agencies to continue addressing blight, promoting growth, and creating jobs.

RAY QUINNEY & NEBEKER

IN MEMORIAM

Michael W. Spence

AUGUST 7, 1956 – MAY 22, 2016

We are deeply saddened to announce the passing of our dear friend and colleague, Michael W. Spence, director, shareholder, chair of our Automobile Dealer Practice Group, and long-serving member of the firm's Executive Committee.

Mike was an outstanding practitioner, and an even better friend and mentor. His career spanned over thirty years – seventeen of them with Ray Quinney. Mike was wholly devoted to the firm and to his colleagues and he proudly, passionately, and tirelessly served his clients.

Mike was a leader at the firm in position and stature. He brought wisdom and practical experience to his work for the firm and there was no matter that he would not fight for his clients and no deal he couldn't close.

We are honored to have known him, to have worked with him, and to have laughed with him. We will miss Mike and are saddened by this great loss.

Our sincerest condolences are with Mike's family.

RQ&N

Looping the Deaf and Hard of Hearing Into Our Judicial System

by Jared Allebest

Last year, the United States Supreme Court installed a hearing loop system that will help those who wear hearing aids or cochlear implants hear better in the nation's highest court. The new induction listening system, which is in addition to the high court's existing FM and infrared listening devices, transmits sound through an electromagnetic signal that can be picked up by the telecoil of a hearing aid or cochlear implant. David H. Kirkwood, *Supreme Court Gets a Hearing Loop*, Hearing News Watch (Sept. 17, 2014), *available at* http://hearinghealthmatters.org/hearingnewswatch/2014/nations-highest-court-gets-looped-joining-many-prominent-institutions/.

The new system is intended for use by court visitors and by attorneys appearing before the Court. The Deaf and Hard of Hearing Bar Association (DHHBA) recently had thirteen members of their organization sworn in and admitted to the Bar of the United States Supreme Court. All members are deaf or hard of hearing attorneys. The Supreme Court provides sign language interpreters and real-time captioning services (also known as Communication Access Realtime Translation, or CART) to DHHBA participants. Anat Mytal, DHHBA Members to Be Sworn into United States Supreme Court Bar, Deaf and Hard of Hearing Bar Association (Apr. 6, 2016), *available at* http://www.deafbar.org/news/archives/04-2016. The hearing loop makes this experience more meaningful for those attorneys with hearing aids and cochlear implants.

There are three types of technology used for assistive listening: RF (radio frequency), IR (infrared), and IL (induction loop). All of these technologies produce much of the same result: the audio source transmitted wirelessly to a personal receiver or directly to a compatible hearing-aid.

In an RF system, the signal is transmitted over radio frequencies (specifically the Federal Communications Commission-mandated 72 and 216 MHz bands) to a personal receiver. The advantage of RF technology is that there are no "line-of-site" issues and the technology can cover a wide area indoors or outdoors.

An IR system uses infrared light to transmit audio. The advantage of IR technology is that the system is secure – the audio signal will never leave the room. The challenge is a listener should be within line-of-site of the emitter/radiators. Also, the shape of the room, the coverage, and line-of-site issues usually require more thought and consideration during the design stage.

In an IL system, an integral wire is installed around the room in a variety of ways creating an induction field that can be picked up by hearing aids with a telecoil, which more than 60% of hearing aids today and 100% of cochlear implants have. Many venues and users alike enjoy this type of an assistive listening system because the users' disabilities are invisible as they simply use their hearing aids to receive the audio signal. There would be no need to ask for a receiver.

It is clear that the United States Supreme Court is committed to making the Court accessible to all Deaf and Hard of Hearing individuals regardless of whether they are members of the legal profession or are there to observe court proceedings. It is leading the way in opening up the court to those with a hearing loss.

Making our courts accessible across the United States is still an

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ongoing challenge. We have come a long way from the days when it was permissible for a person to be denied service or barred from a courthouse because he or she had a disability. However, many courtrooms still do not have hearing loops or other devices installed.

In 1990, the landmark Americans with Disabilities Act (ADA) was passed by Congress. It was the nation's first comprehensive civil rights law addressing the needs of people with disabilities, prohibiting discrimination in employment, public services, public accommodations, and telecommunications. The U.S. Department of Justice released new rules in 2010 in regard to ADA compliance and assistive listening. These new updated rules apply to all new construction and alterations since March 15, 2012, and are mandatory by law. Under the new rules, the number of receivers and of hearing aid compatible receivers depends on the total occupancy of the venue. 2010 ADA Standards for Accessible Design Hearing Chattanooga, *available at* http://www.hearingchattanooga.org/news_items/ADA%20Standards%20219%20+%20706ALDs%20%20.pdf (last visited June 1, 2016).

Deaf and Hard of Hearing Individuals need access to court-ordered services because there has been a "pattern of unconstitutional treatment in the administration of justice in our nation's history towards individuals with a hearing loss." *Tennessee v. Lane*, 541 U.S. 509, 524–25 (2004). When Congress was considering passing the ADA, it discovered that many individuals, in many states across the country, were being excluded from courthouses and court proceedings by reason of their disabilities. *Id.* at 527. A task force established by Congress "heard numerous examples of the exclusion of persons with disabilities from state judicial services and programs, including the exclusion of persons with visual impairments and hearing impairments from jury service [and] failure of state and local governments to provide interpretive services for the hearing impaired." *Id.*

Although courts here in Utah do a fine job of providing deaf members of the community with American Sign Language (ASL) interpreters, not all individuals with a hearing loss use ASL. Many individuals rely on technologies such as hearing aids and cochlear implants, assistive listening devices such as hearing loops, or CART. Without the necessary technology in our courtrooms, meaningful and crucial information is missed, which may lead to severe and unjustified consequences to the administration of justice.

I encourage our Utah judicial system to follow the example of the United States Supreme Court by making our courtrooms accessible to people with a hearing loss by installing hearing loops and other technologies in all of our courtrooms so that people with hearing loss have equal access to our courts.

The Evolution of Utah's Justice Courts

by Judge Paul C. Farr

Introduction

Having sat through a civil procedure course in law school, a student could come to the conclusion that all great and important things that take place in the world of law happen in a federal district court and must have something to do with minimum contacts and international shoes. During three years of law school, I do not believe I ever heard the term, "justice court." (That's okay, I do not remember actually reading the Rules of Civil Procedure either.) It was sometime after graduation while in practice that I discovered there was a place called a justice court. While in practice over the ensuing twelve years, I do not recall ever analyzing minimum contacts in a federal court case. I did on several occasions, however, find myself defending clients charged with misdemeanors and helping with small claims cases. I do not expect that my experience is unusual.

In 2010 I was appointed to serve as a part-time justice court judge while still maintaining a civil law practice. In justice court I discovered a world of people that were interacting with the court system. They were not appearing in the federal district court or the state district courts. They were appearing in front of me and my colleagues at a local justice court. And there were a lot of them.

Justice courts in Utah received a total of 459,622 new case filings in FY 2015. During the same time period, the district courts received a total of 269,143 case filings. The justice courts also handled the majority of criminal cases in the state with 72,832 criminal case filings compared to 39,639 in the district courts. Utah Administrative Office of the Courts, Court Statistics. https://www.utcourts.gov/stats/files/2015FY (last visited March 29, 2016). These numbers, showing that limited jurisdiction courts are handling more cases than their general jurisdiction counterparts, are consistent with other states around the country.[1] While the district court cases are more complex and time-consuming, the fact remains that citizens are much more likely to have some interaction with a limited jurisdiction court than any other type of court. Our court system is being experienced and evaluated, in large part, by average everyday people interacting with local county and city courts.

These courts provide a very important service and have a large impact on the communities that they serve. The quality of these courts should be very important to all parties involved in the courts and the criminal justice system. The purpose of this article is to document some of the steps in the evolution of these courts, beginning with some recent changes that took place in the 2016 legislative session. The history of these courts is also addressed, followed by some ideas for potential future reforms that have been raised.

2016 Changes

H.B. 160

In the 2016 General Session, the legislature passed H.B. 160. At the heart of this bill is a requirement that justice court judges in courts operating in first and second class counties (which includes the five most populated counties of the state: Salt Lake, Utah, Davis, Weber, and Washington) be law school graduates. The bill stopped short of requiring that judges be admitted to the practice of law, as such a change would have required a constitutional amendment.

JUDGE PAUL C. FARR is a graduate of the J. Reuben Clark Law School at BYU. He has been a justice court judge since 2010 and currently serves the cities of Sandy and Herriman. Judge Farr is currently a member of the Utah Judicial Council. The views expressed by Judge Farr are his own and do not necessarily reflect the views of the Council or the municipalities in which he serves.

According to the 2010 U.S. Census, Utah had a total population of 2,763,885. The five most populated counties have a combined population of 2,222,049. *Utah: 2010, Population and Housing Unit Counts*, 2010 Census of Population and Housing. *See* https://www.census.gov/prod/cen2010/cph-2-46.pdf. That means in the future approximately 80% of the state's population will be served by justice court judges with law degrees. Further, as stated above, in FY 2015 the state's justice courts received a total of 459,622 new case filings. These same five counties received 338,342 of those filings. Going forward, approximately 74% of justice court cases will be presided over by a judge with a law degree. Utah Administrative Office of the Courts, Court Statistics. *See* https://www.utcourts.gov/stats/files/2015FY.

The twenty-four other less-populated counties are excluded from this requirement. The bill also contains an exception in the larger counties if fewer than three law school graduates apply for a judicial vacancy. The exclusion of small counties is for practical reasons. Most courts in those counties are relatively small and handle fewer cases, requiring the services of only a part-time judge. A part-time justice court judge that is a member of the bar may still practice law but may not practice criminal law, represent clients that regularly appear in small claims cases, or practice in any court in which they sit. There are already very few, if any, lawyers in some of these smaller communities. Add these practice restrictions, and it can be difficult, if not impossible, to entice a lawyer to give up a significant part of their practice to serve in one of these very part-time positions.

The new law also contains a grandfather clause that allows currently sitting justice court judges in the five most populated counties to continue in their position until they retire, resign, or are removed from office. Some of the reasons suggested for requiring judges to have a law degree include the hope that it will increase the quality, as well as the public perception, of the justice courts. At the same time, I believe it is only fair to recognize and thank the many individuals who have served (and will continue to serve) this state and its communities as justice court judges, law degree or not. Many of these people have

dedicated much time and energy to this important public service. While the legislature has determined that the time for this change has come, just because someone has a law degree does not mean he or she will automatically be a good judge. Conversely, just because someone does not have a law degree does not mean he or she cannot be a very good judge. Our state has been fortunate to have been served by many good men and women as justice court judges without law degrees. The grandfather clause allows those judges who do not have a law degree but who are, due to their commitment and quality of service, able to garner the necessary votes in a retention election to continue serving their communities.

H.B. 160 also contained some administrative provisions. The first would allow judicial positions in large courts with more than one judge to be eliminated, at the end of a judge's term, if caseloads fall below certain thresholds. The second provision requires that the Utah Judicial Council approve the creation of any new judicial positions in justice courts in those same large courts.

Sixth Amendment Study

In October 2015, the Utah Judicial Council issued a report from the Council's Study Committee on the Representation of Indigent Criminal Defendants in Trial Courts. The report cited the results of a study conducted by the Sixth Amendment Center, which noted some deficiencies in the provision of indigent defense services in Utah. These deficiencies were noted at all court levels, including the justice courts. In response, the Utah State Legislature, in its 2016 General Session, passed S.B. 155, which establishes a commission that will study the provision of indigent defense services statewide, promulgate rules and propose legislation to improve the provision of those services, and provide financial help to localities in need of assistance.

While this reform applies to courts at all levels, the justice courts will certainly be affected. The provision of indigent defense services will likely become more uniform and consistent, and individuals should have better access to such services. It will be of interest to watch how justice courts evolve as this reform progresses.

Justice Court History

To understand the structure and place of the justice courts today, it is important to understand the process of evolution they have gone through in the past. The following sections outline that process.

Utah Territory: 1850

Justices of the peace had been in existence in England since the mid-1300s. They were historically judicial officers elected or appointed to serve a local community. Justices of the peace were not required to have formal legal training. This tradition was brought with English settlers to the United States. The institution was common throughout the United States at the time Utah was settled.

In January 1850, less than three years after Mormon settlers arrived in the Salt Lake Valley in what was then a Mexican territory, the local legislature of the proposed State of Deseret created county probate courts. Later, in September 1850, the United States Congress passed an Organic Act organizing the Utah Territory. The organization of the territory included the creation of a court system, which included a territorial supreme court, federal district courts with federally appointed judges, and local justices of the peace. Due to the tension between the federal government and the Mormon settlers, the settlers sought to increase the jurisdiction of the local probate courts, thereby eliminating reliance on the federal courts. The jurisdiction of the probate courts therefore expanded over the next few years until, by 1855, they had virtually the same jurisdictional authority as the federal district courts.

The local justices of the peace heard cases alleging violations of local ordinances and small claims cases. The probate courts heard appeals from justice of the peace courts. As had historically been the case, justices of the peace were not required to have legal training. In Utah, this may have been for practical reasons as well as tradition. Brigham Young is often quoted for his dislike of lawyers. In a speech given in 1872, Young was quoted as saying, "I feel about them as Peter of Russia is said to have felt when he was in England… He replied that he had two lawyers in his empire, and when he got home he intended to hang one of them." *Journal of Discourses*, reported by David W. Evans (October 9, 1872).

Statehood: 1896

The Utah Constitution was drafted in a convention that began in March 1895. On January 4, 1896, Utah was admitted to statehood. Territorial courts transitioned to state courts with the authority provided for by the Utah Constitution. Article VIII, Section 1 of the Utah Constitution established the judiciary for the state. In addition to establishing other levels of courts, that

article also states that "[c]ourts not of record shall also be established by statute." Utah Const. art. VIII, § 1. The "courts not of record" consisted of the justice of the peace courts that continued to operate much the same up until 1989.

Circuit Courts: 1978–1996

> From 1978 to 1996, a 12-court circuit court system existed to handle misdemeanors, criminal cases through the preliminary hearings, and civil small case claims. They could not handle such things as divorce cases, probate cases, or land title cases. Beginning in 1996 and completed in 1997, the circuit courts were consolidated into the district courts.

Utah Administrative Office of the Courts, http://archives.utah.gov/research/guides/courts-system.htm.

