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*The lawyers of the Utah State Bar serve the public and legal profession with excellence, civility, and integrity.
We envision a just legal system that is understood, valued, and accessible to all.*

Cover Photo

Sunflower, by Utah State Bar member Paul G. Amann.

PAUL G. AMANN has been a member in good standing with the Utah State Bar since 1993. He is a longtime volunteer with the Tuesday Night Bar, the Debt Collection Calendar, and also volunteers on Expungement Days. He encourages fellow bar members to join him serving the public through these great programs. He is also a Bar Examiner. Paul grew this sunflower in his backyard. "Nature is the most amazing artist. We can never equal God's creations, but sometimes we are lucky enough to capture their essence in an image. I hope everyone enjoys this one."



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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Interested in writing an article or book review for the Utah Bar Journal?

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

GUIDELINES FOR SUBMISSION OF ARTICLES TO THE UTAH BAR JOURNAL

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

ARTICLE LENGTH

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

SUBMISSION FORMAT

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

CITATION FORMAT

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

NO FOOTNOTES

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

ARTICLE CONTENT

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

EDITING

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

AUTHORS

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

PUBLICATION

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

LETTER SUBMISSION GUIDELINES

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

A photograph of three professionals in a meeting. A man in a light-colored shirt is seated in the foreground, looking down. A woman in a dark blazer is seated behind him, also looking down. A man in a dark suit is standing behind them, leaning over and looking at the same point. The background is a blurred office setting.

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Letter to the Editor

Dear Editor:

75 Years of Howey in your March/April journal did an excellent job of discussing SEC jurisdiction over cryptocurrencies. I would like to caution practitioners that that is not where the analysis stops. Once a practitioner has determined that the instrument or transaction being analyzed is not an ICO subject to SEC jurisdiction, a second statutory scheme must be examined – the Commodity Exchange Act (CEA).

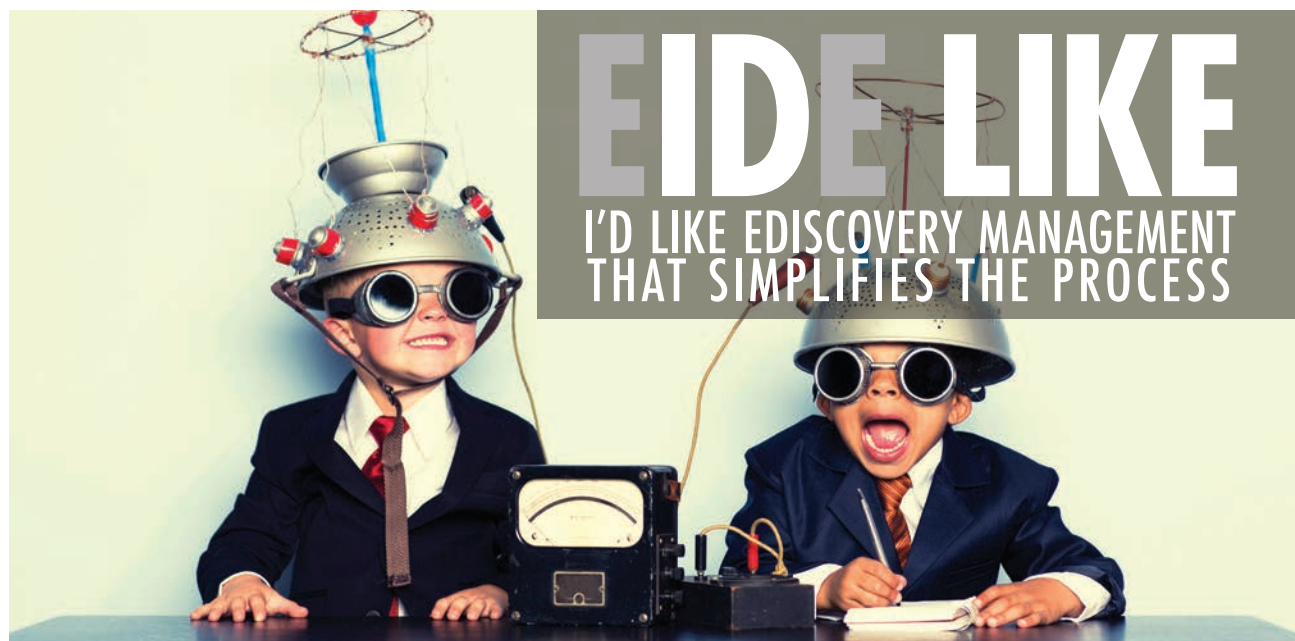
In 2015, the U.S. Commodity Futures Trading Commission (CFTC) determined that virtual currencies are commodities subject to Commission jurisdiction. *In re Coinflip Inc.*, CFTC Docket No. 15-29. The CFTC has jurisdiction when a virtual currency is used as the underlying commodity in a futures or derivatives contract, if there is fraud or manipulation involving a virtual currency traded in interstate commerce or if virtual currencies are marketed to retail investors on a margined, financed or leveraged basis.

In marketing financed transactions to retail customers, in addition to the anti-fraud and manipulation provisions of the CEA, two other provisions come into play. Under 7 U.S.C. § 2(c)(2)(D) if the virtual currency is not actually delivered to the customer within 28 days, the transaction must occur on and subject to the rules of a designated contract market and the offeror has to be registered as a futures commission merchant. 7 U.S.C. §§ 1a(28) and 6d(a). Finally, a business that solicits retail investors to pool their funds for the purpose of speculating in the value of virtual currencies may also have to register as a commodity pool operator under 7 U.S.C. § 6m.

Sincerely,

Rosemary Hollinger,

Retired Deputy Director in the US Commodity Futures Trading Commission's Division of Enforcement



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President's Message

Thank You

by H. Dickson Burton

How did it get so late so soon?

It's night before it's afternoon.

December is here before it's June.

My goodness how the time has flown.

How did it get so late so soon?

— Dr. Seuss

We all experience the sensation of time flying by, and such has been this full and eventful year as Bar President. We have had challenges both expected and unexpected, from exploring ways to address disruption and change in our profession, to addressing lawyer and judge well-being, to responding to a surprise effort to impose a sales tax on attorneys' fees — to name a few of the larger issues before us. And with the heartfelt effort of so many great members of our Bar, we continue to make progress on all fronts. Of course as always, much remains to be done. But progress will continue, better than ever, under the leadership of incoming Bar President Herm Olsen and President-elect Heather Farnsworth.

Disruption in the Legal Profession

As has been frequently discussed in recent years, the profession is changing rapidly and for various reasons, such as an evolving economy, shifting needs and social pressures, and rapidly advancing technology. We face unique and exciting challenges, but at times they seem daunting and intimidating. Even so, the change is real and not going away, and the best way to deal with it is meeting it head on and with a willingness to adapt. Indeed, disruption comes with great opportunity to those who make the effort to understand, adapt, and thrive.

One resource I suggest to you, for better understanding the changing legal landscape, is our Innovation in Law Practice Committee. Consider attending its upcoming day-long symposium on August 28, 2019, which will include, among other things, hands-on technology training and insightful speakers addressing new ways to manage and run a law practice.

I also urge you to follow the efforts of our Utah Supreme Court and a work group it established, at the request of the Utah State Bar, addressing regulatory reform. This work group has been chaired by Justice Deno Himonas of the Utah Supreme Court and our immediate Past-President, John Lund. It has been active since last fall, and its purpose is to study and make recommendations to the court for adapting Utah's regulatory structure for legal services in this "Age of Disruption." The goal is to better use market forces to foster innovation and increase access to legal services. An upcoming report from the work group will make some remarkable, ground-breaking proposals that present an opportunity to significantly advance access to legal services (and therefore access to justice) and to advance the legal profession itself. We are grateful to Justice Himonas for his foresight and leadership of this seminal work group.

Lawyer Well-Being

Disruption also presents new anxieties and stresses as we learn to cope with change. Of course well-being issues such as depression, anxiety, and substance abuse are not new and have, unfortunately, long been with us. Thankfully there has been a new willingness in recent years to recognize well-being as something important to address in our profession. We are particularly grateful for Chief Justice Matthew Durrant's leadership in having the Utah Supreme Court and the Utah State Bar jointly establish an Attorney and Judge Well-being Task Force, made up of attorneys from different types of practices, law school deans, judges, and counseling professionals. This task force just recently issued a report that includes recommendations for legal employers, judges, the law schools, and the Bar. Pursuant to those recommendations, the Bar and the courts are making new efforts to recognize, talk about, and directly address well-being issues that are around us every day in our profession. We want to provide additional resources for those who need help. Just as importantly, we want to break down the



false narrative of the invincible warrior-attorney who can never show weakness and eliminate the stigma that has too often prevented us from seeking help when we need it.

Sales Tax on Legal Services?

Disruption and change is also, apparently, impacting the state government's revenue collection. Our governor and legislature have been pushing to broaden the sales tax base to include most professional services, including attorney services, apparently because our increasingly service-based economy is threatening decreased sales tax revenues over time. While we believe it is a well-intentioned effort to address a perceived problem in our tax structure, we as a Bar did not agree with the particular proposal made near the end of the 2019 legislative session through House Bill 441. Indeed, the Bar took a strong stand against a sales tax on legal services because such a tax would add a new burden on people's access to lawyers – and therefore their access to justice.

As attorneys, we already spend a tremendous amount of effort, including by making significant donations of time and money to

pro bono programs and legal aid organizations, to try to close the huge access to justice gap in Utah. In spite of often heroic contributions from many members of the Bar, far too many Utahns still do not have access to legal help when they need it most. Indeed, when individuals and families need lawyers, it is almost always at a time of crisis in their lives when they may be faced with losing their jobs, their homes, their families – or even their freedom. At these difficult times, government should not make it even more difficult for Utahns to get an attorney by adding an additional tax burden. And when one considers the cost to society when someone is evicted or loses a job or goes to jail, sometimes only because they did not have timely or adequate legal assistance, it is clearly bad public policy to add to the difficulty of getting such assistance in the first place by imposing a sales tax.

As you know, HB 441 was pulled by legislative leaders at the last minute before the recent legislative session ended. I am proud to say that it was lawyers who led the way in opposing the new sales tax. We have heard from many legislators that they heard more from lawyers than from any other group. Thank you! I know

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many of you also encouraged your clients to become involved. And many law firm leaders were at the center of the discussions with the legislature. And we have had (and continue to have) tremendous guidance along the way from the Bar's lobbyists, Frank Pignanelli, Doug Foxley, and Stephen Foxley. Thank you to all.

We are grateful to the governor and legislature for ultimately deciding to take a step back, but we are apparently not done with this fight. When the tax bill was pulled, the legislature announced a task force to explore the perceived need for reform and to study options for best addressing any change in tax policy. So, though HB 441 itself is no longer on the table, the options being considered by the task force still include a sales tax on professionals. Accordingly, the Bar is continuing to be actively involved in monitoring and opposing a sales tax on legal services. And we ask that all of you stay involved and that you encourage your clients to do the same. The task force is holding town hall hearings around the state this summer. Please look at their schedule and attend one near you, and let it (and your legislators) know how you feel about an added tax on individuals and families accessing justice.

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Summer Convention in Park City!!

One last delightful challenge we have faced this Bar year is one we have been very excited about and planning for a long time: our first Summer Convention at a Utah venue in over thirty years! I wrote more in depth about the upcoming convention in Park City in the previous issue of the *Bar Journal*, but let me say again that this should be our best Summer Convention ever.

Under the leadership of convention chairs Judge Eve Furse and Jon Hafen, the committee has planned not only amazing speakers and breakout sessions but fabulous social and networking events for everyone. You will find our traditional opening reception (at a beautiful mountain location), law school gatherings, and a family picnic/carnival, but there will also be a new Park City foodies tour, a nighttime ghost tour, and a Young Lawyer event at Jupiter Bowl. And because of our great location in Park City, we are offering a larger variety of outdoor events, activities, and adventures than we could ever offer before.

Luxury accommodations are still available (for less than half the cost of the cheapest rooms in Sun Valley) and the cost of convention registration itself is less than we have been able to offer in many years. PLEASE make an effort to join us, and bring your families. You (and they) will be glad you did. Whether you have never been to a Summer Convention, or are a regular convention-goer, you should visit www.utahbar.org/cle/utah-bar-conventions/ to register now, book a room, and come!

Thank you

Finally, as I finish my year as President, I want to thank all of you, Bar members, for your support of the Bar, your hard work as attorneys, and the good you do for your clients and the profession every day. Thank you to the hundreds of attorneys who volunteer their time in many types of Bar service, including in the various sections and committees of the Bar. Thank you to the Bar Commissioners with whom I have had the privilege of serving. They are exceptional people and great friends. And a special thanks to those who regularly provide critically important community and pro bono service, usually very quietly and without recognition. You help make our profession truly noble and honorable.

And thank you to an exceptional, dedicated, and highly professional Bar staff, from our Executive Director John Baldwin and Assistant Executive Director Richard Dibblee, right down to the newest Bar employee. They make the job of Bar President go smoothly and (most of the time 😊) pleasantly.