After circuit courts merged with the district courts, justice courts (whose creation is discussed below) began handling the small claims and misdemeanor criminal offenses that were previously being handled in the circuit courts. The district courts maintained jurisdiction over preliminary hearings in class A misdemeanor and felony criminal cases, although the court may utilize qualified justice court judges to hear them.

Constitutional Revision: 1984

In 1984 the Utah Constitution was revised with respect to Article VIII. This revision included many significant changes regarding the rulemaking authority of the Supreme Court, the role of the Judicial Council, and the authorization for an intermediate court of appeals. In addition to these changes, Article VIII, Section 11 was added, which states:

> Judges of courts not of record shall be selected in a manner, for a term, and with qualifications provided by statute. However, no qualification may be imposed which requires judges of courts not of record to be admitted to practice law. The number of judges of courts not of record shall be provided by statute.

This section continued the historical trend that justices of the peace, because they presided over courts not of record, were not required to be lawyers. However, the language used carried an important distinction for future developments. This constitutional language states that a justice court judge may not be required to be "admitted to practice law," i.e., a member of the Utah State Bar. However, other qualifications, including educational requirements, were still to be determined by statute.

Creation of Justice Courts: 1989

In 1983 the Utah State Legislature created the Utah Commission on Criminal and Juvenile Justice. The Commission, along with the Court Administrator's Office, established a task force to study and recommend changes to the justice of the peace system. Based on those recommendations, in 1989 the Utah State Legislature passed legislation creating the justice courts. This was originally enacted as Utah Code section 78-5-101 but was later (in 2008) renumbered to Utah Code Section 78A-7-101. The justice courts handled matters that were previously handled by the justices of the peace courts. Again, in 1996, with the dissolution of the circuit courts, justice courts also began presiding over the small claims and misdemeanor criminal matters (class B and C) that had previously been within the jurisdiction of circuit courts. Educational requirements for justice court judges continued to be a high school diploma.

"In Utah there is a dearth of case law involving misdemeanor criminal charges simply because there is no on-the-record appellate process."

Nehring Commission: 2007

In 2007 recommendations were presented to the Utah Judicial Council by a committee that had been tasked with a study of the justice courts. The committee that studied these issues and made the recommendations has been called the Nehring Commission because now-retired Supreme Court Justice Ronald E. Nehring was the chair. The recommendations included several measures that were adopted in legislation and some that were not. Those that were adopted included:

- The judicial selection process was changed. Nominating commissions are now used for the initial selection, with judges sitting for retention election following completion of a six-year term. Selection and retention are now done in much the same manner as that for district court judges, but at the local level.
- Justice court judges' pay is now determined within a range and based on caseload, by statute. The pay cannot be reduced during the term of office, and judges are required to receive pay raises equivalent to the average raise throughout the municipality. This was done to insulate justice court judges from any financial pressure from cities and counties sponsoring the courts.

Other recommendations that were not adopted by the legislature included an educational requirement for judges (a four-year college degree) and a requirement that judges be full-time, requiring small courts to consolidate with one another.

Recordings: 2011

In 2011 the legislature amended Utah Code section 78A-7-103 to require that all proceedings in justice court be audio recorded. Those requirements have been implemented throughout the state. While the courts are still considered, "courts not of record," digital audio recordings of all proceedings are now available.

Possible Future Reforms

As can be seen, the justice courts have continued to evolve and be refined over the course of time. That evolution is not complete. While I believe the justice court system is a good system that serves the public well, no system is perfect and there is always room for improvement. Following are some ideas that have been raised in various forums regarding possible future reforms.

On January 6, 2016, the *Salt Lake Tribune* ran an editorial entitled, "To improve justice courts, start with full-time judges." http://www.sltrib.com/opinions/3381585-155/editorial-to-improve-justice-courts-start (last visited March 29, 2016). The editorial points out that about two-thirds of justice court judges serve part time. That is because the cities and counties that appoint those judges do not have a large enough case load to keep a

full-time judge busy. The editorial notes, "Those cities and counties could combine jurisdictions so that every court required a full-time judge position. Even setting aside the requirement that they be lawyers, having only full-time judges would make it easier to educate them, and they would gain judicial experience faster because they hear more cases." *Id*. This idea echoes the recommendations made in 2007 by the Nehring Commission.

While such a reform could ultimately be considered by the legislature, it could also be implemented by municipalities entering in to interlocal agreements consolidating their courts. In fact, many municipalities have already adopted this approach. In addition to the benefits described above, such consolidations may create economies that can be beneficial to the municipalities as well as parties to a case.

Another area of reform that has been discussed includes the appeal process. Currently, parties may file *de novo* appeals and get a new trial in the district court. *De novo* appeals are required, under U.S. Supreme Court precedent, when non-lawyer judges preside over cases. As the majority of Utah justice court judges will now be required to have law degrees, the state could look at the idea of revising the appeal process. Some have argued that the current system wastes judicial and attorney resources. Additionally, the lack of a formal appeal on the record also results in a lack of case law relevant to the justice courts. In Utah there is a dearth of case law involving misdemeanor criminal charges simply because there is no on-the-record appellate process. Finally, justice court judges do not get feedback or correction to their legal decisions. A *de novo* appeal does not result in any legal direction being given from a higher court. Recordings of all justice court proceedings are now available. An appeal on the record could provide an avenue for case law to develop and would provide judges with specific and directed feedback and correction. Whether policy makers decide to pursue such a reform or not, some of the roadblocks that would have previously been in place have been removed.

Other reforms that have been recommended elsewhere include implementing centralized, professional court administration;[2] creating uniform policies and forms for justice courts;[3] reducing the focus on a defendant's financial compliance;[4] and increasing structural oversight.[5]

Conclusion

As the court level that handles the majority of cases throughout the country, limited jurisdiction courts deserve our attention. This is where opinions about the court system are being generated. This is where the fairness and effectiveness of our judicial system is being experienced. As has been done over the years, we should continue to look at our justice court system and identify areas where improvement can be made.

1. According to the Court Statistics Project, a project of the National Center for State Courts, in 2009, there were approximately 13.9 million case filings in general jurisdiction courts compared to approximately 21 million case filings in limited jurisdiction courts. *See* http://www.courtstatistics.org/other-pages/statecourtcaseloadstatistics.aspx (last visited March 29, 2016).
2. *Four Essential Elements Required to Deliver Justice in Limited Jurisdiction Courts in the 21st Century*, Conference of State Court Administrators, 2013-1014 Policy Paper. http://cosca.ncsc.org/~/media/Microsites/Files/COSCA/Policy%20Papers/2013-2014-Policy-Paper-Limited-Jurisdiction-Courts-in-the-21st-Century.ashx.
3. *Missouri Municipal Courts: Best Practice Recommendations*, November 2015, National Center for State Courts. https://www.courts.mo.gov/file.jsp?id=95287.
4. Janet G. Cornell, *Limited-Jurisdiction Courts: Challenges, Opportunities, and Strategies for Action*, National Center for State Courts, 2012.
5. *Public Safety – Municipal Courts*, October 2014, Better Together (sponsored by the Missouri Council for a Better Community. http://www.bettertogetherstl.com/wp-content/uploads/2014/10/BT-Municipal-Courts-Report-Full-Report1.pdf.

The New Utah Uniform Power of Attorney Act –

Powerful New Tool to Prevent Elder Financial Abuse by Agents

by Mary Shea Tucker

Elder financial abuse and fiduciary theft are on the rise in the United States. Given the demographics of the aging Baby Boomer population, the growth in these crimes will deprive an increasing number of seniors of their life savings, with no possibility of recovery over time. Family members and trusted others (such as CPAs, attorneys, neighbors, friends) commit a shocking 90% of the reported cases of elder financial abuse in the U.S. *See* Elder Abuse Fact Sheet, National Council on Aging (March 30, 2010), *available at* http://www.iue.edu/area9/Elder-Abuse-Fact-Sheet.pdf (last visited May 31, 2016). Within that category, about two-third of the perpetrators are adult children or spouses of the elderly victim. *See id*. A former Senior Assistant Attorney General for the State of Washington, John E. Lamp, has stated, "'Financial Durable Powers of Attorney continue to be the favorite vehicle for large-scale criminal financial exploitation perpetrated upon vulnerable adults.'" Thomas Hilliard, Power Failures *Power of Attorney Authority and the Exploitation of Elderly New Yorkers*, Schuyler Center for Analysis and Advocacy (Dec. 2006); www.scaany.org/resources/documents/power_failures.pdf (*quoting* John E. Lamp, *Victimization of the Elderly and Disabled* (June 2004)).

During the 2016 General Session, the Utah State Legislature enacted a New Uniform Power of Attorney Act (the New Utah POA Act). The chief sponsors were Representative V. Lowry Snow and Senator Lyle W. Hillyard. There are many valuable features in the New Utah POA Act, and almost all of them are beyond the scope of this article. My purpose herein is to describe one powerful new provision in the New Utah POA Act that can be used by financial institutions and any other third party that receives powers of attorney (POA), in coordination with the Utah Adult Protective Services Statute, to detect and prevent elder financial abuse by unscrupulous agents.

Consider this scenario:

Diane hires a lawyer to draft a durable POA, governed by Utah law, for her 85-year-old mother, Marjorie, who was recently diagnosed with Alzheimer's. The POA document names Diane as the sole agent. The lawyer never spoke to Marjorie until the day he notarized her signature of the power of attorney document.

POA in hand, Diane drives Marjorie to Marjorie's bank and Diane is added as agent to Marjorie's checking account, which has a balance of over $120,000. Marjorie has banked here for years, and she enjoys chatting with the tellers. Diane, in her capacity as POA, sets up online access to Marjorie's checking account.

Several months pass. Today, Diane goes to the bank to arrange a wire transfer of $50,000 out of Marjorie's account to an escrow account in both of their names at a real estate company. Personal banker Ben asks how Marjorie is doing, because she hasn't been in the branch for a while. Diane replies, "My mother is not doing well. She has dementia. I'm closing on a condo tomorrow, so that we can live together and I can take care of her." Ben pauses, and then asks, "Would it be possible for you to bring your mother in to the office so that we can discuss this transaction with her?" Diane replies, "I know what you're thinking. Here's a copy of a letter from my mom's doctor that says she can no longer manage her affairs. My POA permits me to make gifts and buy real estate, it's durable, and you have already accepted

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it. I need this wire transfer today, or we will lose this condo, and my earnest money, and I don't know how I'll be able to take care of my mother."

Ben says, "Please excuse me for a minute, I need to talk to my supervisor." Ben shows his supervisor Sarah the doctor's letter. Sarah looks up the copy of Marjorie's POA that is imaged to the bank account and realizes that the POA was signed by Marjorie two weeks after the date on the doctor's letter of incapacity. There is a clause that says the agent may gift, but it's very short. Sarah then looks at the transactions on Marjorie's account and is concerned that since Diane was added to account, the pattern and rate of withdrawals have changed dramatically: there are numerous ATM cash withdrawals, checks for payment of college tuition, debits for gasoline, restaurants, and a lease payment for a car. The balance in Marjorie's account is now about $55,000.

Sarah knows if she refuses to accept the agent's wire instructions, Diane will lose the condo and her earnest money, and she might sue the bank. If Sarah tells Ben to accept the wire instructions, Sarah may be allowing Diane to help herself to the last of Marjorie's life savings. Does Marjorie know about the condo? Does she want to live with and be taken care of by Diane? Did those account debits for tuition, meals out, and car leases benefit Marjorie? And more fundamentally, on the basis of the doctor's letter, Sarah wonders if Marjorie even had capacity to sign the POA in favor of Diane. The wire deadline for today is in less than one hour.

Powers of attorney are used by agents for millions of Americans every day who need assistance managing their financial affairs. The ease and convenience of use and the potentially sweeping authority of the agent to enter into financial transactions on behalf of the principal, also make a power of attorney especially vulnerable to abuse when the principal no longer has the mental capacity to review or even be aware of the decisions that are made by the agent. The breakneck speed of commerce in the twenty-first century requires financial institutions such as banks, brokerages, credit unions, and insurance companies to make rapid but careful determinations about the validity and scope of powers asserted by POA agents, such as Diane, on behalf of principals, such as Marjorie.

The New Utah POA Act is based upon the Model Power of Attorney Act, which was drafted in 2006 by the Uniform Laws Commission. The Model Power of Attorney Act has been enacted in twenty states (counting Utah) and was introduced into three other states this year. The New Utah POA Act repeals Utah Code sections 75-5-501 through 75-5-504. *See* H.B. 74, 61st Leg., 2016 Gen. Sess. (Utah 2016).

The provision of the New Utah POA Act I want to focus on is section 75-9-120(2). This statute lists specific exceptions to the general rule of liability of a third person for wrongful rejection of a power of attorney.

> A person is not required to accept an acknowledged power of attorney if:
>
> . . .
>
> (f) *the person makes, or has actual knowledge that another person has made, a report to the Division of Aging and Adult Services stating a good faith belief* that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting for or with the agent.

Utah Code Ann. § 75-9-120(2)(f) (emphasis added). This explicit exception was included in the New Utah POA Act to protect "third persons," such as Utah financial institutions that receive and review thousands of POA documents every year from liability for wrongful rejection. The New Utah POA Act also includes a right of action for principals and agents for wrongful rejection.

> A [third] person that refuses in violation of this section to accept an acknowledged [notarized] power of attorney is subject to…a court order mandating acceptance of the power of attorney… and liability for reasonable attorneys' fees and costs in any action…that confirms the validity of the power of attorney.…

Id. § 75-9-120(3). Section 75-9-120(2) is also intended by the drafters to encourage financial institutions to play a more important role in the protection of elders and vulnerable adults from predatory agents.

Here is how section 75-9-120(2)(f) is intended to interact with the Utah Adult Protective Services reporting statutes, which are found at Section 62A-3-305(1), *et seq*. Utah requires mandatory reporting of suspected elder abuse. "A person who has reason to believe that a vulnerable adult [defined in the statute as an elder person – 65 or older – or an adult with a mental or physical disability that impairs that person's ability to take care of himself or his finances] has been the subject of abuse, neglect or exploitation shall immediately notify Adult Protective Services intake." *Id*. § 62A-3-305(1); *see id*. § 62A-3-301(11), (28).

Sarah, the bank supervisor who can see unusual activity in Marjorie's account and who also is aware that Marjorie may not have had capacity when she signed POA, is required by the Utah Adult Protective Services' (Utah APS) reporting statute to report her concerns to Utah APS. Sarah can submit this report online or call a statewide intake number for APS. And because of the provision in the New Utah POA Act, section 75-9-120(2), Sarah's bank has legal authority to reject any further transactions by Diane as agent on Marjorie's account, because Sarah

> *makes, or has actual knowledge that another person has made, a report to the Division of Aging and Adult Services stating a good faith belief* that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting for or with the agent.

Id. § 75-9-120(2)(f). Time is of the essence to the protection of Marjorie's assets from further exploitation. Sarah does not need to have anything other than a reasonable suspicion that Marjorie may be the victim of elder exploitation in order to halt all further withdrawals from Marjorie's account. Financial institution employees, such as Marjorie's personal banker, tellers, or financial advisors, are often better placed than anyone else to be the first to detect evidence of elder financial abuse. With the protection of the New Utah POA Act, financial institutions can and should use section 75-9-120(2) to halt potential exploitation by agents on the accounts of Utah seniors and vulnerable adults.

Any person who, in good faith, reports suspected elder abuse to Utah Adult Protective Services or a law enforcement agency is immune from civil or criminal liability in connection with the report or notification. *See id*. § 62A-3-305(3). The definition of abuse in the Utah APS Statute is also in harmony with this provision of the New Utah POA Act. Exploitation of a vulnerable adult means when the person: "(ii) knows or should know that the vulnerable adult lacks the capacity to consent, and or…(iv) unjustly or improperly uses a vulnerable adult's power of attorney…for the profit or advantage of someone other than the vulnerable adult." *Id*. § 76-5-111(4)(a).

If Marjorie's Power of Attorney document was executed before July 1, 2016, then the New Utah POA Act would not govern Marjorie's power of attorney. Sarah and her bank would not have explicit immunity for rejecting the wire transfer instructions of agent Diane after making a report of concerns to Utah APS. However, Sarah and the bank are subject to the Utah APS Reporting Statute; they are required to report any reasonable suspicion of abuse to APS and are entitled to immunity for making such a report. Sarah might decide to delay the wire transfer until she can speak with bank legal counsel or her compliance department for more guidance because once the wire is sent, Marjorie's remaining assets are gone.

Of course, if Marjorie's Utah POA document is executed on or after July 1, 2016, the New Utah POA Act will give financial institutions, and other third parties, the liability protection, and thus the encouragement, to do the right thing.

STRONG AND HANNI WELCOMES

Mark H. Howard

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The Deductibility of Away-From-Home Expenses for Senior Missionaries and Other People Rendering Charitable Services

by Timothy B. Lewis

At one of the recent Utah State University tax schools for professionals, Professor Jeff Barnes (one of the presenters) was asked about the charitable deductibility of away-from-home expenses, which are typically incurred by senior missionaries while serving missions for the Church of Jesus Christ of Latter-day Saints and who serve for less than two years. Those questions prompted further research by both him and me. Since the headquarters of the LDS Church is in Utah and many Utah attorneys have clients who fit this description, the results of our research should have broad interest.

Moreover, our research should have broader application to charitable work performed on behalf of other churches and even non-religious charitable organizations qualifying as section 501(c)(3) organizations.

Temporary away-from-home expenses can be deducted in at least two contexts, namely, as (1) trade or business deductions under Internal Revenue Code (I.R.C.) Section 162 or (2) charitable contributions deductions under I.R.C. § 170.

I.R.C. § 170(j) specifically allows deductibility for travel expenses (including food and lodging) while away from home performing charitable work as long as there is "no significant element of personal pleasure, recreation, or vacation" involved.

Apparently desiring to avoid duplicative efforts, in Treasury Regulation § 1.170A-1(g), the Treasury Department effectively "piggy-backed" the rules for such things in the charitable deductions context onto the rules associated with away-from-home expenses in the trade or business context under section 162. So the detailed IRS rules and positions concerning temporary away-from-home expenses in the section 162 trade or business context is extrapolated by the IRS to the charitable contributions context even though the specific verbiage and examples used in the trade or business context do not easily transfer over to the charitable context.

According to the IRS, away-from-home expenses can be deductible if the taxpayer is only "temporarily" (as opposed to "indefinitely" or "indeterminately") away from home. This distinction arose from some early Tax Court cases, *Schurer v. Commissioner*, 3 T.C. 544 (1944); *Leach v. Commissioner*, 12 T.C. 20 (1949), and was applied in the United States Supreme Court case of *Peurifoy v. Commissioner*, 358 U.S. 59 (1959).

Before Congress passed the Energy Policy Act of 1992, Pub. L. No.102-486, § 1938; 106 Stat. 3033, the IRS set forth three potential time periods to be considered in determining the "temporary" nature of away-from-home expenses in the trade or business context, namely,

1. Absences from home of fewer than twelve months;

2. Absences from home of at least one year but fewer than two years; and

3. Absences from home of two years or more. Rev. Rul. 83-83 (1983).

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Effectively, if a taxpayer could objectively prove that (1) he had an established home, and (2) he intended to return to it after his service away from that home, then if his period of absence was expected to be fewer than twelve months in duration, his absence would be considered "temporary" in nature thus allowing deductibility for reasonably incurred and adequately substantiated costs.

But even if he could prove his established home and his intent to return to it, if he expected his absence to be at least one year but fewer than two years in duration, then the rebuttable presumption by the IRS would be that his absence was "indefinite" in nature, thus denying deductibility for his away-from-home expenses.

Finally, if his absence from home was expected to last for two years or more, then it would be conclusively presumed by the IRS to be "indefinite" in nature, thus denying deductibility.

Revenue Rul. 83-82 (1983) discussed how the negative rebuttable presumption regarding the middle time period could be effectively rebutted and the taxpayer's absence considered to be "temporary" rather than only "indefinite" by the IRS, thus allowing him to deduct his away-from-home expenses incurred over that long a period of absence.

Of course, all of the foregoing are insights as to how the IRS would be inclined to look at the matter and do not necessarily reflect how the courts would ultimately decide the issue. If that were not the case, then the IRS would always win in court on every tax position it ever took, but we all know that sometimes the IRS wins in court and sometimes it loses. However, it is fair to say the IRS usually wins in court.

We can look at Revenue Rulings as "safe harbors" given to the taxpayers by the IRS. If a taxpayer can meet the requirements set forth in the applicable Revenue Ruling, she can expect to avoid a court battle with the IRS over the desired tax consequences of a particular transaction. But that does not mean that a situation that does not perfectly line up with the conditions set forth in a Revenue Ruling is ultimately doomed to fail in court.

The bulk of my analysis here will proceed on the assumption that the common situations surrounding senior missionaries of the LDS Church fit within the rules the IRS has set forth over the years regarding away-from-home expenses. But at the end, I will argue that even if the IRS were to disagree, those common situations seem to clearly fit within both the spirit and the letter of I.R.C. § 170(j) regarding charitable deductibility.

In an attempt by Congress to generate more tax revenue to pay for the Energy Policy Act of 1992, it effectively legislated a two-period test for away-from-home expenses, namely, absences from home of one year or less and absences from home for more than one year. So now, in the trade or business context, absences from home of more than one year are conclusively presumed by I.R.C. § 162 itself (and not just the IRS expressing its own opinion) to be "indefinite" in nature thus disallowing deductibility under §162 for away-from-home expenses.

The operative language in Section 1938 of that Act reads as follows:

> Section 162(a) [of the IRC] is amended by adding at the end the following sentence: "For purposes of paragraph (2) [dealing with temporary away-from-home travel expenses], the taxpayer shall not be treated as being temporarily away from

> home during any period of employment if such period exceeds 1 year."

Regarding this change, the Conference Committee Report on Section 1938 of that Act reads:

> The conference agreement treats a taxpayer's employment away from home in a single location as indefinite rather than temporary if it lasts for one year or more. Thus, no deduction would be permitted for travel expenses paid or incurred in connection with such employment. As under present law, if a taxpayer's employment away from home in a single location lasts for less than one year, whether such employment is temporary or indefinite would be determined on the basis of the facts and circumstances.

Conference Report, H. Rept. 102-1018 (Oct. 5, 1992). What "facts and circumstances" was the Conference Committee likely referring to? Presumably, they would be the same ones discussed in Revenue Ruling 83-82, namely, those relevant facts and circumstances that help determine (1) where the taxpayer's tax home really was before her new work assignment began and (2) the relevant facts and circumstances that would demonstrate her actual intent to return to that tax home upon the completion of her work.

After the passage of the Energy Policy Act of 1992 (1992), the Internal Revenue Service issued Revenue Ruling 93-86 (1993) that "obsoleted" Revenue Ruling 83-82 since that Revenue Ruling only explicitly dealt with "trade or business" deductions for away-from-home travel expenses and all of the examples used there were more than one year in duration which, because of the specific changes made by that Act to I.R.C. §162, could no longer qualify as deductible away-from-home travel expenses.

So at this point, it would seem that senior missionaries who serve for more than one year but fewer than two, could not deduct (as charitable contributions) any of their away-from-home travel expenses since their absences are not "temporary" in nature. This is because (1) Treasury Regulation Section 1.170A-1(g) says the government's determination of "temporary" away-from-home expenses in the charitable contributions context is "piggy-backed" onto the rules associated with temporary away-from-home deductions in the trade or business context under Section 162; and (2) after 1992, no such away-from-home expenses will be considered "temporary" in the trade or business context under Section 162 if the absence away from home is more than one year.

Now here is where things get interesting. The quotation from the Conference Committee Report concerning Section 1938 of that Act given above, concluded by saying, "This change is not intended to alter present law with respect to volunteer individuals providing voluntary services to charities described in section 501(c)(3)."

So while Congress sought to increase federal tax revenue by limiting the deduction for temporary away-from-home expenses in the trade or business context under IRC Section 162, it did not intend to change any of the then existing law regarding the deduction for temporary away-from-home expenses in the charitable contribution context under I.R.C. § 170. It obviously wanted the deductibility of away-from-home expenses in the charitable contributions context to be allowed for periods of absence that even exceeded one year.

When a bill passes in one of the houses of congress, it must also be passed by the other house before it is sent to the President for his signature, to actually become statutory law. As is usually the case, when a bill passes one house and is sent to the other, the other house makes changes to it before passing its version of the bill. At that point a conference committee is convened to resolve the differences between the two respective bills through debate and compromise. It is made up of selected senators and members of Congress from both houses. Once the conference committee arrives at a mutually acceptable compromise between the two versions of the bill, its compromise bill is sent to both houses for passage. If it passes in both houses, it is sent to the President to either sign into statutory law, or veto.

Because of that process, conference committee reports discussing what the committee did in conference and why it did it, are clear expressions of congressional intent of both houses regarding the bills that pass their committee. *See C.I.R. v. Bilder*, 369 U.S. 499 (1962).

In *Chevron v. Natural Resources Defense Council, Inc.*, 467 U.S. 837(1984), the United States Supreme Court determined how much judicial deference would be given to federal agency regulations that attempt to fill in the gaps that exist in the statutory

law created by Congress. The Supreme Court said:

> When a court reviews an agency's construction of the statute which it administers, it is confronted with two questions. First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress….

Id. at 842–43 (emphasis added). Since the first of the two *Chevron* questions was answered in the affirmative in the above-quoted conference committee report regarding the Energy Policy Act of 1992, there is no need to discuss the second *Chevron* question dealing with the case where Congress was silent about its intent.

Thus, we think Treasury Regulation § 1.170A-1(g) (which was adopted before the passage of the Energy Policy Act of 1992) was effectively made inoperative to the extent it attempts to apply the same rules that apply in the Section 162 context to the Section 170 context when it comes to determining what potential time periods away from home can qualify as being only "temporary" in nature.

True, while absences from home of more than one year but less than two in the charitable contributions context are probably still

rebuttably presumed by the IRS to be non-temporary in nature and thus non-deductible, Rev. Rul. 83-82, that IRS presumption was, and I think still is, rebuttable in the taxpayer's favor. I think that the typical facts surrounding a senior mission call are sufficiently clear and compelling that an objective observer would expect the IRS to concede the issue and allow the deduction if it were to stay true to the spirit of its past discussions of the away-from-home issue in that revenue ruling regarding employment situations.

Conclusion

In expressing my conclusions, I will consider two different approaches that could be taken by the IRS as explained in the following two headings:

My conclusion under the assumption that the IRS will obey the clear intents expressed above by Congress and be consistent with its prior revenue rulings regarding the deductibility of away-from-home expenses in the trade or business context:
In my opinion, when senior missionaries for the LDS Church personally pay out-of-pocket travel and other away-from-home expenses while on their missions, the IRS will probably allow them to deduct such reasonable and unreimbursed expenses as charitable contributions deductions under I.R.C. § 170 as long as they are called to serve for some time fewer than two years, they return directly home promptly at the end of their missions, actually return home fewer than two years after they first left, and can adequately substantiate such expenses.

"Because of that inherent fluidity of employment, absences from one's tax home can, and often do, change from being 'temporary' to 'permanent' very quickly."

For example, if they were called to serve for eighteen months, actually served that time fulfilling their missions, and then spent a month traveling around the world before actually returning home, while the reasonable, unreimbursed, and substantiated costs of (1) traveling to their missions, (2) their ordinary travel and living costs incurred during their missions while away from home, and (3) their travel costs incurred in returning directly home from their missions should be deductible, such would not be the case concerning the added costs of their month-long vacationary embellishments since they contained a "significant element of pleasure, recreation, or vacation." I.R.C. § 170(j).

By saying what I did about the two years, I do not mean to imply that there really is a "hard and fast" two-year limit involved concerning away-from-home deductions in the charitable mission context. Certainly the actual statute itself, I.R.C. § 170(j), imposes no such time limits. I am just saying that if the mission lasts for fewer than two years, based upon its prior pronunciations, the IRS is much more likely to allow the deductions without the necessity of any court battle. For the reasons discussed below, I think even longer missions should still qualify for deductibility because they are very specific and limited as to their duration and thus, are not "indefinite" or "indeterminate."

My conclusion under the assumption that the IRS will arbitrarily choose to (a) ignore the clear intents expressed above by Congress, (b) be inconsistent with its past pronouncements, and (c) choose to deny the deductions and litigate the issue in court:
In my opinion and for the following reasons, the courts will likely allow the deductibility of away-from-home expenses even over the objections of the IRS under the typical facts surrounding the senior missionary callings issued by the Church of Jesus Christ of Latter-day Saints, even when such missions exceed two years' duration.