See you in Park City!



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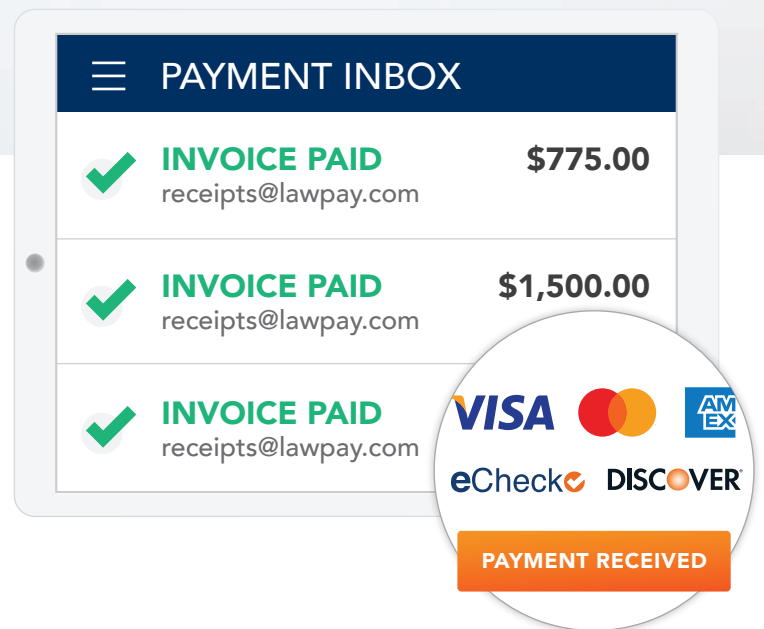
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Dealing with Self Represented Parties in Justice Court

by The Honorable Brook Sessions and The Honorable Carolyn E. Howard

Courts all across Utah and the country are dealing with more self-represented (pro se) parties. With the proliferation of the internet and financial constraints, many people decide to – or are forced to – come to court without an attorney. For judges, these cases are usually more difficult. Believe it or not, most judges prefer to have an attorney standing between the litigants and the court. Most self-represented parties are not constitutionalists who start out with, “I am John, of the household of Smith, of the Republic of Ohio.” That is for another article. This article is to suggest a few rules of thumb for courts to use and for those attorneys who find themselves in a case with a self-represented party.

Slow Down

Court is stressful. Slow down. Self-represented parties are often anxiously prepared to have their say at the hearing in which they have appeared but understand little of the procedure. It is often helpful for the court to acknowledge that court can be confusing. There are a lot of rules, and it doesn't hurt to explain to self-represented parties that lawyers know the rules. A lawyer can help the person navigate the court. It is helpful for the court to explain the purpose of the hearing and the procedure that will be followed. A self-represented litigant may be defensive because he or she is appearing without an attorney. It seems advisable, therefore, that the court communicate to the self-represented litigant up front that the court respects the litigant's legal right to be heard and the court has every intention of being attentive to the litigant's case and arguments. It is equally important,

however, that the court also include an admonishment to the self-represented party to keep his or her language civil and respectful to the opposing party and the court. For our system to be fair all parties, including those who are self-represented, everyone must be held to the rules and laws governing the courts. If several matters are scheduled on the same calendar, it can be helpful to call a case with attorneys on both sides first, suggesting that unrepresented parties whose matters are up next stay in the courtroom and take advantage of the learning opportunity.

Decorum

The realization that the court is dealing with a difficult self-represented party may cause the court to wince, or worse, become impatient. The self-represented party should be afforded all of the respect and patience that would be offered to a represented party. The court, its clerical staff, and opposing counsel are obligated to treat self-represented parties with respect and courtesy.

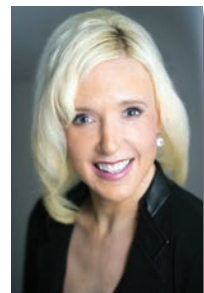
Hearsay

Self-represented parties often appear well prepared with documents in hand as supporting evidence but don't understand that rules against hearsay and other rules of evidence may make such documents inadmissible. This generally requires a simplified hearsay lesson from the court, in which the court explains that the documents will not be considered because the author of the writing(s) is not there to be questioned by the

THE HONORABLE BROOK SESSIONS is a justice court judge for Wasatch County, Utah. Judge Sessions is a committee member representing justice court judges on the Committee on Resources for Self-Represented Parties and is the Vice Chair of the Board of Justice Court Judges.



THE HONORABLE CAROLYN E. HOWARD is a justice court judge for Saratoga Springs, Utah. Judge Howard is a tenured Associate Professor of Business Law at Utah Valley University.



opposing party. In most cases, however, the court is still able to hear the self-represented party's position. In hearing the position of the self-represented party, the party will often get off track, requiring the court to intervene and remind the self-represented party about the issues that he or she is to speak to. Likewise, the self-represented party will often appear with family members and friends advising him or her of what to do. Except in cases involving a minor and/or small claims dispute, family friends and/or family members should not be advising them during the proceedings. This brings to light an additional but vital problem in dealing with self-represented parties. How much help should be rendered by the court to the self-represented party? Giving an explanation of procedure is generally not something the court does for other litigants and could be construed as giving an advantage to the self-represented party. Nonetheless, a minimal amount of explanation must be given to make sure the parties understand the court's procedures. Where the court draws the line will rest with the sound discretion of the court.

Limit Time

The self-represented party often comes to court expecting court services without limitation. Judges need to plan on explaining that the self-represented party will be given an opportunity to be heard, but give a time limit that will be allowed. When it comes to keeping time limits, self-represented parties are generally as bad as lawyers about knowing when to stop talking. Self-represented parties may require multiple admonishments from the court to bring their arguments to a conclusion.

Decision

A bench decision is preferred in most cases. Self-represented parties need a definitive resolution. Many self-represented parties are used to the internet age and expect an immediate decision. If necessary, take a brief recess to prepare a decision with a brief recital of facts and reasons of how you got there. Simplify the legal language, when possible, so that it is easily understood by the self-represented party. Procedural fairness studies repeatedly find that if the parties feel they were heard, they are more likely to be satisfied with the result whether they win or lose.

Appeal

In the event the court rules against the self-represented party, the self-represented party may feel better about the court experience when the court takes a few minutes to explain the availability of an appeal process after rendering its decision. Although the parties in justice court are offered a de novo review in district court, fewer than 1% of cases are appealed.

Justice courts were set up to be the courts where people go to resolve their disputes. The vast majority will accept the justice court's resolution of their dispute if they feel they have had their day in court, making it all the more important that the court ensures a fair process.

Legal Representation

Too often the self-represented party is without representation not because he or she is lacking in means but because he or she does not want to spend money on an attorney. Justice court judges hear many different types of cases. There are small claims, traffic, and criminal cases. For small claims cases the court cannot appoint an attorney. The court can take some time to explain the benefits of an attorney. The parties are in court and for the most part respect the court's advice. If the court suggests the party consults with an attorney, and the advice taken, a continuance might be in order. The court might also refer the self-represented party to the online Rules of Small Claims Procedure. These rules are specifically written with self-represented parties in mind.

The legislature has reclassified most traffic cases as infractions. The court does not appoint an attorney in a traffic matter. The

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self-represented party should be encouraged to at least have a consultation with an attorney. There are many unforeseen consequences to guilty pleas in traffic cases. These may include, but are not limited to, “points,” which might affect the ability to retain a license, negative impacts on future employment, increased insurance rates, and – if the person has a commercial driver’s license – possible risk of losing his or her livelihood.

When there is the possibility the defendant may be incarcerated, the court should inquire into the person’s ability to hire a lawyer. If the self-represented party does not have the means to hire an attorney, and incarceration is a possibility, a lawyer must be appointed to represent the party. Many judges will appoint a lawyer for a person who is right on the line of qualifying and reserve the possibility of an order of recoupment. When the court cannot appoint an attorney, the court should strongly encourage the parties to at least consult with an attorney before proceeding. There are several attorneys in Utah who are willing to provide a low cost consultation. Some attorneys are even appearing on a limited basis instead of taking on the entire case. A short continuance should be offered to the self-represented party who doesn’t seem to understand the proceedings so they can consult an attorney or look for other resources.



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Resources

Many self-represented parties will ask the court or opposing counsel for legal advice. Neither the court nor opposing counsel should give legal advice to an unrepresented party. An excellent resource to help parties navigate the courts is the Self Help Center at the Utah State Law Library. The Self Help Center is part of the court’s web page or can be reached by phone at: 801-683-0009. The Utah Courts have put a great deal of information on the web at: www.utcourts.gov/selfhelp. The Self Help Center is staffed by paid and volunteer attorneys. The Self Help Center can refer the self-represented party to legal information, resources, and referral sources. The Utah State Bar has an excellent attorney referral service, www.utahbar.org. The Utah Bar also helps people with modest means find a lawyer who will take their case for a reduced hourly fee. There are many free legal clinics across the state. The Self Help Center can help self-represented parties find these clinics. In some of the larger courts in the state, there are special debt collection and domestic calendars where volunteer attorneys show up to give self-represented parties basic legal advice. Many of these resources will help self-represented parties find court forms to use. Most attorneys are already familiar with the www.utcourts.gov/ocap where the Utah Courts have put online many of the forms self-represented parties need for self-representation. The use of forms helps the self-represented party present information to the court in a manner the court is used to receiving information. The forms also help the parties know what information the court needs.

Duty of Fairness

The court has an ethical duty to require a minimal level of fairness to all parties. But the court must be careful not to disadvantage a represented party while trying to protect a self-represented party. Balancing giving legal advice versus information on procedural process is beyond the scope of this article. Also beyond the scope of this article is the court’s role in preventing abuse of the process or preventing clear error. Many of the parties in the court have ethical obligations. A prosecutor has a duty not to abuse their prosecutorial powers. A lawyer has ethical duties as an officer of the court. Judges should familiarize themselves with the Code of Judicial Conduct. Both the American Bar Association and the Utah Bar have guidelines for the courts and for attorneys to utilize when dealing with self-represented parties.

In summary, self-represented parties may slow down the legal process. The courts can help the cases along by following a few of these rules to make sure that the process is fair for all parties.



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Implicit Bias in Attorney Evaluation of Judges and Why it Applies to Everyone, Even You

by S. Grace Acosta

This fall, we can expect to receive surveys asking us to evaluate the performance of judges before whom we have appeared. It happens every other year. These surveys are an important professional duty to support a strong judiciary. Judges benefit from constructive feedback, and attorney surveys are a critical part of the Judicial Performance Evaluation Commission's (JPEC) evaluation of each judge. A constant source of concern to the bench and the Bar is the quality of evaluations completed by JPEC. Over the past several years, JPEC has changed its evaluations to minimize the potential impact of implicit bias. These changes are improvements. But as attorney-survey respondents, we can help too.

When we hear warnings about bias, we all may say, "That doesn't apply to me; I am not biased." Well, you very well might be but not in the way you might think. When one is called biased, one automatically assumes that the other person is calling one a "racist" or a "sexist," but this not what implicit bias is. Implicit bias is bias we do not even know we have and which is inherent in every human being.

We all bring life experiences and preconceived ideas to everything we do, even JPEC evaluations. Analyzing information and reaching a conclusion is exactly what lawyers do. But this critical thinking might have a hidden flaw: we may make assumptions that are based upon past experiences or stereotypes but that are not based on actual observations. And we often do it without even realizing that it has occurred. For example, when I am walking alone in the parking lot after work and I see a man by my car, I might assume that he is a threat to me, even if he is just waiting for a ride. If this same person is wearing dirty clothes or has a different skin color than mine, the perceived threat to me is greater. I do not have any credible information that I am under attack, but my past experiences and the experiences that others have shared with me drive me to make this assumption, even

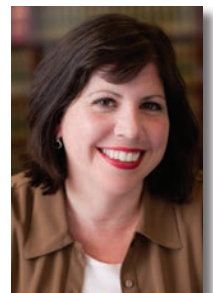
when I am not thinking consciously of those experiences.

This assumption has evolutionary benefit. It has most likely kept our ancestors alive for thousands of years. But we are not cavemen fighting off woolly mammoths. We are lawyers sitting in an office or battling in a courtroom. Yet, this same response occurs. If I allow an inaccurate assumption or stereotype to affect my behavior, my response is a type of implicit bias. Note that it is called implicit bias and not overt bias. This is because this type of bias occurs subconsciously. We do not mean to do it. It is a response based, in part, on our brain's tendency to use shortcuts to make decisions, but we can become more aware of those influences on our decisions in hopes of reducing implicit bias in our decision making.

I can recall a psychology professor saying to a class, "Now think about your toes." Suddenly everyone was aware of their toes in their shoes. This same professor said, "You always knew your toes were there, but they were dwelling in your subconscious. By asking you to think about them, we brought them to your consciousness." I am asking everyone to "think about your toes" and become consciously aware that we might bring implicit assumptions to our interaction with other lawyers and with judges.