First, Congress clearly wanted to preserve the possibility of deducting away-from-home expenses in the charitable context even when the charitable mission extended beyond one year.

Second, in *Chevron*, the U.S. Supreme Court said that both the courts and federal administrative agencies are bound to honor clearly expressed congressional intent (at least when the congressional action is deemed to be constitutional.)

Third, because Congress de-coupled the timing issues involved in the away-from-home-expense area in the two different contexts discussed (namely, the trade or business context under I.R.C. § 162 and the charitable contributions context

under I.R.C. § 170, the courts may treat the two contexts differently and come up with their own set of rules regarding the charitable contributions context that have no connection to prior agency positions or court pronouncements that were made in the trade or business context.

In researching the away-from-home expense issue, almost all the cases dealt with employment settings. Even though the Treasury Department piggy-backs the away-from-home rules surrounding charitable contributions deductions under I.R.C. § 170 onto those rules in the trade or business context under I.R.C. § 162, I could find no cases where the IRS positions discussed in Revenue Ruling 83-82 were applied to extended absences from home in the charitable contributions context.

Fourth, the critical language in the statute (I.R.C. § 170(j)) is: "while away from home." So the key issues should be: "(1) Where was the taxpayer's tax 'home' before his mission and (2) did he intend to abandon that tax home and create a new one or did he intend to return to that tax 'home' after serving his mission?"

The IRS's position in Revenue Ruling 83-82 was this: if the taxpayer had no regular place of business, her tax home would be "at the taxpayer's regular place of abode in a real and substantial sense." Most senior missionaries are retired so they have no regular place of business and it is pretty clear where their regular place of abode was prior to their mission. So establishing their tax home prior to their missions should not be very difficult. As to objective evidence concerning their intent to return to their tax home after their missions ended, that will be discussed below.

Fifth, the statute itself imposes no time limitations regarding the maximum amount of time a taxpayer can be "away from home" for purposes of qualifying to take charitable deductions under I.R.C. § 170(j). There are significant qualitative differences between the two contexts discussed that should justify longer periods of absence being more permissible in the charitable context than in the trade or business context.

In the trade or business context, it is very common for working people to find better employment opportunities than they currently have thus causing them to quit their current jobs and change their tax homes midstream despite their prior honest intentions and anticipations to the contrary.

Because of that inherent fluidity of employment, absences from one's tax home can, and often do, change from being "temporary" to "permanent" very quickly. Hence, the longer the time a working person expects to be away from his tax home, the higher the likelihood he will not really ever come back to it. In that setting, making an argument that a period of absence exceeding two years should be considered "indefinite," rather than "temporary," makes some sense.

In contrast, it is extremely unlikely for missionaries to quit their missions midstream and go somewhere else and do something else contrary to what they originally intended and anticipated. In contrast to the common employment setting, they are not constantly on the lookout for better opportunities to take them off their appointed paths. Rather, at great sacrifice, they are committed to serve where they are needed and for as long as they are needed. They are motivated by a sense of unwavering duty rather than fickle financial opportunity as in the case of employment. Therefore, there is very little, if any, connection between the length of their calling away from home and the probability of their actual return to their prior tax home. Thus,

there is far less justification for calling their absence "indefinite" rather than "temporary" simply because their mission call causes their absence to exceed even two years in duration.

So the IRS' self-created conclusive presumption that absences exceeding two years' duration in the trade or business context are "indefinite" are inherently arbitrary and unreasonable when superimposed over the context of religious missionary work.

Sixth, from many years of past experience in the LDS Church, the level of reliable predictability regarding the missionaries' eventual return to their prior tax homes, is close to one hundred percent.

The typical pattern – which is repeated with clock-like regularity – is as follows: (1) a formal written mission call (of specific and limited duration) is issued to a senior couple from the LDS Church's headquarters (I believe the maximum length of away-from-home mission callings in the LDS Church is currently three years); (2) the long-standing cultural expectation within the local church organizations (called wards) from which the missionaries leave is that those missionaries will eventually return and will again be called to serve within that local ward upon their return – the common phrase used within the church to describe the missionaries' return is: "they have returned home from their missions"; (3) during their temporary absence, the pictures of the missionaries are hung in the foyers of their local wards to honor them and remind the other ward members to pray for them, write to them, and expect their eventual return since they are still considered to be members of that ward but are just on a temporary leave of absence; (4) during their temporary absence, their membership records stay with their home ward; (5) the missionaries usually retain ownership of their physical homes during their missions; and (6) virtually all senior missionaries actually serve their missions for the time periods designated in their formal callings and then they actually return to their homes and former lives within their prior home wards just like they, and everyone else in their home ward, originally expected.

Even if their missions were of three years' duration, under such circumstances, it defies common sense to say the duration of such missions should be considered "indefinite" or "indeterminate." Moreover, because of the limited and certain durations of their callings and the extremely high likelihood of the missionaries' actual return to the tax homes they established before their missions, those absences could only be portrayed as being "temporary" in any meaningful sense of that word.

Going back to the key language in I.R.C. § 170(j), during their missions, they truly are temporarily "away from home" and that home never changes during the course of their missions because they almost always eventually return to it at the end of their missions. If they ever were audited and questioned on this matter, that would most likely happen after they have actually returned home from their missions. That actual return home should bolster their argument with the IRS. They could say to the IRS agent:

> Not only did I leave my home with the intent to return, but now it is an objectively provable and historical fact that I have actually returned right on schedule as anticipated. My mission call was definite and certain as to its duration and, as usual within my church, everything actually happened according to that pre-set timetable. It was obviously only a 'temporary' absence 'away from home.' In no way could it reasonably be described as just 'indefinite' or 'indeterminate' in duration. You don't have to merely believe my stated intents concerning the matter, my actual conduct has fully proven their veracity.

So even if the IRS were to deny the deductibility of senior missionaries' away-from-home expenses for missions that exceed one year's duration, I believe the IRS would most likely acquiesce and if not, that the courts would probably allow deductibility if the record-keeping requirements were met.

For (1) a more detailed analysis of this issue, including how the IRS's negative presumption can be rebutted, and (2) recommendations for meeting the record-keeping requirements, see the more detailed article entitled *Charitable Contributions Deduction – Elevating Congressional Intent* in the Journal of Legal, Ethical and Regulatory Issues, Vol. 19, Number 1, 2016, at pages 1–15. If you cannot successfully access a copy of the article online, you can get a copy by making a request to Professor Jeff Barnes at barnes@emeriti.suu.edu.

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Appellate Highlights

by Rodney R. Parker, Dani N. Cepernich, Nathanael J. Mitchell, Adam M. Pace, and Taymour B. Semnani

Editor's Note: *The following appellate cases of interest were recently decided by the Utah Supreme Court, Utah Court of Appeals, and United States Tenth Circuit Court of Appeals.*

McCormick v. Parker

— F.3d —, 2016 WL 1743388 (10th Cir. May 3, 2016)

In this appeal from the denial of a petition for postconviction relief, the court held that **a sexual assault nurse examiner was a member of the prosecution team for *Brady* purposes because she acted at the request of law enforcement** in the pre-arrest investigation of a crime when she examined the victim.

Tooele Cnty. v. United States

— F.3d —, 2016 WL 1743427 (10th Cir. May 3, 2016)

The court considered whether the Anti-Injunction Act prohibits enjoining parties from pursuing a state-court action challenging state officials' authority to pursue a federal quiet-title action. The court **limited the statutory exception for cases where an injunction is "'necessary in aid of [the federal district court's] jurisdiction'" to cases where both the federal and state are in rem or quasi in rem.** *Id.* at *3 (alteration in original) (quoting 28 U.S.C. § 2283). Because the parties in the state case sought an adjudication of state officials' legal authority, as opposed to an adjudication of property interests, the exception did not apply.

Deherrera v. Decker Truck Line, Inc.

— F.3d —, 2016 WL 1593691 (10th Cir. Apr. 21, 2016)

The plaintiffs in the wage dispute underlying this appeal are commercial truck drivers who claimed that their employer failed to pay them overtime wages under the Fair Labor Standards Act (FLSA) and the Colorado Minimum Wage Order. The court held that **drivers who transported materials on an intrastate route that was the final leg of an interstate journey were moving goods in interstate commerce,** subject to the power of the Secretary of Transportation, and thus exempt from the FLSA's overtime provisions.

Walton v. Powell

— F.3d —, 2016 WL 1566692 (10th Cir. Apr. 19, 2016)

A state employee claimed her former employer violated her right to free political association under the First Amendment. Among other things, the court held **the *McDonnell Douglas* burden-shifting framework does not apply to First Amendment retaliation claims.**

Brown v. Buhman

— F.3d —, 2016 WL 1399358 (10th Cir. Apr. 11, 2016), opinion amended and superseded by 2016 WL 2848510 (10th Cir. May 13, 2016)

This case involves a challenge to Utah's bigamy statute. The Utah County Attorney appealed the district court's order granting summary judgment in favor of the plaintiffs. The court held that **because the Utah County Attorney's Office had closed its file on the plaintiffs and adopted a policy under which it would only pursue bigamy charges against those who induce a partner to marry through misrepresentation or are suspected of committing a collateral crime such as fraud or abuse, the case was moot.**

Lompe v. Sunridge Partners, LLC

— F.3d —, 2016 WL 1274898 (10th Cir. Apr. 1, 2016)

Tenant successfully sued defendants for carbon monoxide poisoning from a malfunctioning furnace and was awarded $1.95 million in compensatory damages, and $22.5 million in

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punitive damages. The court of appeals remitted punitive damages from $22.5 million to $1.95 million, finding that **the reduced amount of punitive damages was "reasonable and proportionate" to the harm suffered and that a higher amount would have been "greater than reasonably necessary to punish and deter."** *Id.* at *25 (citations and internal quotation marks omitted).

United States v. Badger
818 F.3d 563, 2016 WL 1169416 (10th Cir. Mar. 25, 2016)

Although acknowledging that the Utah Supreme Court has never recognized a reverse-piercing claim, the court **predicted that Utah courts would apply reverse veil-piercing** against corporate defendants to hold them liable as alter egos of the defendant, who failed to pay a consent judgment under which he agreed to disgorge profits from a securities fraud scheme.

United States v. Carloss
— F.3d —, 2016 WL 929663 (10th Cir. Mar. 11, 2016)

On appeal from the denial of a motion to suppress, defendant argued that a "No Trespassing" sign effectively revoked the officer's implied license to approach the residence for a knock and talk. Evaluating the overall context and the message that would have been communicated to an objective officer or member of the public, the court held the **mere presence of a "No Trespassing" sign was not sufficient to convey to an officer that he or she lacked a license to approach and knock on the front door of a residence.**

Nichols v. Jacobsen Constr. Co.
2016 UT 19 (Apr. 28, 2016,)

Employee of subcontractor was hurt when scaffolding fell on him. He filed civil claims against the general contractor. The general contractor asserted Workers' Compensation Act immunity pursuant to the "eligible employer" statute, which requires that the contractor "'secure[] the payment of workers' compensation benefits.'" *Id.* ¶ 9 (quoting Utah Code Ann. § 34A-2-103(7)(f)(iii)(B)). The court held that **a contractor "secures the payment of workers' compensation benefits" and is immune if it provides its subcontractors and their employees with a qualifying insurance policy**, regardless of who actually pays the workers' compensation benefits. *Id.* ¶¶ 24–27.

ClearOne, Inc. v. Revolabs, Inc.
2016 UT 16, 369 P. 3d 1269 (Apr. 1, 2016)

Massachusetts company that recruited Texas employee of Utah company lacked sufficient contacts with Utah to support specific or general jurisdiction here. The court **scaled back the "effects" test of *Pohl, Inc. of America v. Webelhuth*, 2008 UT 89, 201 P.3d 944, to require that the effects be broader than just impact on the plaintiff who resides here, and that instead they create a "substantial connection" with the state.** *Id.* ¶¶ 22–23 (internal quotation marks omitted) (emphasis added). The court also rejected a general "doing business" argument that was based primarily on an Internet presence here. *Id.* ¶¶ 39–40 (internal quotation marks omitted).

Salt Lake City Corp. v. Evans Development Grp., LLC
2016 UT 15, 369 P. 3d 1263 (Mar. 24, 2016)

Rocky Mountain Power did not wish to sell land that Salt Lake City (the City) needed to complete its Westside Railroad Realignment Project but agreed to transfer the land to the City if the City would make alternative property available. The City condemned Evans's land to satisfy its obligations under the agreement. The court held that **the exchange agreement did not satisfy the statutory requirements that the condemnor be in charge of the public use to which the property will be put and to oversee construction of the public use** and ordered the property returned to Evans.

Nielsen ex rel. C.N. v. Bell ex rel. B.B.
2016 UT 14 (Mar. 24, 2016)

The plaintiff in this negligence action sued a four-year-old child she was babysitting for throwing a toy at her and striking her in the eye. The court **followed the Restatement (Third) of Torts and held that children under the age of five may not be held liable for negligence.** Accordingly, the court reversed the district court's order denying summary judgment in favor of the four-year-old defendant and remanded with instructions to grant summary judgment.

M.J. v. Wisan
2016 UT 13 (Mar. 23, 2016)

This lengthy decision arose out of various tort claims brought against the United Effort Plan Trust (the UEP Trust). Among other things, the court **(a) held a trust could be liable for**

the acts of a trustee acting within the scope of the trustee's responsibility under the Uniform Trust Act and (b) endorsed the doctrine of reverse-veil piercing. In a notable departure from a prior case law, the court also concluded that, under a standard articulated in the Restatement (Third) of Agency § 7.07(2), an employer may be liable under a theory of respondeat superior even when the agent's conduct occurs away from the work space or outside a work shift.

Monarrez v. Utah Dep't of Transp.
2016 UT 10, 368 P.3d 846 (Mar. 9, 2016)

Utah Department of Transportation (UDOT) did not respond to the plaintiff's notice of claim within sixty days, which is deemed to be an automatic denial under the Utah Governmental Immunity Act. However, UDOT sent the plaintiff an actual denial letter several months after the plaintiff submitted his notice of claim. The plaintiff filed suit within one year of the letter but not within one year of the sixty-day automatic denial. The court held that **the one year limitations period to file a claim expired one year after the sixty-day automatic denial and not one year after the date of the later denial letter.**

2010-1 RADC/CADC Venture, LLC v. Dos Lagos, LLC
2016 UT App 89 (Apr. 28, 2016)

Plaintiff RADC was the successor coholder of a note on which plaintiff Utah First had sued. RADC had not been named as a plaintiff in the original complaint and was not added as a plaintiff until after the three-month statute of limitations had run. The court held that **because the case involved a single note, the original complaint had provided the defendant-borrowers with sufficient notice to satisfy the rationale of Rule 15(c)'s relation-back provision.**

Falkenrath v. Candela Corp.
2016 UT App 76 (Apr. 14, 2016)

Plaintiff suffered severe burns after laser hair removal treatment. She timely brought claims against the technician operating the machine but did not bring claims against the manufacturer until ten months after the statute of limitations had run. The court affirmed summary judgment in favor of the manufacturer because, **while plaintiff**

> **was ignorant of the existence of her potential cause of action against [the manufacturer] until hearing from her expert, it is clear that a personal injury caused by the operation of a machine will routinely entail possible liability on the part of both the operator and the manufacturer of the machine.**

Id. ¶ 10. (emphasis added)

Granger v. Granger
2016 UT App 67 (Apr. 7, 2016), opinion superseded and amended by 2016 UT App 117 (May 26, 2016)

The parties' settlement agreement provided for division of the husband's 401(k) plan based on the formula articulated in *Woodward v. Woodward*, 656 P.2d 431 (Utah 1982). *Woodward*, however, involved a defined benefit plan, not a 401(k) defined contribution plan, and the formula could not be applied without modification. The court held that **the parties' agreement to apply the *Woodward* formula to this 401(k) plan yielded an inequitable result and remanded for equitable apportionment of the account.**

Sleepy Holdings LLC v. Mountain W. Title
2016 UT App 62 (Mar. 31, 2016)

Plaintiff attempted to serve two supplemental disclosures addressing damages and naming witnesses over a year after the discovery cutoff. The district court struck both disclosures. Affirming, the court of appeals held that **Utah Rules of Civil Procedure 26(a) and 37(f) govern the sanction when a party fails to timely make or supplement an initial disclosure,** as opposed to Rule 16.

Steffensen-WC LLC v. Volunteers of Am. of Utah
2016 UT App 49, 369 P.3d 483 (Mar. 10, 2016)

The court affirmed the lower court's decision that **arguments in a reply brief were proper rebuttal because they addressed a subject matter raised in the opposition, even though the reply did not rebut any specific arguments.** The court declined to decide whether Utah recognizes a cause of action for anticipatory nuisance because the plaintiff's complaint did not put the defendant on notice that such a claim was intended.

high praiseyers

OUR SINCERE CONGRATULATIONS TO ANNETTE JARVIS FOR BEING HONORED BY THE UTAH BAR AS "LAWYER OF THE YEAR."

Annette is one of the nation's leading bankruptcy and restructuring lawyers who represents financial institutions and other parties in Chapter 11 bankruptcy cases and out-of-court workouts. She is a natural leader and an exemplary mentor in Utah's legal community.

Annette is a Dorsey & Whitney partner and a member of the firm's Management Committee.

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Serving as Local Counsel

by Keith A. Call and Robert T. Denny

With few exceptions, most lawyers love it when they receive a call from an old classmate or colleague asking them to lend their expertise as local counsel on a case. Acting as local counsel has the benefit of keeping you connected to both your colleagues and new clients, and it is also an opportunity for you to build your reputation and referral network.

While your role as local counsel might range from acting as co-counsel at a major trial to occasional hearing attendance, oftentimes lead counsel expects local counsel to provide little more than a bar number and a mailing address. Lead counsel's expectation may be that you only take a cursory glance at a motion to ensure compliance with local procedure and file it with little thought or effort, to keep client expenses low.

This relationship works great, until something goes wrong. If the client is dissatisfied with the representation, the client may sue both lead and local counsel for malpractice, regardless of local counsel's involvement. Moreover, if lead counsel commits some sort of discovery abuse or ethical transgression, local counsel may be held responsible. In such situations, relying on the fact that you were "only local counsel," may not be persuasive.

So how can you limit exposure when acting as local counsel? The first step is to recognize that you still have ethical obligations to the client, court, and third parties even though your role may be limited.

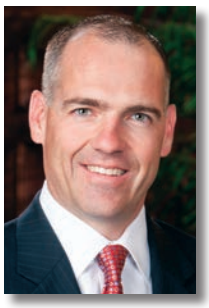
Rule 14-806 of the rules governing the Utah State Bar sets out the basic requirements for acting as local counsel. It requires that local counsel "consent to appear as associate counsel," "sign the first pleading filed," continue as counsel of record in the case, and be available to communicate with opposing counsel and the court. Sup. Ct. R. Prof'l Practice 14-806(f). Moreover, you may be required to appear at all hearings, and local counsel must have the responsibility to act for the client if non-Utah counsel is unavailable.

Given these potentially broad responsibilities, ensuring compliance with the Utah Rules of Civil Procedure, the Utah Rules of Professional Conduct, and any other applicable rules for the duration of the case is essential.

For instance, local counsel must ensure that any documents signed or filed by them comply with Rule 11 of the Utah Rules of Civil Procedure. This requires that local counsel conduct "an inquiry reasonable under the circumstances" to ensure filings are not presented for an improper purpose, that any contentions are warranted by existing law (or a nonfrivolous argument for an expansion of the law), and that any assertions or denials have proper evidentiary support. Utah R. Civ. P. 11(b). Whether an inquiry is reasonable is a somewhat squishy standard. While Utah courts likely will not require "perfect or exhaustive research," it is unclear how much inquiry local counsel must actually make when out-of-state counsel is taking the lead.

Local counsel must also remember their obligations under the rules of professional conduct. They must provide competent

KEITH A. CALL is a shareholder and ROBERT T. DENNY is an associate at Snow Christensen & Martineau, where their practices include professional liability defense, IP and technology litigation, and general commercial litigation.



representation under Rule 1.1 of the Utah Rules of Professional Conduct, "act with reasonable diligence and promptness," Utah R. Prof'l Conduct 1.3, "keep the client reasonably informed," *see id*. R. 1.4, exercise candor in dealing with the court, *see id*. R. 3.3, and deal fairly with the opposing party and counsel, *see id*. R. 3.4. If lead counsel is failing to comply with the rules of professional conduct, local counsel needs to ensure compliance and must be cautious not to inadvertently ratify unprofessional conduct. *See id*. R. 5.1.

Given the murky ethical standards and lack of specific guidance in Utah, this would be a good topic for consideration by the Supreme Court Advisory Committee on the Rules of Professional Conduct or the Ethics Advisory Committee. One open question is the extent to which local counsel may rely on lead counsel to supply the "diligence," "competence," and "communication" required by the rules.

Meanwhile, the best way for local counsel to protect himself or herself is to lay the ground rules with lead counsel up front. Establish early, preferably in writing, what you expect and explain that you must have enough involvement in the case to be aware of what is going on. If lead counsel expects you to simply sign and file documents with minimal review, this may be a relationship you want to avoid. Make sure you fully disclose your limited role to the client and get the client's consent in writing to your role and anticipated channels of communication. Never agree to simply be a mailbox and a bar number. If something does not "feel right," ask questions and conduct appropriate due diligence. Lastly, if non-Utah counsel is permitted to file electronically, ensure that you are able to review all documents before filing, and if that is not possible, promptly review after filing.

Ultimately, acting as local counsel is not as easy as providing a bar number and a mailing address, collecting fees, and walking off into the sunset. But if local counsel is cognizant of his or her professional responsibilities throughout the representation, it can be a rewarding experience and a great way to grow your network and personal reputation.

Every case is different. This article should not be construed to state enforceable legal standards or to provide guidance for any particular case.

What the Legislature Does between Now and 2017

An article for anyone who thinks the Legislature is on break for the next six months

by Douglas S. Foxley, Frank R. Pignanelli, and Stephen D. Foxley

Although Utah has a part-time citizen legislature, our elected representatives certainly do not act that way. A recent survey by the National Conference of State Legislatures suggests that legislators from states like Utah spend about half their time throughout the year on legislative functions. http://www.ncsl.org/research/about-state-legislatures/full-and-part-time-legislatures.aspx. How could this be possible when the Utah State Legislature's General Session lasts forty-five calendar days, with only thirty-three working days? The answer lies in all the official and unofficial work these individuals do to shape policy throughout the year and prepare for the next session.

In addition to the legislative functions required of the legislature, 2016 is an election year, so many public officials are in full campaign mode. Those lucky enough to have less-than-competitive races, or even to be running unopposed, are also likely meeting friends and neighbors and laying the groundwork for their next race.

How does this relate to the Bar? Well, it is important for our membership to work with the process during the interim on any proposed changes to the law. We also encourage your involvement in the local races that might affect you. The legislature may pass the laws, but the Bar interacts with the results on a daily basis. This gives us unique expertise to provide public officials as they consider future legislation. Thus, this article will briefly outline what you can expect to go on at the legislature and how you can be involved in the legislative and political process over the upcoming months.

Interim Legislative Process: What your legislator is doing for (or to) you

The legislative process is not the inverse to your children's school calendar, with seven weeks of work followed by a nine-month vacation. Quite the contrary. In order for the state to pass the magnitude of legislation it does on an annual basis (474 bills in 2016 alone), policymakers must invest in months of upfront planning to pass the most important initiatives.

In previous years, the "Master Study Resolution" provided guidance to the public of some of the major topics the legislature could be expected to discuss during the monthly meetings held by the legislature. These meetings are known as "Interims." However, in recent years the Resolution has been proposed, *see, e.g. S.J.R. 11 Joint Resolution – Potential Interim Study Items*, but never passed. Instead, legislative leadership has simply identified these priorities and placed them on the legislature's public website, http://le.utah.gov. Several topics could be of interest to members of the Bar, including, to pick just a few: revisions to the Revised Model Business Corporation Act; minimum motor vehicle insurance requirements; a recodification of the Agricultural Code; an income tax deduction for foreign taxes; regulation of unmanned aerial systems (UAS); parental rights; indigent defense; justice courts; the death penalty; and further reforms as a result of the Justice Reinvestment Initiative. A more complete list can be found at: http://le.utah.gov/documents/2016studyitemlist.pdf.

DOUGLAS S. FOXLEY, FRANK R. PIGNANELLI, and STEPHEN D. FOXLEY are attorneys at Foxley & Pignanelli, a government and public affairs law firm in Utah. They focus on federal, state, and local government activities on behalf of numerous corporate and individual clients and are proud to be the new government relations representatives for the Utah State Bar.

In addition to interim committees, several task forces and commissions will also meet and provide recommendations in the coming months for consideration in 2017, including the Health Reform Task Force and the Commission on the Stewardship of Public Lands. Oversight committees like the Legislative Management Committee and Legislative Audit Subcommittee convene meetings, and the Administrative Rules Committee provides a venue to review proposed administrative actions. When topics need immediate attention, the governor may also convene the legislature for a "Special Session." Special Sessions are rare.

If a section knows it will be impacted by some of the proposed topics, or if attorneys have special knowledge in these areas and an interest in getting involved, we encourage you to reach out to the applicable committee chairs or other members you may know to let them know you are available to help. You can also offer to be a resource to the general counsel, policy analysts, and legislative assistants for these committees.

Beyond these formal meetings that take place throughout the year, legislators also form informal working groups on their priority legislation, and many trade associations engage with legislators to work on important issues. If you have particular interest in a topic or area of the law, contact your legislator and see if he or she knows what is going on.

Your input is crucial to the Bar's success at the legislature. The Bar recognizes that the political process can be difficult to navigate and has retained our firm to provide guidance. This benefit is available to all members. Please know that our firm is here to help you through the process as well. Do not hesitate to contact us at either foxpig@fputah.com or by phone at (801) 355-9188.

Interim Political Process: (What you can be doing for your legislator or candidate)

This will sound obvious, but the benefit of 2016 being an election year is that re-election is on everyone's mind. This gives Bar members extra opportunities to get involved with policymakers and to share your expertise.

Increased interaction with legislators helps create deeper, more genuine relationships with policymakers. Put another way, legislators remember the individuals who are most involved in the political process. We know that many individual members of the Bar are active politically and are leaders of their community. But all of us in the Bar will benefit the more active we are as an organization. For this reason alone we ask you to do whatever you can. Attend your neighborhood caucus, walk a precinct with a campaign, or just put up a lawn sign. If your situation allows you may also want to consider a campaign donation. Elected officials cannot do their job without financial support.

We understand that some of you think you live in an area where you think your legislator does not share the same policy positions as you. If you fall into this category, consider this: a recent analysis by a BYU professor showed that the average bill passed with 93% support in the house and 96% support in the senate, even though the legislature is 84% Republican. http://utahdatapoints.com/2016/03/unanimity-remained-the-rule-in-the-2016-utah-legislature/. This means most bills pass with strong consensus and at least some bipartisan support. The same analysis calculated that only 14% of house and 6% of senate votes divided legislators along party lines. *Id*. One of the most conservative house members, Rep. Ken Ivory, even co-sponsored a bill with the uber-liberal Sen. Jim Dabakis!

Our Last Piece of Advice

Please remember that despite what you read in the local paper, the individuals who serve in the legislature are public servants with the best interests of Utah at heart. They have businesses, families, and other personal responsibilities. Very few individuals leave the legislature with more free time and money than when they entered. As you work with them on the legislative and political process, be appreciative of this and thank them for their time. We hope these tips help you stay engaged with the legislature.

Commission Highlights

The Utah State Bar Board of Commissioners received the following reports and took the actions indicated during the May 20, 2016 Commission Meeting held at the Law & Justice Center in Salt Lake City, Utah.

1. The Bar Commission voted to contribute $1,000 to the Judicial Performance Evaluation Commission for its diversity training program.

2. The Bar Commission voted to award **Annette Jarvis** and **Bruce Maak** Lawyer of the Year.

3. The Bar Commission voted to award **C. Dane Nolan** Judge of the Year.

4. The Bar Commission voted to award the **Utah Bar Leadership Academy** Committee of the Year.

5. The Bar Commission voted to award the **Bankruptcy Section** with the Section of the Year Award.

6. The Bar Commission voted to approve the WIPFLi contract for a Bar budget and expense review.

7. The Bar Commission selected **Kathi Sjoberg**, **Sharla Dunroe**, **Jon Memmott**, **Rich Gallegos**, **Benjamin Larsen**, and **Stewart Young** as nominees for the Second Judicial Court Nominating Commission.