We have all encountered "that" lawyer who has a bad reputation for not playing fair or not following the rules. Even though in your current encounter the lawyer has not done anything

S. GRACE ACOSTA is a partner with Lewis Hansen PC and primarily does family law, personal injury, and workers compensation defense.



wrong, you are on guard. At the end of the encounter, you might change your perception of the lawyer or, more likely, you view the lawyer's encounter with you as the anomaly. The same could be true of your interaction with a judge. Others' opinions and experiences might affect your perception of this judge when you are completing a JPEC survey.

In the truest sense, there is no clean slate. We all carry inside of us ideas about the world, things others have said, things we have experienced in the past, etc. So our answers on a JPEC evaluation might be a compilation of others' experiences, things we have heard and maybe our past experiences with people who have similar characteristics as the judge (e.g. women, minorities, Catholics, just to name a few). It is also possible that we might have viewed the same actions from another judge differently than we might from a judge who fits into one of our stereotypes.

So, how to do we stop and ensure that our evaluation of a judge is fair and accurate? Research shows that just because we have implicit associations does not mean that we necessarily allow those associations to affect our decisions in a biased way. This is a very hopeful thing! We are not just pawns to our own subconscious. We can consciously check ourselves to ensure that we are being fair.

The first step is to recognize the potential problem – “think about your toes!” Be mindful of how you are evaluating a judge. Ask yourself: What is the evidence to justify my rating? Who or what is influencing my assessment? Having these questions in the forefront of one's mind is essential to answering questions based upon one's own observations and experiences with the judge. In this way, we help to minimize the potential influence of implicit bias.

I attended my third grader's theater performance earlier this year. In that performance, a young girl played a doctor. After the performance I spoke with several of the students, including a precocious boy about eight years old. He commented to me that he thought it was silly that a girl had played the doctor. “They should have just called her a nurse.” I told him that girls can be doctors too, and he just cocked his head at me and did not seem convinced. What surprised me was that such a young boy had absorbed – through his limited life experiences – that there were gender roles to which men and women were assigned. This boy could no more believe that a woman could be a doctor than he could believe that a man could be a nurse. If that young boy can hold this belief in 2019, then there is still a lot of work to be done for implicit bias. This conversation made me reflect on my professional experiences and question whether I had felt

Implicit Bias Reduction at the Judicial Performance Evaluation Commission (JPEC)

Since 2016, JPEC has taken on the substantial challenge of minimizing the potential impact of implicit bias on the judicial evaluation process.

Implicit bias training: JPEC conducted training using the same trainer engaged by the Utah State Courts, the Utah State Bar, and the National Conference of Bar Presidents. Giving commissioners, judges, and the legal community the same high-quality experience encourages a shared understanding of the problem and associated challenges.

Survey improvements: JPEC engaged a professional survey consultant to reduce the risks related to implicit bias and its evaluation surveys. Modifications followed best practices, including “focusing questions” to help respondents recall their most recent appearances before the judge. JPEC pretested all survey changes prior to their first implementation in October 2017.

Modified blind review: No longer do commissioners know the names (or demographic information) of the evaluated judges. Although commissioners eventually learn the identity of judges, an anonymous review helps minimize the impact of implicit bias.

Careful, systematic deliberations: JPEC redesigned deliberations to help commissioners reduce cognitive overload, engage clear decision points, and achieve efficiencies necessary to provide more time to evaluate each judge with care.

Continuing legal education: JPEC is developing an online CLE to address the potential impact of implicit bias on survey completion and other parts of judicial evaluation.

*By Jennifer Yim, Executive Director
Judicial Performance Evaluation Commission*

Implicit Bias Reduction: What Works?

Research shows that certain strategies and approaches can help guard against the effects of implicit bias. Consider taking these steps to structure your decision-making process.

Become aware: Knowing one's implicit associations is the first step to reducing their effects on decisions. The Harvard Implicit Association Test is a computerized assessment that tests the speed with which we connect ideas like math skills and men compared to math skills and women (<https://implicit.harvard.edu/implicit/takeatest.html>). Although we might know many women who are good at math, our implicit assumption may still be that men tend to be better at math than women are.

Slow down: Slowing down when you have important, deliberative decisions to make can help. Intentional conversations between the quick, intuitive part of the mind and the slower, deliberative part of the mind tend to yield less biased decisions.

Avoid overload: Avoiding cognitive overload, whether due to compressed deadlines or massive information amounts, can have a positive impact on reducing implicit bias.

Create decision clarity: Creating a systematic decision process by being clear about the decision criteria and decision points can help minimize implicit bias.

Seek equity: Finally, thoughtful self-reflection and mindfulness practices can help. When we consciously seek equity and consider multiple perspectives, especially those different from our own, we may consider options that cause us to question our assumptions and stereotypes in productive ways.

*By Jennifer Yim,
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bias before. What I realized is that bias does not have to be based upon race or gender, but it can be based upon age, religious beliefs, body size, practice area, firm size, and many other characteristics that are unique to people. So, if we all have implicit bias, then we all need to stop and think before doing something as important as filling out a JPEC evaluation.

Judge reviews are very important. They are important to the judge being reviewed and to the legal system as a whole. It is the only way we have to measure the performance of a judge. So please fill out your surveys when they are sent to you. The bigger the sample, the better the statistics. But as you fill out your surveys, ask yourself, what your evidence is for your ratings? Who or what is influencing you? As critical thinkers, we want evidence-based decisions to be made about the competency of our judiciary. If we all give our evaluations a second, considered thought, we can help make sure we are evaluating judges based on their merits and reduce the amount of implicit bias in the surveys. It is how we can help make Utah's judiciary even stronger, and please, tell your sons and daughters that girls can be doctors – and even judges.



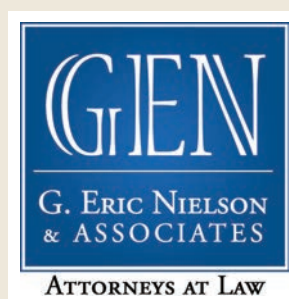
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Six Practice Management Tools You Need Now!

by Hal Davis

Disclaimer: *The tools I discuss below are not necessarily technology based. They would benefit even an attorney who still uses law books, yellow pads, and a pencil. This article focuses on organizational, process-based principles rather than on any particular technology. Having spent many years as a legal secretary, paralegal, and computer network administrator prior to attending law school, I can state unequivocally that the following tools will lower your stress, improve your business relationships, and make you a better, more successful attorney – in direct proportion to the degree you implement them. Even using one or two of these tools, or making an attempt to, will improve your practice significantly.*

I have an attorney friend who needed to fly to a small town in Colorado for work. He was assigned the seat next to the pilot in a four-seat, small plane. As the pilot pulled out a lengthy list of what appeared to be instructions, my friend began to worry. “Does this guy know what he’s doing? Reading the user manual just prior to takeoff does nothing to inspire my confidence in his abilities!” After finishing the checklist, the pilot spoke to the tower, pulled out onto the runway, and came to a complete stop just prior to taking off. Unbelievably, the pilot pulled out a second set of instructions and began reading through them while flipping switches and pushing buttons. My friend’s worry turned into fear as the plane finally hurtled down the runway and took to the air. Thankfully, the flight was uneventful, my friend’s white knuckles began to turn pink again, and by the time he landed, he had quite an appreciation for the inexperienced pilot who had just flown him safely to his destination over the mountains.

While the pilot and passengers were walking into the terminal, a flight mechanic stepped up to the pilot and said: “This is an extremely difficult airport to fly into. I’ve never seen a better three-point landing in a cross-wind. How did you do it?” The pilot modestly shrugged and replied: “Twenty-five years of flying for Delta gave me lots of practice.” My friend was dumbfounded.

One “take away” from this story is that everyone is uneducated about something – even lawyers.

Like an airline passenger, a client’s comfort, correct time and place of arrival, value for the money, safety, and even his or her very survival (physically or economically) may depend upon the skill of his or her attorney. An attorney (even an expert) should always have, use, and follow easily-accessible, written, detailed, consistent, and thoroughly-tested procedures for taking off, flying, and landing a case, even if he or she could do it in his or her sleep without them. A professional pilot cares enough about his or her career, the passengers, and even his or her own life that the pilot uses written, pre-flight procedures every time he or she flies. A professional attorney should do no less.

Of course, no business can survive without customers (clients, in a law practice) or a means of accounting for money. A marketing strategy and a system of accounting for the flow of money are supremely important components necessary to start and grow a law practice. As important as marketing and accounting are, however, I am going to ignore those critical subjects for now, take for granted that you have some clients and a bank account already, and save discussion of marketing and accounting for another time. In my business, excluding a marketing plan and an accounting system, I have identified six indispensable elements necessary to successfully practice law. The first one, of course, is the tool I alluded to above (a checklist of procedures), and it is absolutely essential to employing the other tools to their full potential. Though you may have computers, software, expertise, mentors, and the finest office space money can buy, your practice will suffer, or even die, without good written procedures. The six tools are:

HAL DAVIS, admitted to practice in both Utah and Idaho, is the owner of Davis & Sanchez, PLLC, a firm with locations in both states specializing in workers compensation cases and representing plaintiffs.



1. Personal practice procedures (I informally call mine the “Blue Book”);
2. Document templates;
3. A document storage system;
4. A calendar;
5. A case tracking system; and
6. Client notes.

Let’s discuss each of these tools, one at a time.

Personal Practice Procedures (The “Blue Book”)

The Blue Book is the single most important document in my firm. No matter what software or hardware technology I use, no matter how smart my associates are, no matter how many staff I employ, and no matter how many clients I serve, my practice, without the Blue Book, would be simply a jumble of disorganized folklore passed on verbally from one person to another. I am constantly amazed when I meet an attorney – who may even deny belief in the supernatural – who nevertheless

believes that others should be able to read his or her mind!

The Blue Book is usually divided into major sections by area of practice, such as litigation, estate planning, or workers compensation. Areas of practice may be subdivided further by jurisdiction (such as Federal District Court or State Court) or attorney (if the Blue Book is a firm resource, and different attorneys use different procedures).

Finally, the Blue Book is the master document – the constitution, or the symphonic score, if you will – that directs, correlates, and harmonizes all of the other major tools necessary to practice law. The Blue Book ensures that key processes are knowable, written, consistent, efficient, and successful. The Blue Book is the first, and most important tool, for managing the infrastructure and resources of any law practice.

My practice is limited solely to workers compensation law, and all my associates follow the same procedures, so my Blue Book is fairly straightforward. But it is detailed. Except for junk mail, my Blue Book contains a set of procedures for creating or receiving and then filing, handling, or processing each and every document I author or receive via mail, fax, email, text, or

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Attorney T. Edward Cundick Joins Clyde Snow



Clyde Snow is pleased to welcome T. Edward Cundick to its Salt Lake City office. Mr. Cundick’s practice focuses on bankruptcy law and creditor’s rights. He has extensive experience representing debtors, creditors, and trustees in all aspects of complex bankruptcy proceedings, financial restructurings, and workout-related litigation matters in state and federal courts. In addition, Mr. Cundick also represents clients in a variety of complex commercial litigation matters.

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hand delivery. In general, a procedure will be written for each document we generate and for each document we receive. The procedure describes how, where, and under what name to file a document; what template(s), if any, to use in response; how, where, and under what name to file the new document just created; items that need to be entered on the calendar; updates that need to be made to our case tracking system; and notes that need to be added to the file.

Let me emphasize the importance of the Blue Book, or at least a procedure in the Blue Book, with an anecdote. The partner of a small law firm had an administrative assistant who had been with him for many years. She was his right hand. Due to years spent together, she could practically read his mind. One day, however, she dropped a bomb on him. “This year I am using my vacation. I’m taking my mother on a three-week cruise to Europe.” After recovering from the shock, admitting that she was entitled to time off, and telling her how much he relied on her, he said with real anxiety: “What if I have to mail something certified, return-receipt requested, while you’re away?”

Recognizing the truth above that everybody is uneducated about something, the assistant told her boss not to worry. She took a green certified mail card and filled it out (front and back) along with a receipt for the post office to stamp. She then wrote step-by-step instructions underneath the sample documents explaining how to package the letter, calculate postage, mail, and pay the post office. Finally, she showed an example of what the post office should return to the firm after delivery and gave step-by-step instructions for filing the document in the file. “Here you go,” she concluded, “that’s how you send a certified letter!” Voila, a knowable, written, consistent, efficient, and successful procedure was born.

Let’s take a worst case scenario. You get hit by a bus...or your administrative assistant does. Who picks up the caseload, and how does he or she handle it? Even in a best-case scenario, where your assistant gives you two-weeks’ notice of leaving, and you are able to immediately hire a new person to take his or her place, the new person gets only two weeks of mentoring, usually by example and words only, from a soon-to-be ex-employee who may not cover half of the important duties he or she now performs, or who has zero interest in training the newcomer to do a better job than he or she did.

Unless you have a photographic memory and staff who can read your mind, a book of personal practice procedures (a Blue Book) that is written, clear, concise, and detailed is essential to successfully practicing law. Does this exist at your firm now? It should!