8. The Bar Commission voted to approve language for rule to allow admission of undocumented immigrants.

9. The Bar Commission will continue to explore whether ABA electronic job board should be second phase after implementation of the lawyer directory.

The minute text of this and other meetings of the Bar Commission are available at the office of the Executive Director.

2016 Fall Forum Awards

The Board of Bar Commissioners is seeking nominations for the 2016 Fall Forum Awards. These awards have a long history of honoring publicly those whose professionalism, public service, and personal dedication have significantly enhanced the administration of justice, the delivery of legal services, and the building up of the profession. Your award nominations must be submitted in writing to Christy Abad, Executive Secretary, 645 South 200 East, Suite 310, Salt Lake City, UT 84111 or adminasst@utahbar.org by Friday, October 14, 2016. The award categories include:

1. Distinguished Community Member Award
2. Professionalism Award
3. Outstanding *Pro Bono* Service Award

View a list of past award recipients at: http://www.utahbar.org/bar-operations/history-of-utah-state-bar-award-recipients/.

Mandatory Online Licensing

The annual Bar licensing renewal process has started and can be done only online. Sealed cards have been mailed and include a username and password to access the renewal form and the steps to re-license online at www.myutahbar.org. **No separate form will be sent in the mail. Licensing forms and fees are due July 1 and will be late August 1. Unless the licensing form is completed online and payment received by September 1, your license will be suspended.**

To receive support for your online licensing transaction, please contact us either by email to onlineservices@utahbar.org or, call 801-597-7023. Additional information on licensing policies, procedures, and guidelines can be found at http://www.utahbar.org/licensing.

Upon completion of the renewal process, you will receive a licensing confirmation email. Subsequently, you will receive an official licensing receipt along with your renewal sticker, via the U.S. Postal Service.

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2016 Law Day Awards

PRO BONO PUBLICO

Recognizing people providing donated legal services to those most in need.

Law Firm: Strindberg & Scholnick

Young Lawyer: Sue Crismon

Student: Adam Saxby

YOUNG LAWYERS DIVISION

Young Lawyers of the Year: Kat Judd, Kate Conyers

Liberty Bell: Angie Leedy

SCOTT M. MATHESON AWARDS

Law-related youth education: Thomas Richard Davis

See details at lawday.utahbar.org.

Utah State Bar 2016 Summer Convention Award Winners

During the Utah State Bar's 2016 Summer Convention in San Diego the following awards will be presented:

Annette Jarvis
Lawyer of the Year

Bruce A. Maak
Lawyer of the Year

Hon. Dane Nolan
Judge of the Year

BANKRUPTCY SECTION
Section of the Year

UTAH LEADERSHIP ACADEMY
Committee of the Year

WLU Congratulates Woman Lawyer of the Year Joan Watt

Woman Lawyers of Utah (WLU) has awarded the 2016 Christine Durham Woman Lawyer of the Year Award to Joan Watt, Chief Appellate Attorney at the Salt Lake Legal Defender Association (LDA). WLU received nominations for Ms. Watt from dozens of colleagues throughout the legal community, who call her a "fearless and peerless appellate advocate." Ms. Watt argues often in Utah's appellate courts, and her impressive success rate amply demonstrates her abilities. Her name appears on 215 Utah appellate cases dating back to 1987. In 2015 alone, she won four appeals in a row, a significant achievement for any attorney let alone a criminal defense attorney on appeal.

Ms. Watt is a steadfast and zealous advocate for her clients, no matter the adversity or obstacles facing her. She is known for her ability to deftly explain the hardest facts and the most complex legal issues, and for being a superlative oral advocate. She writes persuasive and compelling appellate briefs better and faster than most, even while maintaining significant administrative responsibilities at LDA. Joan has also long been an active member of the Supreme Court's Advisory Committee on the Rules of Appellate Procedure, and she is its current chair.

In February of this year, Ms. Watt achieved the dream of all appellate advocates by arguing LDA's first case before the United States Supreme Court. Despite numerous inquiries from large Washington D.C. and New York law firms angling to take the case, Ms. Watt's lifelong career as a public defender doing largely appellate work prepared her better than anyone to defend the Utah Supreme Court's decision to suppress evidence under the exclusionary. Reporting on the oral argument, which brought out fierce debate amongst the justices, *Slate Magazine* noted that Ms. Watt "project[ed] an aura of stoic patience," and calmly explained the implications of the outcome of the case on minority communities. Mark Joseph Stern, *The First Day of the New Supreme Court Without Antonin Scalia on the bench, the court's liberals spoke up and won* out, Slate (Feb. 23, 2016, 7:30 AM), www.slate.com/articles/news_and_politics/supreme_court_dispatches/2016/02/in_the_oral_arguments_for_utah_v_strieff_the_supreme_court_s_liberals_spoke.html. In the words of her appellate colleague, Teresa Welch, "Once again, Joan showed us all how to fight the good fight…Her hard work and dedication to this case manifested as true virtuosity in the courtroom."

Ms. Watt's colleagues also note that aside from her laudable legal abilities, her most remarkable quality is her attitude. After many years of defending some of the most challenging cases, Ms. Watt is a champion for the importance of the work of public defenders in our legal system and community. She not only maintains her own positive attitude even in even the most trying of circumstances, but she often boosts the moral in the appellate division and in LDA as a whole. Her devotion of countless hours mentoring women lawyers was recognized with her receipt of WLU's Mentoring Award in 2010. She has taught appellate advocacy at the University of Utah and also oversees LDA's law school clerkship program.

Her colleagues at LDA summed it up well: "She is our biggest supporter, our guide, our mentor, the person we go to when no court or client will listen to us, and she is always the first person to cheer when we win a case we have worked on for months."

Joan Watt joins the ranks of the more than thirty amazing local women lawyers who have received this award since 1986, when it was first awarded to Chief Justice Christine M. Durham. More information about the award and WLU can be found at www.utahwomenlawyers.org. WLU congratulates Joan Watt and thanks her for her tremendous service to our community.

Pro Bono Honor Roll

2nd District ORS Calendar
Jake Cowdin
Lauren Schultz

3rd District ORS Calendar
Joshua Cannon
A.J. Green
Kristine M. Larsen
Gregory Osborne
Katherine Priest
Rick Rose
Maria E. Windham
Robert Wing

Adoption Case
Ken McCabe

Advanced Directive Legal Clinics
Brendan Bybee
Steven Christensen
Lance Gibson
Joe Huey
Robin Kirkham
Thomas Parkin
David Parkinson
Rick Rappaport
Emily Sorensen
Brian Taylor
J. Bion Wimmer

American Indian Legal Clinic
Joe Bushyhead
Elliot Scruggs
Jason Steiert
Jonathan Thorne

Bankruptcy Case
Timothy Larsen
Will Morrison
Ellen Ostrow
Jory Trease

Community Legal Clinic: Ogden
Jonny Benson
Joshua Irvine
Chad McKay
Mike Studebaker

Community Legal Clinic: Salt Lake
Joel Ban
Jonny Benson
Marlene Gonzalez
Todd Jenson
Jason Nichols
Margaret Pascal
Bryan Pitt
Brian Rothschild
Paul Simmons
Ian Wang
Russell Yauney

Debt Collection Calendar
David P. Billings
Grant Gilmore
Amanda Montague
Kasey Rasmussen
Brian Rothschild
Charles A. Stormont
Reed Stringham
Adam Weinacker

Debtor's Legal Clinic
Tami Gadd-Willardson
Todd Jenson
Brian Rothschild
Paul Simmons
Brent Wamsley
Ian Wang

Expungement Law Clinic
Kate Conyers
Deborah Kreeck Mendez
Stephanie Miya
Amy Powers
Bill Scarber

Family Law Case
Ken McCabe
Carolyn Morrow
Paul Waldron

Family Law Clinic
Emily Cordano
Zal Dez
Carolyn Morrow
Rachel Peirce
Stewart Ralphs
Jeff Richards
Aunica Smith
Linda F. Smith
Sheri Throop
Morgan Vedejs

Guardianship Signature Project
Kent Alderman
Kathie Brown-Roberts
Leslie Francis
Michael Garrett
Laura Gray
Michael Jensen
Matthew Wiese
Troy Wilson

Medical-Legal Clinic
Stephanie Miya
Micah Vorwaller

Military Service Order Case
Kenyon Dove
Leah Farrell
Christian Kesselring
Jason Richards

PGAL Case
Meghann Mills

Post-Conviction Case
Cory Talbot

Probate Case
Jeremy Shimada

Rainbow Law Clinic
Jessica Couser
Russell Evans
Stewart Ralphs

Senior Center Legal Clinics
Kyle Barrick
Sharon Bertelsen
Kent Collins
Phillip S. Ferguson
Richard Fox
Michael A. Jensen
Jay Kessler
Terrell R. Lee
Joyce Maughan
Stanley D. Neeleman
Kristie Parker
Jane Semmel
Jeannine Timothy

Street Law Clinic
Jennifer Bogart
Dara Cohen
Kate Conyers
Matt Harrison
Brett Hastings
Steve Henriod
Adam Long
John Macfarlane
Tyler Needham
Craig Smith
Kathryn Steffey
Aaron Worthen

Tuesday Night Bar
Steve Alder
Jared Allebest
Michael Anderson
Dean Andreasen
Courtland Astill
Alain Balmanno
Dan Barnett
Mike Black
Lyndon Bradshaw
Matt Brahana
Allison Brown
Mona Burton
Doug Cannon
Josh Chandler
Rita Cornish
Tanner Frei
Mike Green
Morris Haggerty
Will Harnish
Carlyle Harris
Melinda Hill
John Hurst
Annette Jan
Craig Jenson
Patrick Johnson
Jared Jones
Beth Kennedy
J. Mason Kjar
Jonathan Kotter
Jordan Lee
Mike McDonald
Susan B. Motschieder
Ben Onofrio
John Pennington
Grace Pusavat
Lauren Reber
Brian Rothschld
Zacchary Sayer
LaShel Shaw
Clark Snelson
Reed Stringham
Kathryn Tipple
Jeff Tuttle
Chris Wade
Adam Weinaker
Ben Welch
Bruce Wycoff

The Utah State Bar and Utah Legal Services wish to thank these volunteers for accepting a pro bono case or helping at a clinic in the months of April and May 2016. To volunteer call Tyler Needham at (801) 297-7027 or go to https://www.surveymonkey.com/s/UtahBarProBonoVolunteer to fill out a volunteer survey.

Attorney Discipline

UTAH STATE BAR ETHICS HOTLINE

Call the Bar's Ethics Hotline at 801-531-9110 Monday through Friday from 8:00 a.m. to 5:00 p.m. for fast, informal ethics advice. Leave a detailed message describing the problem and within a twenty-four-hour workday period, a lawyer from the Office of Professional Conduct will give you ethical help about small everyday matters and larger complex issues.

More information about the Bar's Ethics Hotline may be found at:
www.utahbar.org/opc/office-of-professional-conduct-ethics-hotline/

Information about the formal Ethics Advisory Opinion process can be found at:
www.utahbar.org/opc/bar-committee-ethics-advisory-opinions/eaoc-rules-of-governance/.

SUSPENSION

On March 29, 2016, the Honorable Paul D. Lyman, Fifth Judicial District Court, entered an Order of Discipline: Suspension against Bryan T. Adamson, suspending his license to practice law for one year, for his violation of Rules 1.1 (Competence), 1.2(a) (Scope of Representation and Allocation of Authority Between Client and Lawyer), 1.4(b) (Communication), 1.5(a) (Fees), 1.15(d) (Safekeeping Property), 1.15(e) (Safekeeping Property), 1.16(d) (Declining or Terminating Representation), and 7.1 (Communication Concerning a Lawyer's Services) of the Rules of Professional Conduct.

In summary, there are four matters:

In the first matter, Mr. Adamson was retained to represent a client in several criminal matters and was paid a flat fee for the representation. Mr. Adamson only entered an appearance in one of the client's criminal cases and performed very limited work on the client's behalf before his representation was terminated less than two weeks after he was hired. The client requested an itemization of Mr. Adamson's bill, along with the return of any unearned fees. Mr. Adamson did not refund any of the unearned fees he received; Mr. Adamson did not deliver any file materials to his client because there was nothing in the client's file to deliver.

In the second matter, Mr. Adamson entered into a contingency agreement to represent a client in an attempt to collect fees owed to the client pursuant to a Decree of Divorce. After the client signed the fee agreement, Mr. Adamson had no further communication with the client. Without informing the client, Mr. Adamson filed a motion for supplemental proceedings in the client's divorce case to collect the debt. Mr. Adamson agreed to dismiss the supplemental proceeding filed in the divorce case after being informed by opposing counsel that the debt had been discharged by the bankruptcy court. Mr. Adamson did not inform his client of his actions. The court subsequently held a hearing on a motion for attorney's fees and entered an award of attorney's fees against Mr. Adamson's client. Mr. Adamson did not inform his client of the motions or court proceedings. Without informing the client, Mr. Adamson filed a motion to reconsider and the court denied the motion, entering an Amended Final Order extending the Rule 11 sanctions to include proceedings regarding the motion to reconsider. The court also granted a protective order to deter further attempts by Mr. Adamson and his client to re-litigate issues that have already been decided. Mr. Adamson's client was sanctioned. Mr. Adamson's client first became aware of Mr. Adamson's actions and the sanctions award entered when a process server served the client with the Order in Supplemental Proceedings.

In the third matter, Mr. Adamson made statements in his advertising that the bankruptcy section of his law firm was "non-profit" when that was not the case.

In the fourth matter, Mr. Adamson was retained to represent a client in a divorce matter. Mr. Adamson's client filed joint taxes with the client's estranged spouse and a tax refund check was issued payable to both spouses. The spouses agreed to divide a portion of their joint tax return. Only Mr. Adamson's client endorsed the tax refund check and the check was deposited into Mr. Adamson's trust account. Mr. Adamson deducted legal fees incurred by his client from the funds and disbursed the remaining funds to his client. Mr. Adamson failed to hold the funds belonging to his client's estranged spouse in trust.

Aggravating circumstances:

Prior record of discipline and multiple offenses.

DISBARMENT

On March 15, 2016, the Honorable James Gardner, Third Judicial District Court, entered Findings of Fact, Conclusions of Law and Order of Disbarment, against James H. Alcala for violating Rules 8.4(b) (Misconduct) and 8.4(c) (Misconduct) of the Rules of Professional Conduct.