Document Templates

Everyone has heard of boilerplate documents or templates. Everyone believes in them, but few people really use them. After working for me, my daughter went to work for an estate planning firm in another city. Her boss would ask her to prepare a new will or trust, give her some of the variable information to fill in, and then expect a signature-ready document to appear on his desk the following morning. After being yelled at a number of times for her inability to read the boss’s mind, and for making incorrect assumptions, she began asking frankly: “Where can I find procedures and a template?” (She had been spoiled, working for me.) To this question, the boss was happy to reply: “Just use the Barnaby documents we did two months ago as a model.” Still, however, proper names, gender pronouns, and incorrect clauses or inappropriate language persisted. Her bouts with tears, while diminished somewhat, persisted as she made decisions and assumptions that should have been made by an attorney. She would even get hammered for mistakes he did not catch when he proofread the original document the first time for the original client.

In my office, I have a clean, no-variables-filled-in-yet, virgin template for every document I draft. I make sure that the document is not editable, except by the author or a trusted assistant. It may only be copied by non-authors for transformation into a brand new client-specific document. If there are multiple variations of the same document, I may draft a separate template for each one, or better still, I can include all possible optional language in the original template (with the idea that inapplicable language can always be deleted). If something important needs to be added to the client-specific document, it can be done without corrupting the template. If necessary, the template itself can be edited to include the new language if it is of sufficient worth to be used again and again. In my experience, it is much easier to delete language from a template bulging with options than to add language to a template that is little better than a blank document.

Lawyers may rightly be criticized for using templates that contain incorrect, inapplicable, or outdated information. This is embarrassing, but the fault lies with the author or proofreader, not the template itself. Lawyers are often wrongly criticized for using templates as a way to charge exorbitant fees for very little work. That is unfair. A good template may be the product of years of research and legal experience. It is a result of the reduction, simplification, clarification, and refinement of legal information, in clean prose, over time. It provides consistent, accurate, and uniform advice, counsel, or argument. It also

deserves to be paid for again and again as if it were a valuable asset of the firm – which it is. As a final plug for templates, they can eliminate the need for printing letterhead and provide all of your work with a consistent look, outline, style, format, and font.

In addition to legal documents, even lists, agendas, announcements, advertising material, maps, handouts, answers to frequently asked questions, biographies, speeches, research memoranda, photographs, meeting minutes, and a hundred other categories of documents – anything you use again and again – deserve a place in the template file. How many times have you ever heard a colleague say, “I don’t have time to do it up right!” But he or she always finds time (or is forced to take the time) to do it over. Your dad was right! “If something is worth doing, it is worth doing well” (and then using over and over and over again).

Unless you have a photographic memory and staff who can read your mind, a collection of virgin, detailed, uneditable, copyable, jam-packed-with-optional-language templates for every document you draft is essential to successfully practicing law. Does this exist at your firm now? It should!

A Document Storage System

Unless you border on the realm of genius, your memory is limited. There are a few, select Mensa types who can honestly boast superhuman feats of memory. It is for those of us not so blessed that paper and pencil were invented. That, in turn, led to the invention of paper files, filing cabinets, and libraries. Today, if you are up to date with your technology, pencil and paper have been replaced by keyboards and hard drives and clouds. Paper files have been replaced by folders and subfolders. Libraries have been expanded – if not replaced – to include information of all kinds and varieties accessible using google. We live in an incredible age!

My point is, that if you are not a genius, there is still hope. I compete with geniuses by writing stuff down. One of the secrets of success in law school, and in practicing law, is the ability to find and retrieve important information quickly. Geniuses use their memories. I use my computer. You do not have to be flat out brilliant – though it never hurts – to be a good lawyer. If you can find the stuff you are looking for, you are in good shape. A good document storage system will help you find information quickly (as long as it was put in the right place to begin with).

RAY QUINNEY & NEBEKER WELCOMES *Sally B. McMinimee*

We are honored to have Sally join RQN.

Sally is an experienced litigator with an emphasis on family law. Her practice focuses on large marital estates, complex business and property divisions, and all other areas of divorce practice. Sally is a member of the American Academy of Matrimonial Attorneys (AAML), and former president of the Mountain States Chapter of the AAML. She is a trained mediator and uses that expertise in a collaborative manner to resolve difficult disputes. Sally will serve as the Chair of the Family Law Practice Group at RQN.

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Another anecdote might help. While working as a paralegal for a large law firm, I worked on a multi-million dollar oil and gas case involving multiple parties, millions of dollars, and scores of depositions. One day, while preparing for an upcoming hearing, an emergency call went out to the entire office. “We can’t find the thirty-page deposition of John Doe, a junior accountant for one of the opposing parties, who gave some absolutely critical testimony. It is not in the file. Please help us find it!” A thorough scavenger hunt began. After two or three days, and probably a hundred man hours, the deposition was found at the bottom of a two-foot pile of papers on the desk of an attorney who was on vacation. In my office today, that could not happen (knock on wood, cross my fingers, and rub my rabbit’s foot). Okay, that *should* never happen. Every document that comes into our office via U.S. Mail, FedEx, UPS, fax, email, or hand delivery – except junk mail – is immediately date stamped, initialed, scanned to computer in PDF format, and distributed to the appropriate attorney’s incoming documents folder for filing, processing, or both by that attorney’s staff. We maintain a paperless filing system. There are no filing cabinets in our office. (Correction: We keep one in which to store original documents given to us by clients who want them back.)

I must add here, however, that there is no such thing as a truly “paperless filing system.” I tell my audience in seminars I teach on the subject that a “completely paperless office” will be invented right after the paperless bathroom. A better name for a paperless filing system is a *less paper* filing system. Even if everyone in the office wanted to read, review, search, highlight, attach to a pleading, file with the court, print, mail, email, text, fax, lose, or even destroy a copy of a deposition, they could do so while the original PDF version lies safely stored in the client’s electronic file. Only if a person wants it done, does the PDF file ever need to be turned back into paper using a printer.

So, the first goal of a successful document filing system is to keep documents in a single place, safely stored, and accessible only by those authorized to use them. The second goal is to be able to access them quickly. That requires some thoughtful planning as to how stored documents are named and organized. This subject alone could take up an entire article. Whether you use a specialized case-filing database or simply a series of computer folders, it is important to put documents where you can find them quickly. A misfiled document is not much better than one that has not been filed at all.

To cut to the chase, I track every document in my filing system by seven variables. These variables can be entered into a database or tracked using folder, subfolder, and file names. The seven critical pieces of information I track are:

1. The client;
2. The matter;
3. The document type (correspondence, pleading, discovery, exhibit, etc.);

I track these three variables by creating named folders.

4. The document date and time (YYMMDD 00:00);
5. The author, creator, or originator of the document followed by “>”;
6. The recipient or user of the document; and
7. The document name.

I track these four variables by how I name a particular document.

If documents are stored using the variables above, they should be fairly easy to locate by simply drilling down into the file. Using these variables, you can also create simple search filters to narrow the scope of the search. For instance, to search for all

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is pleased to announce that

KAYLA H. QUAM

has joined the family law practice of the firm, recently celebrating her one-year anniversary with us. She has been a great addition to the firm.

Kayla graduated with honors from the University of Utah, S.J. Quinney College of Law in 2015.

Kayla practices exclusively in the area of family law, zealously advocating for her clients in both settlement and litigation settings.



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documents sent by my firm to our client, I can get into the client's folder and search for "ds>cl." To search for documents with a particular date, I can get into the client's folder and search for "180725." To search for documents with a particular name, I can get into the client's folder and search for "interrogatories." These are just simple examples. If a file itself is colossal, text searches of PDF documents can be performed to find phrases within documents.

Unless you have a photographic memory and staff who can read your mind, a paperless, text-searchable, variable-based storage scheme, including standard PDF file-naming conventions for every document you store, is essential to successfully practicing law. Does this exist at your firm now? It should!

A Calendar

I remember fishing from my boat one beautiful spring Friday when my cell phone rang. I stood aghast as I realized that an Administrative Law Judge seventy miles away was calling me. "Hello!" I answered. "Why are you not in my courtroom for your scheduled hearing?" the judge began abruptly. A knot in my stomach, the size of a walnut, swelled immediately to pumpkin size. There is no feeling of horror quite like "forgetting" to go see a judge! Thankfully, it turned out that the judge's clerk, not me, screwed up the calendar. After working out the problem, I sat down to decide if I should begin breathing into a paper bag or just surrender to a full-blown nervous breakdown.

Keeping a calendar is essential to the practice of law. The consequences of missing an appointment or a deadline can range all the way from having to issue a mildly embarrassing apology to facing a career-ending malpractice claim. Do you know *anyone* who has *never* made a calendar goof? I don't. The goal, however, is to reduce, and eliminate if possible, the scenario in which an appointment, hearing, statute of limitation, statutory deadline, or something really important (like your daughter's birthday) are forgotten.

Your Blue Book is an essential companion to your calendar. Nothing is more deadly when using a calendar than to use it one way one time and another way another time. Consistency is the key! How dates are entered on your calendar, and by whom, and ensuring that important dates are double checked by more than one set of eyes all depend on procedures you implement to create, edit, or delete items from your calendar. For example, my staff understands that any change made to the calendar for the following day must be brought to my attention in a text or an email, in addition to being added to my calendar.

In my practice, intake staff have the ability to schedule initial client interviews. My paralegal, on the other hand, has unlimited authority to manage my calendar. Colors are important. Appointments in the office are in blue. Appointments out of the office are in red. Reminders (such as discovery due date deadlines) are in yellow. Reminders for my paralegal (such as making a telephone call to a client to remind them of a deposition the next day) are in green. Items deleted from the calendar or completed (such as calling a client) are changed to gray. All of these calendar items, the colors, the format, and who is to act on the item, are entered based on procedures in the Blue Book.

For example, when we receive discovery requests from opposing counsel, one of the procedures tied to processing this document is to enter a calendar item, in yellow, on the date discovery is due. This reminds us that discovery responses are due for that particular client. We also enter another calendar item, in green, the week before discovery is due reminding us to call the client to check on the status of our request for his discovery responses.

For very important calendar items (mediations and hearings) my paralegal enters the dates on my calendar. When I receive document notification of those meetings, I personally double

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Greg Hoole

- Trained in mediation at the Straus Institute for Dispute Resolution at Pepperdine School of Law;
- Trained in advanced negotiations at the U.S. Dept. of Justice National Advocacy Center;
- Adept at bringing parties together to resolve even the most complex of disputes.



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check the calendar to make sure the date, time, and place entered by my paralegal on the calendar match the notice I received from the issuing agency. This gives us an automatic, two-person review of deadlines that could get us in hot water if we were to miss them. Many professional liability insurance policies require such a procedure to be in place in order for malpractice coverage to be in force.

Finally, it is very helpful if you can combine the calendars of several attorneys. This is necessary if a staff member supports more than one attorney, or if an attorney is out of the office on vacation, for instance. Being able to overlay the calendars of all attorneys into one calendar is also extremely useful in calendaring management and staff meetings and other firm-wide events of importance.

Unless you have a photographic memory and staff who can read your mind, a shareable, color-coded, procedure-driven, and double-checked calendar for every attorney and staff member in your firm is essential to successfully practicing law. Does this exist at your firm now? It should!

A Case Tracking System

A case tracking system allows an attorney to enter, save, and locate information critical to a case. Some worthwhile categories include **client and case information** (name, address, phone number, email address, street address, adjuster information, opposing counsel, judge, court case number, etc.) **milestones** (dates when pleadings are filed, discovery received, depositions, mediations, and hearings scheduled, appeals made, and the case closed), **homework assignments** given to the client, **mileage** driven and **expenses** incurred, the current **status of settlement negotiations** (discussed further below), **receivables** owing, and **client notes** (discussed at length in the next section).

A case tracking system allows an attorney to see a 30,000 foot view of the file – including the progress of a case (or lack thereof). It allows firm management to see all the cases in the pipeline in order to estimate revenue, keep attorneys and staff accountable, observe patterns or anomalies with respect to case handling by opposing counsel or the courts, set goals, and run reports. And finally, a case tracking system can help the firm avoid conflicts of interest.

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In our firm, our case tracking system allows us to answer questions – sometimes at regular, periodic intervals, such as these:

- How many cases does an attorney have?
- How many cases does an attorney have with a particular opposing counsel?
- How many cases does an attorney have with a particular judge?
- Are there any cases without a written fee agreement?
- How quickly is the court or administrative agency processing cases?
- What is the average award or settlement per attorney or in total?
- What cases need to have a closing file letter sent?
- What is on an attorney's things to do list today...this week...or this month?

The list could go on and on. One of the most useful things a case tracking system does is show the book of clients in new

and different ways. This information can point out interesting anomalies or even errors and omissions. For a simple example, if you run a report of clients by attorney, you may see a client who is misidentified and should belong to a different attorney, or you might find a client assigned to an attorney who is no longer with the firm.