In summary:
Beginning in or about July, 2005, Mr. Alcala agreed with at least one other person to encourage and induce foreign nationals to come to, enter, and to reside in the United States, knowing and in reckless disregard that such coming to, entry and residence was or would be in violation of law. Mr. Alcala knowingly caused others to make under oath and under penalty of perjury, subscribe as true, and present an application containing a fraudulent statement with respect to a material fact on Form I-129s for the purpose of permitting foreign nationals to reside in the United States through the use of the H-2B visa process. The H-2B visas sought were for new workers who resided outside of the United States when in truth, the foreign nationals were, at the time of the filing of the Form I-129, illegally present in the United States and working for the employer petitioning for the H-2B visas. Mr. Alcala was convicted of Conspiracy to Commit Visa Fraud and Alien Smuggling, 18 U.S.C. § 371; and Fraud and Misuse of Visas/Permits/Visa Fraud, 18 U.S.C. § 1546(a), and sentenced to fifty-six months in prison.

Aggravating circumstances:
Prior record of discipline; dishonest or selfish motive; substantial experience in the practice of law; and illegal conduct.

PUBLIC REPRIMAND
On May 16, 2016, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Paul Lydolph for violating Rules 1.1(Competence) and 1.4(a) (Communication) of the Rules of Professional Conduct.

In summary:
Mr. Lydolph failed to timely file an answer or procedurally appropriate motion on behalf of his clients under the Utah Rules of Civil Procedure. As a result, a default judgment was entered against his clients. Mr. Lydolph told his client in an email that his failure to respond to the Motion to Strike was a deliberate strategy to show a pattern of conduct in which the court clearly favored the Petitioners. Mr. Lydolph had not consulted with his client about that strategy prior to his failure to respond.

DISBARMENT
On March 23, 2016, the Honorable Andrew H. Stone, Third Judicial District Court, entered an Order of Disbarment against Ryan R. West for violating Rules 1.1 (Competence), 1.2(a) (Scope of Representation and Allocation of Authority Between Client and Lawyer), 1.3 (Diligence), 1.4(a) (Communication), 1.5(a) (Fees), 1.15(a) (Safekeeping Property), 1.15(d) (Safekeeping Property), 1.16(d) (Declining or Terminating Representation), 8.1(b) (Bar Admission and Disciplinary Matters), and 8.4(c) (Misconduct) of the Rules of Professional Conduct.

In summary, there are five matters:
In the first, Mr. West repeatedly obtained several loans and mortgages on a piece of real property that he did not have interest in. Mr. West admitted to obtaining the loans and mortgages on the property without the knowledge or consent of the actual owner.

In the second matter, Mr. West was the attorney for and provided limited business consulting services to an individual and the individual's LLC. Mr. West obtained a secured loan from the individual and the LLC; this loan was secured by a first lien deed

of trust on property of which Mr. West represented to his client he was the sole owner. Mr. West did not own the property and the property was already encumbered by at least four other security instruments. Mr. West defaulted on the loan.

Additionally, Mr. West created a fictitious LLC under the same name as his client's LLC, without the knowledge or consent of his client. Acting on behalf of his LLC, Mr. West executed documents using property owned by his client's LLC as collateral for loans. Mr. West obtained the loans without permission or authorization from his client and retained the proceeds of the loans.

In the third matter, Mr. West received client funds to be held in trust. The client requested disbursements of the funds from Mr. West and Mr. West did not respond. Mr. West eventually provided a check for an amount less than the full amount owed to the client. Mr. West never remitted the remaining funds owed to the client and never provided an accounting of the manner in which the funds were managed by Mr. West as requested by the client.

In the fourth matter, Mr. West filed a complaint in the District Court on behalf of his clients against their mortgage lender. Mr. West received notice that his clients' property would be sold at auction and failed to inform the clients of the sale. The lender moved to have the clients' case dismissed; Mr. West failed to inform his clients. In the meantime, a realtor informed Mr. West of a cash offer to purchase the property. Mr. West did nothing to move the matter forward and the cash offer was cancelled.

Mr. West advised his clients to pursue settlement with the lender instead of a short sale. Mr. West advised his clients of settlement provisions which were inconsistent with the actual settlement with the lender. In reliance upon Mr. West's advice and representations, the clients signed a settlement agreement which required the clients to voluntarily dismiss their case against the lender, but did not release the lender's claims against the clients.

The clients' HOA filed a notice of lien against the property. Mr. West sent a letter to the HOA incorrectly indicating the lender owned the property and was responsible for the lien. The clients continued to receive notices from the HOA as a result of their failure to pay. The clients forwarded the notices to Mr. West requesting that he put a stop to the notices since they believed they no longer owned the property. An attorney at Mr. West's office had the clients sign a quit claim deed transferring the clients' interest in the property to the lender to be sent to the lender and the HOA. The lender filed a repudiation and rejection of the quit claim deed. Mr. West did not inform the clients of the repudiation; another attorney at Mr. West's office informed the clients but stated that it was not of concern.

Mr. West led the clients to believe that he was making efforts to enforce the settlement with the lender and resolve the claims of the HOA. The clients were subsequently sued by the HOA but were not informed of the suit by Mr. West. The HOA filed a motion for summary judgment and Mr. West failed to timely file an opposition to the HOA's motion. Mr. West filed a third party complaint against the lender on behalf of the clients. The lender moved to have the third party complaint dismissed and Mr. West opposed the motion. The Court held a hearing on the motion to dismiss; Mr. West failed to inform his clients of the hearing and failed to appear at the hearing on his clients' behalf.

The lender commenced foreclosure proceedings against the clients and an attorney from Mr. West's office agreed to settle with the lender on behalf of the clients without informing the clients or obtaining their authorization. Mr. West's office settled with the HOA on behalf of the clients without informing the clients or obtaining their authorization. Settlement with the lender was not finalized due to a lack of waiver of the clients' deficiency but Mr. West never notified the clients and ignored the clients' attempts to contact him. As a result of the stalled settlement, the lender continued its foreclosure proceedings and the property was sold at auction.

The clients retained a new attorney to represent them. The attorney contacted Mr. West to request the clients file. Mr. West failed to timely release the clients file to their new attorney. Mr. West failed to provide a full accounting of the payments he received from the clients.

In the fifth matter, a direct withdrawal was presented for payment from Mr. West's IOLTA trust account at a time when the balance in his trust account was insufficient to cover the transaction. The OPC sent a letter requesting that Mr. West provide an explanation and documentation regarding the transaction. Mr. West did not

Notice of Petition for Reinstatement to the Utah State Bar by David B. Oliver

Pursuant to Rule 14-525(d), Rules of Lawyer Discipline and Disability, the Utah State Bar's Office of Professional Conduct hereby publishes notice of the Verified Petition for Reinstatement ("Petition") filed by David B. Oliver, in *In the Matter of the Discipline of David B. Oliver* Third Judicial District Court, Civil No. 070909858. Any individuals wishing to oppose or concur with the Petition are requested to do so within thirty days of the date of this publication by filing notice with the District Court.

respond. The OPC sent a second letter to Mr. West requesting an explanation; Mr. West did not respond.

In each matter, the OPC served Mr. West with a Notice of Informal Complaint (NOIC) requiring his written response within twenty days pursuant to the Rules of Lawyer Discipline and Disability. Mr. West did not timely respond in writing to the NOICs.

Aggravating factors:
Dishonest or selfish motive; multiple offenses; obstruction of the disciplinary proceeding by failing to respond.

ADMONITION
On May 19, 2016, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rule 3.3(a)(1) (Candor Toward the Tribunal) of the Rules of Professional Conduct.

In summary:
At a criminal sentencing hearing, the attorney made inaccurate statements to the court regarding a witness who spoke at the sentencing on behalf of the criminal defendant. The inaccurate statements were made as a result of the attorney confusing the witness with a different individual who had the same first name. Afterward, the attorney informed the court and defense counsel of the error but did not file a pleading to correct the record until after the OPC contacted the attorney regarding the matter.

PUBLIC REPRIMAND
On May 19, 2016, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand, against Scott T. Poston, for violating Rule 8.4(b) (Misconduct) of the Rules of Professional Conduct.

In summary:
Mr. Poston purchased a home. Through a survey of Mr. Poston's property, Mr. Poston discovered that a home on an adjacent property had been built over his property line. Mr. Poston and the neighbor attempted to negotiate a selling price for the property but were unable to come to an agreement.

Mr. Poston's neighbor had a personal relationship with a plans examiner in the county where Mr. Poston's home was located. When Mr. Poston was denied a building permit to rebuild part of his home by the county, he contacted his neighbor and the plans examiner and suggested that if the plans examiner could assist him in resolving his difficulties for the building permit, Mr. Poston would reduce the price for sale of the land to his neighbor. Mr. Poston's statements to the county plans examiner were recorded.

Mr. Poston was interviewed by a detective in connection with the statements he made to his neighbor and the plans examiner. Mr. Poston made statements to the detective that were inconsistent with the recording. Mr. Poston entered into a plea in abeyance agreement for attempted bribery to influence official or political actions, a Class A misdemeanor.

PUBLIC REPRIMAND
On May 19, 2016, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand, against Martin V. Gravis, for violating Rules 1.3 (Diligence), 1.4(a) (Communication), 1.5(a) (Fees), and 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

In summary:
Mr. Gravis was hired to represent a client in a civil stalking matter. Mr. Gravis took a flat fee for the completion of this work. Mr. Gravis did not timely request a hearing in the proceeding and an injunction was entered against his client. Mr. Gravis took no action to attempt to set aside the injunction, but assured his client that he was working on the situation. The client contacted Mr. Gravis every month regarding the matter but, other than the initial consultation and the drafting of a document to be filed with the court (that was not filed), no work was performed on his case. After a period of time, Mr. Gravis returned the client's fee. Mr. Gravis did not timely respond in writing to the OPC's requests for information or the Notice of Informal Complaint.

Discipline Process Information Office Update

From January 2016 through May, Jeannine P. Timothy assisted thirty-three attorneys with their questions about the discipline process. Jeannine is able to provide information to all who find themselves involved with the Office of Professional Conduct (OPC). Feel free to contact Jeannine with all your questions about the discipline process.

DISCIPLINE PROCESS INFORMATION OFFICE

Jeannine P. Timothy
(801) 257-5515
DisciplineInfo@UtahBar.org

Fit2PracticeUtah: A Health and Wellness Initiative

by Jaelynn R. Jenkins

If you haven't already heard, members of the legal profession rank as some of the most depressed professionals in the nation – a sort of "lawyers' epidemic," if you will.[1] Common symptoms of this epidemic include fatigue, interpersonal sensitivity, hostility, excessive drinking and or drug use, suicidal ideation, appetite loss, racing hearts, increase in miscarriages, ulcers, coronary heart artery disease, hypertension, and a cacophony of additional and equally undesirable manifestations.[2] With such a lengthy list of these professional "opportunities," it is no wonder that the ranks of lawyers are filled with the unhappy, and where empirical and experimental evidence shows that "being unhappy or unsatisfied with one's professional life is correlated with risky or unethical and unprofessional behavior,"[3] this is an epidemic that cannot be ignored.

In an attempt to address these issues head on, the Young Lawyers Division (YLD) of Utah is pleased to announce its yearlong initiative – Fit2PracticeUtah. This program, modeled after the ABA YLD's Fit2Practice, is a health and wellness initiative that seeks to educate and inform young lawyers and the legal community about the professional benefits of maintaining a healthy lifestyle and encourage lawyers to make one small change. The initiative highlights four areas: sleep, nutrition, fitness, and mental health for the following reasons:

1. Sleep improves memory, the quality of work product, sharpens attention, increases productivity, spurs creativity, boosts moods, and builds a stronger immunity. All desirable benefits for a fatigued lawyer.

2. Proper nutrition contributes to heart health and brain health, reinforces the immune system, and provides fuel to perform daily tasks. What you eat will also influence your mood, improve concentration, alertness, productivity, and problem-solving skills. Noticing a pattern?

3. Improved physical fitness means better concentration, sharper memory, faster learning, prolonged mental stamina, enhanced creativity, and lower stress levels. Yet another list of traits every lawyer craves.

4. Finally, the benefits of improved mental health or "mindfulness" results in an increased ability to regulate focus and emotions. Increased mindfulness "increases rational decision-making, and reduces the impact bias in affective forecasting, implicit age bias and implicit race bias and the sunk-cost bias."[4] In other words, lawyers who practice mindfulness are "more effective at conflict resolution and negotiation by decreasing the strength of negative emotions; developing awareness of and freedom from emotions, thoughts, habitual perceptions, and behaviors; enhancing social skills, fostering sensitivity towards other people's emotions; increasing concentration; and reducing attention to self-centered concerns."[5]

Each area (sleep, nutrition, fitness, and mental health) will be explored through bar journal articles and "Lunch and Learns" designed to inform and educate the Utah State Bar and encourage a movement towards a happier profession. As the YLD President, I invite your input and encourage you to join our Fit2PracticeUtah activities in person or online through the hashtag #Fit2PracticeUtah.

1. *See* Peter H. Huang and Corie Rosen Felder, *The Zombie Lawyer Apocolypse*, 42 Pepp. L. Rev. 727, 735 (2015).
2. Patrick J. Schiltz, *Attorney Well-Being in Large Firms: Choices Facing Young Lawyer: On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 Vand. L. Rev. 871, 874-82 (1999).
3. *Supra* note i, at 746-47.
4. *Id*. at 752.
5. *Id*.

JAELYNN R. JENKINS is an associate attorney at Fetzer Simonsen Booth Jenkins where she focuses her practice on estate planning and business law. Ms. Jenkins has been elected 2016–2017 President of the Young Lawyers Division of Utah.

2016 Distinguished Paralegal of the Year Award

On May 19, 2016, the Paralegal Division of the Utah State Bar and the Utah Paralegal Association held the Annual Paralegal Day Luncheon at the Joseph Smith Memorial Building in Salt Lake City. Appellate Court Administrator Timothy Shea spoke on Paralegal Practitioners: Improving Access to Civil Justice and Improving Consumer Protection.

One of the highlights of this event is the opportunity to recognize the individuals who have achieved their national certification through the National Association of Legal Assistants. This year there were five individuals recognized for passing the Certified Paralegal Exam: Lexi Balling, Nicole McCullough, Kathryn Peterson, Kelsi Wall, and David Yeager. Also, there were three individuals recognized for passing the Advanced Certified Paralegal Exam: Lexi Balling, Erin Stauffer, and Suzanne Williams.