In short, a case tracking system is simply a database of relevant information about each case the firm is handling. It can identify cases that have slipped through the cracks, cases that are overdue for action, cases where money is uncollected, or cases where important milestones have been ignored (or just not reported correctly). The case tracking system is a snapshot, or an executive summary, not a data duplicate, of the client's file. If a piece of information is critical, trackable, or used on a regular basis, it should be in the case tracking system.

Besides client notes (discussed at greater length in the next section), a place to record settlement offers and counter offers, the terms, the dates and how they were made (telephone, voicemail, email, text, letter, or in person) is critical to my practice. Few things are more embarrassing than sending an offer to opposing counsel that over or under bids a previous

 <div style="text-align: center;"> <p>Durham Jones & Pinegar is pleased to welcome</p> <p>Lynda Cook & T. Richard Davis</p> </div> 			
<p>"We're pleased to welcome Lynda Cook to DJP. She is an experienced and skilled attorney with special expertise in representing lenders in financing transactions who will synergistically complement our Business & Finance practice group."</p> <p>- N. Todd Leishman, DJP CEO</p>		<p>"We are very pleased with the addition to DJP of T. Richard Davis. Rick has leading expertise and experience in the areas of real property, banking, commercial transactions and litigation. He will deepen our already strong real estate and banking practice as we continue to serve our clients across a broad spectrum of business legal needs."</p> <p>- N. Todd Leishman, DJP CEO</p>	
<p>Lynda Cook Of Counsel 801.415.3000 lcook@djplaw.com</p>	 <small>ATTORNEYS AT LAW</small>	<p>T. Richard Davis Of Counsel 801.415.3000 rdavis@djplaw.com</p>	 <small>ATTORNEYS AT LAW</small>

offer you forgot you made. The current state of the dispute is clearly on display, in dollars, if you will keep a section in your case tracking system for offers and counter offers.

Unless you have a photographic memory and staff who can read your mind, a case tracking system that includes databases of clients, opposing counsel, and court information, case milestones, a means of viewing the progress of individual cases through the legal process, and a place to review the status of offers and counter offers is essential to successfully practicing law. Does this exist at your firm now? It should!

Client Notes

Client notes are really part of a case tracking system but important enough to be mentioned as a stand-alone necessity. If you keep a good case tracking system, the history of your case can be easily plotted and explained to others. As far as communication with your client goes, your document storage system should contain a copy of every letter, email, and text you have sent to your client and to anyone else involved in the case. That leaves only one gaping hole. How do you document verbal communications, observations, thoughts on strategy, or other important pieces of information? Client notes.

I used to put in a client note every time I received a document, sent a document, wrote a letter, sent an email, had a thought, conversation, observation, idea, or strategy come to mind, or had a verbal conversation with my client. That got to be a little overwhelming. I began to think I was spending more time counting coconuts than growing them. For that reason, I now limit my client notes to documenting anything that is not documented elsewhere (in procedures, templates, documents in the file, the calendar, or the case tracking system).

If you have ever had an upset client or an informal bar complaint filed against you, a history of client notes, including all verbal interaction with your client, is the best protection you can have from anyone who might allege unethical or unprofessional behavior.

I also use client notes to record voicemail messages I receive from my clients, from opposing counsel, or others involved in the case. This collection of “open” or “pending” notes also forms a “things to do list” that keeps me organized. When responded to, I close the note, which takes it off my list of things to do. If you need to bill hours, the notes section of your case tracking system may also be a good place to track your time, if you do not otherwise have a sophisticated time and billing system.

Have you ever heard this before? A client calls up and asks, “What’s going on with my case?” When you or your assistant speak to a client who asks this question, it is incredibly simple to look in the client notes section of the case tracking system to see what last happened in the case, and whose court the ball is in. I love it when I am able to tell my client: “According to my notes, the last time we talked, you were to send me a copy of the denial letter you received from the adjuster.” Sometimes, the ball is in my court, and a phone call is a prompting to look at my notes and to follow up on something I said I would do. Sometimes, you are waiting on opposing counsel or the court. Keeping good client notes helps you avoid ever having to admit: “What we have here is a failure to communicate.”

Unless you have a photographic memory and staff who can read your mind, keeping careful and detailed client case notes is the best way in the world to document verbal communications between you and your client, staff, and opposing counsel. If you become the subject of an ethics investigation, client case notes become priceless. A history of careful and detailed client case notes is essential to successfully practicing law. Does this exist at your firm now? It should!



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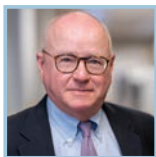
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Parsons Behle & Latimer is pleased to welcome attorneys Thomas R. Barton, Thomas T. Billings, Alex B. Leeman, John A. Snow and Mark A. Wagner to the firm's Salt Lake City office.



Thomas R. Barton, Shareholder

Mr. Barton is an experienced commercial attorney who has litigated a wide variety of business disputes – including matters related to employment, corporate fights, tax, natural resources and real estate, contracts, homeowner disputes, and professional liability cases. Tom has tried cases in the state, federal and tax courts, administrative forums and handled appeals. Tom is currently acting as receiver for an IT company in an action brought by the FTC.



Thomas T. Billings, Of Counsel

Mr. Billings concentrates his practice on banking and financial institutions including corporate reorganizations, real estate and commercial transactions, working with state and local governments including legislative matters, commercial litigation, real estate development and outdoor advertising.



Alex B. Leeman, Shareholder

Mr. Leeman's practice involves general business litigation for individuals and Utah businesses of all sizes. Alex has experience with a range of employment matters, including challenging and defending employment non-compete agreements and claims involving misappropriation of trade secrets. He also handles land use and real estate litigation.



John A. Snow, Shareholder

Mr. Snow's practice consists of general civil litigation, including commercial, professional malpractice, construction and insurance coverage and defense. John commenced his legal practice in 1973 in Salt Lake City, and he has also had an active professional practice in Nevada since 1990.



Mark A. Wagner, Shareholder

Mr. Wagner concentrates his practice in employment law, homeowners association law, and health care law. In his employment practice, Mark advises employers in all aspects of the employment relationship. He also routinely represents employers in audits, investigations, and proceedings before numerous federal and state agencies, including DOJ, DOL, EEOC, OSHA, and UALD, and in litigation in state and federal courts.

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Appellate Highlights

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

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

UTAH SUPREME COURT

***State v. Hon. Ann Boyden*, 2019 UT 11 (March 20, 2019)**

The State convicted Bela Fritz of criminal drug charges and he was sentenced to prison using Bela Fritz's criminal history. Then, during the prison intake process, a corrections officer discovered that the man was not Bela Fritz after all. The State moved to vacate the conviction and sentence under Rule 60(b) and the man opposed the motion. The district court denied the motion, holding that the State's only avenue for relief was the PCRA. On a Rule 65B petition for extraordinary relief, the Supreme Court held that in this "somewhat unconventional" case, the district court had jurisdiction to entertain the Rule 60(b) motion "because neither the PCRA nor any other statute or rule governs this aspect of criminal proceedings."

***Sumsion v. J. Lyne Roberts & Sons, Inc.*, 2019 UT 14 (April 26, 2019)**

The Supreme Court held that a contractor that created an artificial condition on land of another may owe a duty of reasonable care to the employees of the land owner. The Supreme Court held that Restatement (Second) of Torts §§ 385, 394-398, and 403-404 provided the proper framework for the analysis.

UTAH COURT OF APPEALS

***In re CCW*, 2019 UT App 34 (March 7, 2019)**

Mother petitioned to terminate parental rights of father, who had abandoned the children and twice been incarcerated for violently attacking the mother along with another woman. For

purposes of the best interest analysis, the Court of Appeals held that simply because there is no history of domestic violence toward children, district courts cannot compartmentalize and ignore domestic violence against others, including the mother in the instant case, and must carefully weigh the potential impact of that violence on the children even if not visited upon the children.

***McCloud v. State*, 2019 UT App 35 (March 14, 2019)**

The Court of Appeals recognized a new exception to the procedural rule barring PCRA claims that could have been raised on direct appeal. The court held that claims that could have been raised in a Rule 23B motion will not be barred post-conviction when, as here, the record on appeal did not indicate a reasonable probability that developing those claims would have resulted in reversal.

***California College v. UCN*, 2019 UT App 39 (March 21, 2019)**

In a dispute between a telephone system provider and for-profit colleges, the Court of Appeals granted interlocutory review to decide whether the trial court properly denied a motion to exclude the plaintiffs' two experts. The district court reasoned that issues of conflicting data went to the weight of the evidence. Because both sides agreed that the underlying data was flawed, the Court of Appeals reversed, holding that the district court had abused its discretion by admitting the experts' testimony where their opinions were developed from a data set both parties agreed was unreliable.

***Williams v. Kingdom Hall*, 2019 UT App 40 (March 21, 2019)**

The plaintiff sued her church for negligent and intentional infliction of emotional distress after she was subjected to church disciplinary proceedings and forced to listen to an audio recording of her being raped by another church member for several

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

hours, while church leaders questioned whether she consented to various acts on the tape. The Court of Appeals **affirmed the district court's dismissal of these claims under the Establishment Clause of the First Amendment, because they would require inquiry into the appropriateness of the church's conduct in applying a religious practice.**

***Windsor Mobile Estate v. Seazy*
2019 UT App 44 (March 21, 2019)**

In this appeal from an order dismissing claims for failure to prosecute, the Court of Appeals addressed “the misuse of a third-party action,” which it described as a common mistake, and took an “opportunity to remind practitioners of the quite limited proper usage of third-party complaints.” It explained, “**a third-party claim may be asserted under Rule 14(a) only when the third party's liability is in some way dependent on the outcome of the main claim or when the third party is secondarily liable to the defending party.**”

***State v. Miller*, 2019 UT App 46 (March 28, 2019)**

The Court of Appeals reversed the district court's order arresting the defendant's conviction for stalking, **holding that the State need not prove the defendant knew or should have known that his emails about the victim would be shared with her in order to establish the elements of a stalking charge.** The defendant had sent several emails to the attorney for his former employer about the victim, a former coworker. As long as the State proved beyond a reasonable doubt that at the time the defendant sent the emails, he knew or should have known that a reasonable person in the victim's circumstances would suffer significant mental or psychological suffering, the knowledge element of stalking is established.

***Luna v. Luna*, 2019 UT App 57 (April 11, 2019)**

The plaintiff was injured in a car accident while his sister was giving him a ride to work. He sued his sister and the other driver, claiming both were negligent. The plaintiff testified unequivocally in his deposition that his sister had the green light. The court held that **a party's deposition testimony constitutes a binding judicial admission if four factors are present: 1) the statement is made under oath in the course of the current judicial proceeding; 2) the testimony is unequivocal; 3) the statement is about a factual issue within the party's knowledge; and 4) giving conclusive effect to the testimony is consistent with the public policies of conserving judicial resources.** Applying this test, the court held that the plaintiff's testimony about the

color of the light was a binding judicial admission that he could not dispute using the other driver's testimony.

***Cox v. Hefley*, 2019 UT App 60 (April 18, 2019)**

In this domestic case, the appellant argued the district court erred in entering a modified decree of divorce contained provisions authorizing a third party neutral to restrict parent time. The court of appeals rejected this argument, and it held that **the appointment of a neutral third-party to act as buffer between the parties and ensure compliance with an existing court order was not contrary to Utah law,** where the district court retained continuing jurisdiction and the neutral's decisions were reviewable by the court.

***Bloom Master Inc. v. Bloom Master LLC*
2019 UT App 63 (April 25, 2019)**

In this case involving a claim the buyer breached a promissory note by underpaying, the Court of Appeals reversed the district court's order granting summary judgment to the buyer based on a provision of a promissory note allowing an unspecified reduction in payments if the subject product “failed to generate expected sales numbers.” The Court of Appeals held that the **provision was an unenforceable agreement to agree despite the fact that it contained mandatory language concerning the obligation to accept reduced payments.**

***State v. Ahmed*, 2019 UT App 65 (April 25, 2019)**

This appeal arose out of the intersection between privilege and the Confrontation Clause. Provisionally reversing the conviction, the Court of Appeals held that the district court erred in denying the defendant access to a surveillance location, which was not privileged. **Although a trial court may impose reasonable limitations on cross-examination concerning privileged material under the Confrontation Clause, the trial court can may impose those limitations only if the evidence sought by the defendant is privileged.**

***Ghidotti v. Waldron*, 2019 UT App 67 (May 2, 2019)**

The plaintiffs sued the sellers and their real estate agent and broker for failing to disclose that property was subject to restrictive covenants that prevented plaintiffs from operating a dog training business. The plaintiffs did not disclose an expert to support their damages in accordance with Rule 26, but they argued that they implicitly and sufficiently designated one of the plaintiffs as a non-retained expert when they listed her as a potential fact witness in their initial disclosures, when she

testified about their damages during a deposition, and when they disclosed the financial documents that she intended to testify about in supplemental disclosures. The Court of Appeals held that **plaintiffs' "implicit disclosure" argument is contrary to its precedent, and plaintiffs failed to properly disclose the non-retained expert under Rule 26.**

***Pino v. Entity # 4812420-0140*
2019 UT App 69 (May 2, 2019)**

A non-profit water corporation, TWC 2000, failed to renew its registration and was administratively dissolved. The board of TWC 2000 formed TWC 2013 and caused TWC 2000 to transfer all of its assets to TWC 2013 along with granting all shareholders in TWC 2000 equal shares in TWC 2013. The Division of Corporations reinstated TWC 2000, after which 95% of the TWC 2000 shareholders ratified the forming of TWC 2013 to act as a successor corporation. A group of dissenting minority shareholders contended that the assets of TWC 2000 should have been distributed to the shareholders upon dissolution based upon the corporation's bylaws. The Court of Appeals **affirmed transfer of TWC 2000's assets to TWC 2013 under the bylaws because, among other reasons, the shareholders of both companies were the same.**

State v. Gavette, 2019 UT App 73 (May 2, 2019)

The Court of Appeals **vacated the defendant's conviction and remanded for a new trial in light of the district court's failure to comply with Utah R. Crim. P. 29 by presiding over the defendant's trial while a motion to disqualify the judge was pending.** Under the rule, when a motion to disqualify is filed, the district court has two options: grant the motion or certify the motion to a reviewing judge for decision. The rule explicitly provides, "[t]he judge shall take no further action in the case until the motion is decided." "Failure to comply with this rule renders void any further proceedings presided over by that judge."

State v. Smith, 2019 UT App 75 (May 2, 2019)

This appeal centered on the court's application of the community caretaking doctrine. Police officers found the defendant sleeping in his vehicle in a restaurant parking lot in the early morning. Affirming the denial of a motion to suppress, the court of appeals held that **the community caretaking doctrine justified the warrantless seizure, because the officers were checking on the defendant's welfare on a cold evening, the circumstances suggested that the defendant did not intend to leave, the seizure was brief**

duration, and it appeared to be motivated by the safety of the defendant and members of the community. The dissent framed the community caretaking doctrine more narrowly and would have held that the manner in which the seizure was conducted could not be justified by the doctrine.

State v. Brunn, 2019 UT App 77 (May 9, 2019)

As a matter of first impression, the Court of Appeals held that **a criminal defendant's prior settlement agreement with the victim did not preclude a restitution judgment for a greater amount under the Crime Victims Restitution Act,** except to the extent that the settlements and judgment would demonstrably result in double recovery.

10TH CIRCUIT

United States v. Bowline

917 F.3d 1227 (10th Cir. March 11, 2019)

In this criminal appeal, **the Tenth Circuit joined a majority of circuits and held that prior precedent establishing appellate courts cannot review an untimely motion to dismiss under Fed. R. Crim. P. 12 absent a showing of good cause remains good law despite the 2014 amendments to that rule.** The criminal defendant filed his motion to dismiss for vindictive prosecution days before trial was set to start. On appeal, he acknowledged that he could not establish good cause for the untimeliness, but argued that the court could nevertheless review the district court's denial under a plain error standard.

United States v. Dalton

918 F.3d 1117 (10th Cir. March 21, 2019)

In what appears to be a case of first impression, the Tenth Circuit held evidence obtained during a search pursuant to a search warrant was seized in violation of the Fourth Amendment because the warrant had become stale, not due to the passage of time but because of the officer's subsequent discovery of additional information. The court held that **"probable cause becomes stale when new information received by the police nullifies information critical to the earlier probable cause determination before the warrant is executed."** Here, the probable cause had become stale because the officers had become aware the defendant was not the driver of the car in which officers had observed a firearm, a fact that had served as the basis for the probable cause he was illegally possessing a firearm in the house.

Sacchi v. IHC Health Servs., Inc.**918 F.3d 1155 (10th Cir. March 26, 2019)**

In this employment case, an intern argued that she should be treated as an employee under federal discrimination laws, even though she received no pay, because she received benefits from the internship program, including completing requirements of education program and advancing her professional certification. Applying the “threshold remuneration” test used in other circuits, the Tenth Circuit held that the intern was not an employee where the benefits alleged were not provided by the hospital, were different from traditional benefits, such as a pension or insurance, and were too attenuated to give rise to an employment relationship.

Butler v. Bd. of Cty. Commissioners for San Miguel Cty.
920 F.3d 651 (10th Cir. March 29, 2019)

A county employee sued his former employer for demoting him after he testified as a character witness at his sister-in-law’s custody hearing. The plaintiff urged the Tenth Circuit to adopt a per se rule that treated all truthful testimony given by a public

employee as a matter of public concern. Instead, as a matter of first impression, the Tenth Circuit **clarified that a case-by-case approach applies to assessing whether a government employee’s speech involves a matter of public concern** and affirmed the district court’s dismissal of the individual claims, because the employee’s motive was primarily personal and did not concern the community at large.

Nelson v. City of Albuquerque**921 F.3d 925 (10th Cir. April 16, 2019)**

The defendants filed two motions to alter or amend a civil judgment under Fed. R. Civ. P. 59(e) that were decided by different judges. After the first judge denied the first motion, he retired and the court reassigned the case to another judge. The defendants then filed their second motion, reurging or elaborating on what they had argued in their prior motion. The second judge granted the motion. The Tenth Circuit reversed, holding that **parties cannot invoke Rule 59(e) to reurge or elaborate on arguments already decided in earlier Rule 59(e) proceedings.**

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The *Utah Bar Journal* Editorial Board regrets to announce the retirement of our fearless leader, Bill Holyoak. Bill has served as the *Bar Journal*'s editor-in-chief for twenty years, but he has been a part of the editorial board for much longer than that. We grateful for Bill's dedication to making the *Bar Journal* a publication we are all proud of. We would like to take this opportunity to thank him for his leadership, humor, and commitment.

Bill has given countless hours of tireless and thoughtful service to the *Bar Journal* for more than thirty years. The Bar is indebted to him for his vision and care in assuring the consistent high quality of the magazine's content and for his relentless drive to keep our members informed and enlightened.

H. Dickson Burton, President, Utah State Bar

Working with Bill for the better part of the last twenty years has been one of my favorite extracurricular activities over the course of my professional career. Mostly this is due to the satisfaction I have derived from working with great people and helping to put out a quality publication like the *Utah Bar Journal*. But partly it is due to Bill's rather unique (nonlinear? Keillorian?) way of running a meeting. With no disrespect intended, he can be replaced as editor-in-chief on the *Bar Journal*'s editorial board. In fact, he has been. But he can't be replaced as raconteur-in-chief.

Gregory Orme, Judicial Advisor, UBJ

I met Bill when I first started practicing as a clueless associate in the days before cell phones, when “instant messaging” meant sending a fax on those vintage machines with curly, smelly thermal paper. Bill was friendly and very smart. I doubt that he realizes what a calming example he was to me at a time when I was struggling to make the shift to the real world. I've lost track of the number of years he has allowed me to contribute to the *Utah Bar Journal* (thanks so much, Bill, for inviting me to be an editor way back when – it's really been fun). He was always an excellent lawyer, and working with him on the *Journal* was a pleasure. Bill is one of the brightest, kindest, and funniest people I've ever known. Happy Trails, Bill!

Todd Zagorec, Editor at Large, UBJ

In my forty-plus year association with the *Bar Journal*, Bill Holyoak and Cal Thorpe were the two outstanding editors-in-chief. When Cal passed away I worried that no one would have the same passion for the *Journal* as Cal did, but Bill stepped right in and never missed a beat. I believe that he even took it to a new level of quality. I enjoyed Bill's sense of humor and his efficient manner in conducting meetings, encouraging discussion, and valuing diverse opinions. He was always well prepared. I especially admire his willingness to dedicate twenty years of excellent service as editor. I am sure it was a sacrifice of his time and talents. Thank you, Bill!

Randall (Randy) L. Romrell, former UBJ Editor

Bill was one of the major thought influencers of my career, on the rare occasions when I had a thought to be influenced. I remember well the tasty lunches and scintillating repartee, especially between him and Judge Orme. I always hoped that Todd Zagorec would appear via hologram, but it never happened. Seriously, Bill brought out the best of the keen legal minds on the committee (who never shied away from controversial issues) and with Christine's superb assistance, the *Journal* just got better and better. Here's a free thought to influence Bill: retirement is great! Cheers from California!

Cathy Roberts, Departments Editor, UBJ

I'm convinced that Bill Holyoak ran the best committee meetings of the entire Utah State Bar organization. The conversation at the meetings of the *Utah Bar Journal* was lively, entertaining, and thought-provoking. Always apparent was Bill's care and concern for the *Journal* and its reputation, quality, and ethics. Bill was a wonderful steward of the *Journal*!

Nicole Farrell, Articles Editor, UBJ

Thank You!



Our *Bar Journal* meetings just won't be the same without Bill's musings on the legal community and world around us. Thank you, Bill, for your quality work, your commitment, and, most of all, letting us know the power of humor.

Lee Killian, Articles Editor, UBJ

I enjoyed working with Bill Holyoak on the *Utah Bar Journal* very much. During the years I was part of the *Utah Bar Journal* committee, I always looked forward to our monthly meetings. The discussions were lively and full of laughter each and every time. Always apparent in every discussion was the fact that Bill cared deeply about the *Journal*. There is no question that Bill was committed to providing a great product to the members of the Utah Bar. I'm grateful for his diligent service over many years.

David C. Castleberry, former UBJ Editor

Working with Bill over the past twenty years has been a wonderful experience. I've appreciated his ability to improve and protect the *Bar Journal* during his time as Editor-in-Chief. Bill was always prepared, organized, and able to infuse humor into each editorial meeting. Thank you Bill for your unwavering contributions and support to the *Bar Journal* and to me personally, and for making my job much easier.

Christine Critchley, Bar Staff Liaison

Calvin Thorpe was the editor of the *Utah Bar Journal* for just over ten years. With almost exactly twenty years of service now as the editor, Bill has carried on that tradition of excellence. In the April 1999 *Bar Journal*, Bar President James Jenkins remarked that Calvin 'has left big shoes to fill.' I would echo that sentiment in regards to Bill. As a paralegal, it can be frustrating to have a seat in the room but not at the table. Bill has not only made a place at the table for paralegals, he has enthusiastically encouraged articles and input. We cannot thank you enough.

Greg Wayment, Paralegal Division Liaison, UBJ

It has been a pleasure serving with Bill on the *Utah Bar Journal* for the past six years. Bill brought a wit to the editor-in-chief role that has made the monthly editorial board meetings an entertaining professional extracurricular activity. Thank you, Bill, for your many years of service and for your demonstration on how to have fun while attending to the important work of the *Journal*.

Andrea Valenti Arthur, Articles Editor, UBJ

Bill welcomed me to the *Bar Journal* Committee with his jovial spirit and kind words of advice. He has always provided valuable insight into the practice of law and is truly a wonderful example for the bar. His presence and experienced oversight will be missed!

Victoria Luman, Articles Editor, UBJ

It was always easy to see that the *Journal* was a labor of love for Bill. At every board meeting, his dedication, enthusiasm and ever-present humor were infectious. Thanks, Bill, for all the hard work and great product.

Robert Rees, former UBJ Editor

I've had the pleasure of working with Bill for approximately ten out of the more than thirty years he has served on the editorial board of the *Utah Bar Journal*. Bill has graciously devoted his time and talents to delivering a quality publication. Bill has a unique way of simultaneously entertaining and conducting a meeting. He's a true comedian and he will be missed.

Alisha Giles, Managing Editor, UBJ

While Bill's years of dedication mean that his retirement is well-deserved, it's nevertheless a blow. Bill has an extraordinary talent for commanding meetings – our *Bar Journal* gatherings have been entertaining yet informative and nevertheless adjourned precisely on time. I will miss his warm and personable leadership.

LaShel Shaw, Utah Law Developments Editor, UBJ

Gideon at 56 in Utah: Utah's Public Defenders and The Indigent Defense Commission

by Joanna Landau

Gideon v. Wainwright, 372 U.S. 335 (1963), is the foundation for much of the work we do at the Utah Indigent Defense Commission (IDC), and it guides the work Utah's public defenders dedicate themselves to across the state. While the *Gideon* Court was not the first to declare a right to counsel, it did clarify the critical importance of counsel in court proceedings.

The *Gideon* Court determined the Sixth Amendment right to counsel was "fundamental and essential to a fair trial," so much so that an accused person who cannot afford an attorney "cannot be assured a fair trial unless counsel is provided." *Id.* at 342, 344. That right to counsel, Justice Hugo Black wrote, was one of "those guarantees of the Bill of Rights which are fundamental safeguards of liberty immune from federal abridgment [that] are equally protected against state invasion by the Due Process Clause of the Fourteenth Amendment." *Id.* at 341. And it is that Fourteenth Amendment right to due process that requires states to ensure the Sixth Amendment right to counsel, because of its fundamental nature to due process. Indeed, the Supreme Court would later note, "[O]f all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive for it affects his ability to assert any other rights he may have." *United States v. Cronin*, 466 U.S. 648, 654 (1984) (internal quotation marks and citation omitted). *Gideon* began the rapid expansion of the right to counsel to a variety of state proceedings. See, e.g. *Alabama v. Shelton*, 535 U.S. 654 (2002) (misdemeanors with suspended jail sentences), *Argersinger v. Hamlin*, 407 U.S. 25 (1972) (misdemeanors), *In re Gault*, 387 U.S. 1 (1967) (juvenile delinquency proceedings), *Douglas v. California*, 372 U.S. 353 (1963) (criminal appeals). States can always provide more than is required by federal law, and under Utah law any indigent parent facing an action to terminate his or her parental rights is entitled to court-appointed counsel.