Paralegal Day is also the day to recognize the Distinguished Paralegal of the Year award. The purpose of this award is to honor a Utah paralegal who, over a long and distinguished career has contributed to the profession with his or her service.

This year we received many great nominations and are pleased to announce that the winner of the 2016 Distinguished Paralegal of the Year award is Shari Faulkner. Shari was nominated by her attorney Margaret Plane. Shari is retiring in June after nearly thirty years as a paralegal. She has worked for VanCott Bagley Cornwell & McCarthy, Durham Jones & Pinegar, and for a short time, the Utah Attorney General's Office. The last six years, Shari has worked for the Salt Lake City Attorney's Office.

Shortly after becoming a paralegal, Shari joined what was then known as the Legal Assistants Association of Utah (LAAU). She served as chair of the CLE committee and on the board of LAAU for several years. She is a founding member of the Paralegal Division of the Bar and is committed to enhancing and serving the legal profession. For example, for five years, Shari was a member of a screening panel for the Utah Supreme Court's Ethics and Discipline Committee. As a member of the panel, she volunteered her time to hear and consider lawyer discipline matters, a difficult but important aspect of the legal profession.

Shari is also a master mediator and enjoyed mediating family law matters before joining the City Attorney's Office. In order to foster and support the professional competence of new paralegals, Shari served as an adjunct professor in the Westminster College Paralegal Program.

During her legal career, she has been a Court-Appointed Special Advocate (CASA) for the Utah Guardian Ad Litem's Office, served on a Foster Care Review Board for children in foster care, and has presented to the Utah State Court's Divorce Education for Parents Program. In 2004, Shari authored an article for the *Utah Bar Journal* advising attorneys on how to effectively use a probate paralegal. We are pleased to recognize Shari's accomplishments and are proud to present her with this award. Congratulations, Shari Faulkner!

The Paralegal Division would also like to thank Judge Shaughnessey, Angelina Tsu, Kamie Brown, Jodie Scartizina, and Heather Allen for their work as a committee evaluating and choosing the Paralegal of the Year.

The Heather Johnson Finch Memorial Endowed Scholarship

Paralegal Day is also a time when we reflect on Heather Finch who was serving as the Chair of the Paralegal Division at the time of her tragic passing. Her husband Doug graciously attended the Twenty Year Celebration in April. Heather was the consummate professional and model for what every paralegal should be. She devoted over twenty years to the profession.

To honor the life and accomplishments of Heather Finch, the Paralegal Division of the Utah State Bar created the first-ever endowed scholarship for students pursing undergraduate degrees in Paralegal Studies at Utah Valley University. Heather's life was given to hard work and service to the legal community through countless hours of volunteering.

In 2009, Heather was given Utah's highest award available to paralegals: the Distinguished Paralegal of the Year Award. In Heather's honor, this scholarship was created on September 15, 2010. Heather's legacy and dedication to the paralegal profession will live on through this newly endowed scholarship. Dedicated, aspiring, service-oriented students majoring in Paralegal Studies at UVU will be able to benefit from pursing the best paralegal education available. In order to receive this scholarship, UVU has outlined the following criteria:

1. Students who are in good academic standing, as determined by UVU

2. Student completed the first year requirements of Paralegal Studies Program, on track toward completion of Program's requirements

3. 3.0 GPA or higher

4. Student is considered to be one of the top students in the Paralegal Studies Program, and is someone who has tremendous promise as a professional

5. Must show recent and ongoing community service

6. Character assessment, having high moral values

7. Student interested in involvement with the Paralegal Division of the Utah State Bar

This is the third year the scholarship has been awarded. This year's winner is Janée Krekelberg. Janée is a student at Utah Valley University who already holds an Associate's Degree and is furthering her education by working toward her Bachelor's Degree in Legal Studies with a minor in Economics. Education has always played an integral role in Janée's life.

When she is not studying or working Janée loves to travel. She recently traveled to Australia and New Zealand, broadening her horizons and encountering new perspectives of life and culture. She hopes to bring this new found knowledge into the legal profession.

Janée would like to express her gratitude as a recipient of the Heather Johnson Finch Memorial Endowed Scholarship. She feels that this scholarship can, and will, push her with a new vigor to finish her degree and make an impact in the paralegal field just as Heather Finch had.

20th Anniversary Celebration of the Utah State Bar

On April 22, 2016, the Paralegal Division of the Utah State Bar held a 20th anniversary celebration at the Grand Hall at the Gateway. There was entertainment, dinner, and remarks from the first chair of the Paralegal Division, Peggi Lowden, past Bar President Steve Kaufman (president during the founding of the Division), Bar President Elect Rob Rice, and Jacey Skinner, General Counsel to Governor Herbert. It was a memorable evening!

CLE Calendar

NEW BAR POLICY: BEFORE ATTENDING A SEMINAR/LUNCH YOUR REGISTRATION MUST BE PAID.

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

July 6–9, 2016 — **TBA**

Utah State Bar Summer Convention in San Diego: Reserve your accommodations at the Loews Coronado Bay Resort today at: https://resweb.passkey.com/go/USBA2016, or by calling 800-235-6397. Use Group Code ANN727 to receive a discounted rate.

August 12, 2016 | 9:00am–12:00pm

Salt Lake County Golf & CLE: River Oaks Golf Course, 9300 Riverside Dr.

August 18, 2016 | 8:00am–4:00 pm

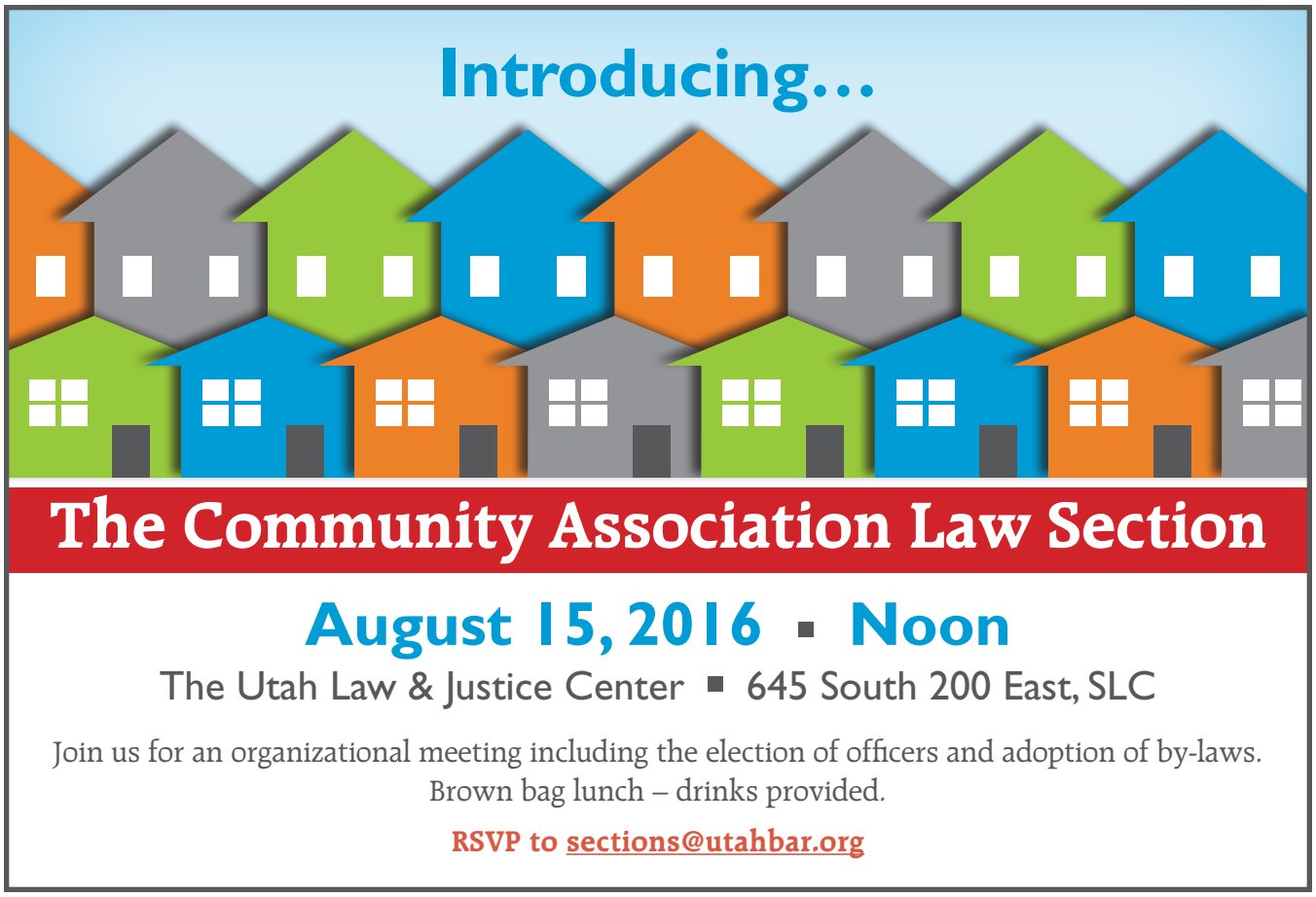
Mangrum & Benson on Expert Testimony in Utah.

August 19–20, 2016

Annual Securities Law Workshop: Snow King Hotel, 400 East Snow King Avenue, Jackson Hole, WY. For more information and to register, go to: https://services.utahbar.org/Events/Event-Info?sessionaltcd=17_9006.

November 17 & 18, 2016 | All Day Event — **TBA**

Fall Forum: Save the dates. Details to be announced.



Classified Ads

RATES & DEADLINES

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

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

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

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

OFFICE SPACE

Office Sharing Orem, Utah. Offices available in Orem for one to two attorney to office share with nine other attorneys. Great location, receptionists, two conference rooms, fax/copier/scanner/full wireless internet etc. Great opportunity for referrals and reasonable rental rates. Contact Steve or Jeff @ 801-222-9700 or srs@skabelundlaw.com.

Office space for lease. Total building space 5260 sf. Main floor 1829 sf, $16/sf. Upper floor 3230 sf (may be divided), $10/sf. Owner would consider offer to purchase. Walking distance to city and courts. Easy access to TRAX. Lots of parking. 345 South 400 East. Lynn Rasmussen, Coldwell Banker, 801-231-9984.

VIRTUAL OFFICE SPACE AVAILABLE: If you want to have a face-to-face with your client or want to do some office sharing or desk sharing. Creekside Office Plaza has a Virtual Office available, located at 4764 South 900 East. The Creekside Office Plaza is centrally located and easy to access. Common conference room, break room, fax/copier/scanner, wireless internet, and mail service all included. Please contact Michelle Turpin at 801-685-0552 for more information.

PRACTICE DOWNTOWN ON MAIN STREET: Nice fifth floor Executive office in a well-established firm, now available for as low as $599 per month. Enjoy great associations with experienced lawyers. Contact Richard at 801-534-0909 or richard@tjblawyers.com.

Executive Office space available in professional building. We have a couple of offices available at Creekside Office Plaza, located at 4764 South 900 East, Salt Lake City. Our offices are centrally located and easy to access. Parking available. *First Month Free with 12 month lease* Full service lease options includes gas, electric, break room and mail service. If you are interested please contact Michelle at 801-685-0552.

DOWNTOWN OFFICE LOCATION: Opportunity for office sharing or participation in small law firm. Full service downtown office on State Street, close to courts and State and City offices: Receptionist/Secretary, Internet, new telephone system, digital copier/fax/scanner, conference room, covered parking. Call Steve Stoker at 801-359-4000 or email sgstoker@stokerswinton.com.

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

Consultant and Expert Witness: Fiduciary Litigation; Will and Trust Contests; Estate Planning Malpractice and Ethics. Charles M. Bennett, PLLC, 370 East South Temple, Suite 400, Salt Lake City, UT 84111; 801 883-8870. Fellow, the American College of Trust & Estate Counsel; Adjunct Professor of Law, University of Utah; former Chair, Estate Planning Section, Utah State Bar.

CALIFORNIA PROBATE? Has someone asked you to do a probate in California? Keep your case and let me help you. Walter C. Bornemeier, North Salt Lake, 801-721-8384. Licensed in Utah and California – over thirty-five years experience.

Certificate of Compliance

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Utah State Bar | 645 South 200 East | Salt Lake City, Utah 84111
Phone: 801-531-9077 | Fax: 801-531-0660 | Email: mcle@utahbar.org

For July 1 _____ through June 30_____

Name: _____ Utah State Bar Number: _____

Address: _____ Telephone Number: _____

_____ Email: _____

_____

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

1. **Active Status Lawyer –** Lawyers on active status are required to complete, during each two year fiscal period (July 1–June 30), a minimum of 24 hours of Utah accredited CLE, which shall include a minimum of three hours of accredited ethics or professional responsibility. One of the three hours of the ethics or professional responsibility shall be in the area of professionalism and civility. Please visit www.utahmcle.org for a complete explanation of Rule 14-404.

2. **New Lawyer CLE requirement –** Lawyers newly admitted under the Bar's full exam need to complete the following requirements during their first reporting period:
   - Complete the NLTP Program during their first year of admission to the Bar, unless NLTP exemption applies.
   - Attend one New Lawyer Ethics program during their first year of admission to the Bar. This requirement can be waived if the lawyer resides out-of-state.
   - Complete 12 hours of Utah accredited CLE.

3. **House Counsel –** House Counsel Lawyers must file with the MCLE Board by July 31 of each year a Certificate of Compliance from the jurisdiction where House Counsel maintains an active license establishing that he or she has completed the hours of continuing legal education required of active attorneys in the jurisdiction where House Counsel is licensed.

EXPLANATION OF TYPE OF ACTIVITY

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

1. **Self-Study CLE:** No more than 12 hours of credit may be obtained through qualified audio/video presentations, computer interactive telephonic programs; writing; lecturing and teaching credit. Please visit www.utahmcle.org for a complete explanation of Rule 14-413 (a), (b), (c) and (d).

2. **Live CLE Program:** There is no restriction on the percentage of the credit hour requirement which may be obtained through attendance at a Utah accredited CLE program. **A minimum of 12 hours must be obtained through attendance at live CLE programs during a reporting period.**

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

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

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

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

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

A copy of the Supreme Court Board of Continuing Education Rules and Regulation may be viewed at www.utahmcle.org.

Date: _____ Signature: _____

Make checks payable to: **Utah State Board of CLE** in the amount of ***$15*** or complete credit card information below.

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