Even before *Gideon*, however, the right to state counsel existed for defendants in state courts facing capital offenses. See *Powell v. Alabama*, 287 U.S. 45 (1932). And many state statutes had long provided for a right to counsel. As early as 1888, Utah law provided,

[I]f the defendant appears for arraignment without counsel, he must be informed by the court that it is his right to have counsel before being arraigned and must be asked if he desires the aid of counsel. If he desires and is unable to employ counsel, the court must assign counsel to defend him.

Pardee v. Salt Lake Cnty., 39 Utah 482, 486, 118 P. 122 (citing Comp. Laws 1907, section 4767); see also Utah Code Ann. § 105-22-12 (Callaghan 1943), noting the 1907 law was "practically identical with 2 Comp. Laws 1888 § 4961". And the Utah Constitution has, from its inception provided, "In criminal prosecutions the accused shall have the right to appear and defend in person and by counsel." Utah Const. Art. I, § 12 (1896).

Ensuring that courts appoint counsel is only one-half of the right to counsel. How will counsel be compensated for representation was a significant question for Utah's early courts and continues to be a question today. Utah had an early right to counsel, and courts were appointing attorneys to represent people, but there was no provision requiring anyone to pay court-appointed counsel. See Sanford H. Kadish and Edward L. Kimball, *Legal*

JOANNA LANDAU is the first Director of the Utah Indigent Defense Commission, where she helps the fifteen-member Commission and her amazing staff improve indigent defense services around the state, by working with local governments and all three branches of state government.



Representation of the Indigent in Criminal Cases in Utah, 4 Utah L. Rev. 198, 205 (1954) (noting Utah’s “traditional system of providing indigents with counsel in criminal cases prevails; i.e., the judicial appointment of unpaid attorneys to serve as a matter of public and professional duty”). It was surely lawyers then, who would later draft the code provisions requiring Utah’s local governments to pay for court-appointed counsel, pre-*Gideon*. Representative Allen tried in 1939 through House Bill 89 to have the Utah Code statute require:

In all criminal cases when it shall be satisfactorily shown to the judge or justice of any court that the defendant has no means and is unable to employ counsel, the judge or justice shall appoint and assign counsel for his defense, and shall allow and direct to be paid by the county or municipality in which such trial is had, a reasonable and just compensation to the attorney so assigned for such services as he may render; provided, however, that such attorney shall not be paid a sum to exceed fifteen dollars per day in any one case.”

These early legislative struggles with how to properly provide and pay for court-appointed counsel foreshadowed the current Utah Legislature’s debate around the appropriate roles of state and local government regarding the provision and funding of indigent defense services.

Legislative questions aside, we need court-appointed public defenders to ensure a fair trial in each case, and public defenders have a bigger role in ensuring a fair and efficient criminal justice system. They help protect the innocent, ensure due process, test the prosecution’s evidence, reduce over-incarceration, and ensure their individual clients’ rights and freedom from injustice. Consider the impact public defenders have on Utah’s criminal justice system alone. With the exception of some of Utah’s richer counties, it is overwhelmingly poor people who come in contact with Utah’s criminal justice system, and without defense counsel to represent them, they “cannot be assured a fair trial unless counsel is provided.” *Gideon*, 372 U.S. at 344. In Utah’s district courts, judges appoint counsel in around 80% of the roughly 43,000 criminal cases filed in a fiscal year across the state. See Utah Courts, *District Courts Case Filings Fy2018* <https://www.utcourts.gov/stats/files/2018FY/district/0-Statewide.pdf>. And after the passage of Senate Bill 32 in the 2019 legislature, all minors facing court for felony or misdemeanor offenses

must be appointed counsel – without regard to indigency – to represent them at all stages of the proceedings unless private counsel is retained. This achieved the longstanding idea that children should not be required to attend formal court proceedings without a zealous defense attorney at their side.

As indicated by the early struggles for how to provide counsel in Utah, the appropriate judicial appointment of counsel is one thing, but public defenders must also be independent and financially able to provide all their clients with robust and effective representation. Yet, even fifty-six years after *Gideon*, states including Utah are still struggling with how to implement its mandate and ensure effective indigent defense representation. Perhaps because *Gideon* said counsel was required and was the responsibility of state government, but the Supreme Court never enumerated how a state must ensure an individual, “haled into court, who is too poor to hire a lawyer,” must be provided counsel. *Id.* at 344. Certainly, counsel must be effective. *Strickland v. Washington*, 466 U.S. 668 (1984). But how all fifty states ensure this fundamental right in state court proceedings varies greatly.

Approximately twenty-nine states provide indigent defense services through state funding. Colorado for example, took over the provision of indigent defense services in that state in 1970. For \$1,000,000 the Colorado Legislature created a statewide indigent defense system, which today operates with a \$158,000,000 budget to provide services through more than forty regional public defender offices throughout the state, 525 attorneys, a Denver appellate office, and an Office of Alternate Defense Counsel that manages statewide conflict attorneys. Colorado’s population is almost double Utah’s, which spends a current total of around \$39 million in state and local indigent defense funding – far less than a quarter of what Colorado spends per capita.

Many states’ indigent systems do not reach as far as Colorado’s, and twenty states are like Utah, delegating the majority of indigent defense funding to local governments. Pennsylvania is the lone state where state indigent defense services are funded entirely at the local level. And even in the most robust statewide indigent defense systems, defense representation in municipal courts – such as Utah’s justice courts – is rarely provided by states, even though municipal courts are where the vast majority of criminal cases occur. In fiscal year 2018, Utah’s justice courts saw 70,561 criminal cases across the state. Utah Courts, *Justice Courts Case Filings Fy2018*, <https://www.utcourts.gov/>

[stats/files/2018FY/justice/0-Statewide.pdf](https://www.utcourts.gov/resources/reports/docs/Indigent_Defense_Committee_Report.pdf). Problems with the representation of indigent individuals in Utah's justice courts was highlighted in the Sixth Amendment Center's 2015 report on Utah. Sixth Amendment Center, *The Right to Counsel in Utah* October 2015, http://sixthamendment.org/6ac/6AC_utahreport.pdf.

Utah delegated the responsibility for providing indigent defense services to its local governments – the twenty-nine counties and many cities prosecuting cases in district, juvenile, appellate, and justice courts around the state – without much state guidance, any funding, and little accountability for half a century. Those approximately 185 local governments spend over \$30,000,000 providing indigent defense today and have been spending many millions over the years. However, these different indigent defense systems provide indigent defense services in very different ways. The two largest counties have public defender offices, while the rest of counties and cities separately contract with attorneys or law firms to provide local services. Using contractors is a common method of providing indigent defense, but it is much more difficult for a local government to oversee contract attorneys and ensure they are providing adequate defense and resources in all appointed cases.

The Judicial Council and the ACLU repeatedly warned of problems with the state of public defense in Utah, noting inconsistencies and other issues.¹ Indeed, problems from a lack of uniformity in indigent defense services are easy to recognize. If you are arrested in one county, you may receive a public defender who works in an organized and well-resourced office that employs in-house investigators and social workers to ensure you receive an effective defense. But if you fall over the county line, your appointed counsel may be a private attorney with a contract – or several contracts – to provide indigent defense services to counties and cities, who has no similar resources or assistance to help ensure your rights. Some have suggested this presents an equal protection problem for the state, if it is truly the happenstance of where an offense occurs that determines whether you get effective assistance of counsel.

While these problems were manifest, it was not until the 2015 Report by the Judicial Council Study Committee on the Representation of Indigent Criminal Defendants in Trial Courts that Utah's legislature took up a role in ensuring the state's responsibility for constitutional indigent defense services. See *The Study Committee on the Representation of Indigent Criminal Defendants, Indigent Defense Committee Report*

October 26, 2015, https://www.utcourts.gov/resources/reports/docs/Indigent_Defense_Committee_Report.pdf. Senator Todd Weiler and then-Representative (now Senator) Dan McCay were on that committee, and they turned the study and discussion into legislation through Senate Bill 155, which created the IDC in 2016 and began Utah's most comprehensive state-level involvement in indigent defense services.

As he often jokes, Senator Weiler's punishment for creating the IDC is that he now serves on it. He is an IDC commissioner along with fourteen others who hail from state and local government, defense practice (representing adults, minors, and parents), a retired judge, and a representative designated by the Minority Bar. The IDC's small staff of four does the day-to-day work of the commission, helping to guide discussions about how the state can play a meaningful role in all areas of indigent defense, researching and reporting on indigent defense services in the state, and providing technical and financial assistance to local governments to improve services. The IDC has awarded and administered \$5.2 million in state funding grants to 41% of counties and 3% of the cities to support their local indigent defense systems as of 2019. And the 2019 legislature appropriated another approximately \$4,000,000 to continue these improvements and further the IDC's work. The IDC has helped seven of the twenty-nine counties regionalize their indigent defense service, which has many benefits, including regionalization of multiple counties' systems into a single organizing source, and independence from the county attorneys' offices that previously oversaw the provision of indigent defense services in many counties.

Additionally, the IDC has helped the legislature to revise Utah Code provisions on indigent defense services – ensuring local governments and courts understand how to provide constitutional indigent defense services. The IDC's advocacy has helped to secure dramatic increases in state-indigent defense funding to local governments. And with the IDC's help, the governor's budget and the legislature's appropriations have included increased funding for indigent defense services every year since the IDC's creation.

The IDC is also helping to smooth implementation of the Utah Supreme Court's recently enacted rule to improve appointed appellate representation, which created a Standing Committee on Appellate Representation. The rule created a process by which attorneys can apply to be on a supreme court-approved roster of people who courts can appoint to represent children,

and indigent adults and parents, on appeal. *See* Judicial Council Code of Judicial Admin. R. 11-401. Appellate representation is unique. Where our state courts have more locations than there are counties, there are only two appellate courts, both located in Salt Lake City. This fact alone arguably makes appellate representation a more obvious place for state involvement, whether through the courts, legislature, or executive branch. Indeed, because of the generally centralized nature of appellate work, many states have statewide indigent defense representation even where they leave trial representation to local governments. Take Idaho, whose state appellate defender is in the Idaho Governor's Cabinet and oversees a state-funded office of around twelve attorneys who provide representation in all state appeals and post-conviction proceedings. *See, Idaho State Appellate Public Defender's Office*, <https://sapid.idaho.gov> (last visited April 18, 2019). Yet Idaho's counties are primarily responsible for meeting the state's indigent defense standards in trial courts. In Utah, appointed appellate work is funded by the counties, and with Rule 11-401, the Utah Supreme Court created a roster of attorneys qualified to be appointed on appellate cases and paid for by counties.

Implementation of the Utah Supreme Court's rule has faced certain challenges. While several requests for applications went out to the Bar, a relatively low percentage of attorneys applied, and many did not understand the rigorous evaluation process the standing committee would apply to applications. And even once the roster was composed, there is no clear process for being appointed or paid for representing indigent individuals on appeal. Counties face the question of what to pay an appellate attorney, and there is no consistency in amounts paid by counties. I have seen a 10:1 ratio in per appeal payments made by different counties. The IDC offers funding grants specifically for appellate representation, but it does not have a clear means to address the unevenness in funding. *See generally, Utah Indigent Defense Commission*, <https://idc.utah.gov> (last visited April 18, 2019). And now, with three rosters, one for each area of appointed appeals – criminal, juvenile, and parental rights – the courts' other rules about how appointments in those cases must occur need revising.² A coordinated discussion with the counties, courts, and the IDC about this rule and the long-term solutions to appellate representation in Utah is warranted. The IDC remains available to help.

Nearly three years into the IDC's work, many questions are swirling about Utah's long-term solutions for ensuring

constitutional indigent defense services in every court in this wide and varied state. And while *Gideon* and the Bill of Rights are the floor for what must be provided, it is up to Utah's state and local government actors to help ensure our system of defense representation for poor people and minors is truly part of our justice system.

I have traveled this state listening to county commissioners, judges, county councils, city councils, mayors, defense attorneys, legislators, and county attorneys. If I am certain about one thing from meeting all these people, it is that these invested stakeholders care deeply about this subject and want to be sure any long-term solution to the many issues in indigent defense, is a *Utah Solution* arrived at through collaboration with state and local governments, public defenders, and others to find a sustainable, adequately funded, and consistent system, where the risks of due process being violated do not change based on the location of an arrest.

There are many people in this state who want to improve these services but just need the continued support and funding from the state to achieve those improvements. The IDC and staff are committed to advocating for Utah at the state and local level. We will continue to encourage discussion of these issues across the state. Our meetings are open to the public in person or on the phone and we welcome the involvement of all of Utah's legal community in helping us help the state.

1. *See, e.g., Utah Supreme Court Task Force on Appellate Representation of Indigent Defendants Report*, September 14, 1994; *Judicial Council Study Committee on Appellate Representation of Indigent Criminal Defendants Report*, January 6, 2011; American Civil Liberties Union of Utah, *Failing Gideon: Utah's Flawed County-By-County Public Defender System* August 23, 2011, https://www.acluutah.org/images/Failing_Gideon.pdf.
2. Consider Rule 8 of the Utah Rules of Criminal Procedure, which has no provision for the appointment of counsel in juvenile delinquency cases. And Rule 55 of the Utah Rules of Appellate Procedure, which in parental rights termination cases, requires that:

The petition on appeal must be prepared by appellant's trial counsel. Trial counsel may only be relieved of this obligation by the juvenile court upon a showing of extraordinary circumstances. Claims of ineffective assistance of counsel do not constitute extraordinary circumstances but should be raised by trial counsel in the petition on appeal.

This rule, created to ensure swift consideration of appellate issues in these fraught cases, amazes most appellate attorneys, who know appellate work is a specialized practice area – distinct from trial counsel's work – where the strongest claims may sometimes be the ineffectiveness of trial counsel, a claim you cannot effectively raise against yourself.

If You Prosecute Criminal Misdemeanors, You Must Read This

by Keith A. Call

The American Bar Association's Standing Committee on Ethics and Professional Responsibility (the Committee) recently took aim at a problem it perceives among prosecutors of misdemeanor crimes. The Committee's recent ethics opinion (the Opinion) seeks to promote fairness in the context of an overwhelming load of misdemeanor prosecutions. *See* ABA Standing Comm. on Ethics & Prof'l Resp., Formal Op. 486 (May 9, 2019).

Reported Evidence of Unethical Plea Bargaining Practices

According to the Opinion, researchers estimate that misdemeanors make up approximately 80% of state criminal dockets. Misdemeanor prosecutions have doubled since 1972, with the expansion concentrated in "communities of color." *Id.* at 3 (citation omitted). Collateral consequences for misdemeanor defenses are significant and "can lead to denial of employment, expulsion from school, deportation, denial of a professional license, and loss of eligibility for a wide variety of public services." *Id.* at 3–4 (citations omitted).

The vast majority of misdemeanor defendants plead guilty at their initial appearances, often with no legal representation. The administrative burden on prosecutors and judges resulting from this increase in misdemeanor prosecutions can put intense pressure on a justice system that demands fairness. *Id.* at 4. The United State Supreme Court has warned, "[t]he volume of . . . cases, far greater in number than felony prosecutions, may create an obsession for speedy dispositions, regardless of the fairness of the result." *Id.* (quoting *Argersinger v. Hamlin*, 407 U.S. 25, 34 (1972) (omission in original)).

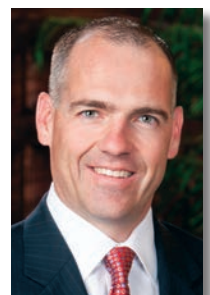
The Opinion identifies several methods of plea negotiation that the Committee deems unethical. These include:

- requiring or encouraging plea negotiation with a prosecutor before a right to counsel has been raised;

- using delay or the prospect of a harsher sentence to dissuade the accused from invoking the right to counsel;
- gathering arrestees into court *en masse* and instructing them, prior to any advice regarding the right to counsel, that they must tell the court clerk how they intend to plead;
- using forms to obtain waivers of the right to counsel either as a condition of negotiating a plea or following a negotiation absent proper confirmation that the defendant understands the forms and the rights being waived;
- permitting police officers involved in the investigation of a crime or arrest to act as prosecutors and negotiate pleas;
- advising defendants of the right to counsel but failing to provide any procedure for asserting or validly waiving that right before requiring plea negotiation with a prosecutor; and
- failing to inform indigent defendants of the procedure for requesting a waiver of court application fees associated with the assignment of a state-subsidized defense lawyer.

Id. at 5–6 (citations omitted). Invoking several different Model Rules of Professional Conduct, the Opinion condemns each of these practices as a violation of the Model Rules of Professional Conduct.

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The Prosecutor's Ethical Responsibilities in Plea Bargaining

The Opinion places particular emphasis on Model Rule 3.8(a-c) (Special Responsibilities of a Prosecutor), which provides:

The prosecutor in a criminal case shall:

- (a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;
- (b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;
- (c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing; . . .

Invoking this rule, the Committee opines that a prosecutor must exercise informed discretion with respect to the prosecution of every misdemeanor charge and may not uncritically rely on a police report or citation and a criminal background check. The Committee notes that if the prosecutor's workload is too heavy to permit independent assessment of each charge, he or she may not be able to fulfill his or her ethical responsibilities. Supervising prosecutors must control workloads so each matter can be handled ethically and competently. Opinion 486 at 8–9.

The Opinion also invokes Model Rules 4.1 (Truthfulness in Statements to Others), 4.3 (Dealing with Unrepresented Person), and 8.4(c) (Misconduct) to discuss a prosecutor's plea bargains with an accused individual who is not represented. This includes individuals who are ineligible for state-subsidized counsel, those who elect to proceed pro se, and those who are still in the process of securing counsel. The rules require the prosecutor to avoid giving the impression that he or she is "disinterested" and prohibit or limit a prosecutor from giving legal advice. Opinion 486, at 13–14. The rules also impose on the prosecutor a "heightened" duty to make sure the accused's acceptance of a plea is "voluntary, knowing, and intelligent." *Id.* at 14. For example, it is unethical, according to the Opinion, for a prosecutor to omit known collateral consequences of accepting a plea. *Id.* at 1415.

Finally, the Opinion imposes a continuing duty on the prosecutor after the plea is accepted. If, during the plea

colloquy with the court, the prosecutor learns that the accused's acceptance of a plea or waiver of the right to counsel is not "voluntary, knowing, and intelligent," then "the prosecutor is obliged to intervene." *Id.* at 15 (citation omitted). "The prosecutor cannot . . . knowingly permit an unconstitutional plea to be entered by an unrepresented accused." *Id.*

Conclusion

While the Model Rules of Professional Conduct and ABA ethics opinions are not necessarily binding in Utah, they are certainly instructive and persuasive. The Opinion is devoid of any reference to any particular practice in Utah. As a civil practice lawyer, I am unclear on the extent to which the identified practices occur in Utah. But I am quite confident that the ABA's Opinion 486 will engender significant discussion among the Utah criminal bar, as it should.

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

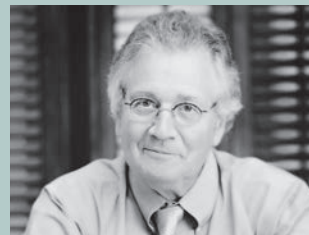
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A Drum Beat for Religious Liberty in Utah Thirty Years Ago

by Michael Patrick O'Brien

Thirty years ago this spring, a Utah court battle took center stage in the ongoing fight for religious liberty. The case was memorable for many reasons but mostly because it involved ancient rituals, prisoners, sweat, medicine men, a law and order judge, drums, and a mysterious wind.

The dispute started when Native American inmates at the Utah State Prison asked to participate in a 40,000-year-old religious ritual – a sweat lodge ceremony. A sweat lodge is a small domed structure built with willow poles and covered with blankets or canvas. Inside, participants create steam with water and hot rocks, and then chant, pray, and seek spiritual renewal and purification.



Prison officials expressed concerns about security risks associated with a dark and confined space beyond the view of guards. Lodge advocates pointed out that numerous other state and federal prisons had allowed lodges for years without major problems. Yet the state denied the request unless inmates agreed to use existing steam room facilities or add windows to the lodge for better observation.

Six inmates, led by an Assiniboin Sioux named George A. Roybal, filed a lawsuit in Utah federal court claiming the state had violated their First Amendment rights to practice their

religion. They and their lead legal counsel, Salt Lake attorney Danny Quintana, also sought allies for their cause.

The Navajo nation joined the suit, as did local Utah churches and Native American advocacy groups. I was just three years out of law school, and working with my current firm Jones Waldo, when my friend Michele Parish called and asked me to help too. Michele was the local director of the American Civil Liberties Union (ACLU).

At the time, critics called the ACLU anti-religion, which was unfair because the sweat lodge case was just one of many times the ACLU has worked for religious liberties. It also was rather silly to try to pin an anti-religion label on either Michele, a devout Methodist and a member of her church choir, or on me, a practicing Catholic with a degree in government and theology from the University of Notre Dame.

The coalition helping the inmates filed the appropriate legal papers and prepared for a hearing set for mid-March 1989 before federal Judge J. Thomas Greene, one of President Ronald Reagan's first appointees to the Utah bench. Greene, a former assistant Utah attorney general, was known as a law and order judge – tough, conservative, and fair.

On the big day, I walked into his courtroom at the Frank Moss Courthouse for the arguments. I was struck by the gold stars and bright shades of red, white, and blue decorations Judge Greene had designed or inherited from his predecessor in that space (I cannot recall which). It was a colorful setting for one of my first major court appearances as a young lawyer.

MIKE O'BRIEN is a writer and attorney living in Salt Lake City, Utah, and working at Jones Waldo. He is writing a book about growing up with the monks at the old Trappist monastery in Huntsville. He blogs at <https://theboymonk.com>.



During the two-hour long hearing, before a gallery packed with tribal representatives, news reporters, and curious onlookers, Judge Greene challenged all the involved attorneys. He quizzed us: “Couldn’t this be dangerous?” He interrogated the state’s lawyers: “Isn’t this just like any other house of worship at the prison?”

Those present expected him to think about the arguments and issue a decision several days later. He famously had kept in his chambers a large bust of a brooding ape with a sign reading “under advisement.” Judge Greene surprised everyone, however, when he announced at the end of the hearing, “I am ready to rule.”

Noting how other facilities had allowed sweat lodge ceremonies without problems, he said Utah could do it too. Rejecting the state’s proposed lodge modifications, Judge Greene explained, “That’s like saying to a Christian you can have a ceremony but don’t mention Christ.” The crowd erupted in applause when the judge ruled in favor of the inmates.

The Utah prison hosted its first sweat lodge ceremony a few months later. News accounts indicate that a medicine man built the lodge and that the Keeper of the Pipe for the Sioux nation led the purification rites. Inmates from the Blackfoot, Shoshone,

Sioux, and Navajo tribes participated.

There were no security incidents. Similar ceremonies at the Utah prison have continued regularly over the last thirty years.

Before all that, however, there was one other remarkable moment in the case. Outside the courthouse, just after Judge Greene’s ruling, friends and relatives of the inmates surrounded us on the marble steps. They beat drums, and a medicine man chanted. Then a gust of wind kicked up, giving flight to a few small leaves and early spring blossoms, which danced around us in perfect symmetry to the music.

The Navajo use the word *Nilch’i* to describe the Holy Wind by which all elements of the living world communicate with each other. I do not know the origin or meaning of the gentle breeze that blessed me that day three decades ago, but I do know that it spoke to my soul.

From time to time, the unusual wind returns to me, now a much older lawyer. With the slight echo of drums, it brings warm memories of when we first met but also teases me with fleeting glimpses of eternity. As quickly as it arrives, it eludes me again, and I am left to yearn for sacred wind to gently caress my face one more time.

THE UTAH DEFENSE LAWYERS ASSOCIATION AWARDED SPENCER BROWN ITS HORIZON AWARD FOR 2019



Congratulations to our colleague Spencer Brown!

The Utah Defense Lawyers Association awarded Spencer its Horizon Award for 2019. The Horizon Award is given to a lawyer who demonstrates excellent and distinguished service in the area of civil defense and who has practiced less than 15 years.

Spencer specializes in appellate practice, aviation law, and construction law. Strong and Hanni has enjoyed watching Spencer develop into a first-rate lawyer over the decade he has spent with the firm and we are proud to celebrate this achievement with him.

Spencer Brown
sbrown@strongandhanni.com
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Sharp-pointed Arrows in Our Quivers to Combat Rampant Attorney Dissatisfaction in the Practice of Law!

by James Judd Lund

Just yesterday, here came an email solicitation from a CLE provider: *Understanding and Avoiding Professional Burnout*. The instructor will scare his or her audience with mental health statistics and stories of legal practice dissatisfaction. For a handsome fee, he or she will provide hopeful professional recommendations on how to achieve improved attorney mental health and anecdotal stories to minimize burnout.

While unemployment hovers near all-time lows, *see* Bureau of Labor Statistics, <https://www.bls.gov/news.release/empsit.nr0.htm>, overall job dissatisfaction of lawyers continues to trend upwards. Too many lawyers are burning out. Over the past thirty years, since I graduated from law school, there have been several lawyer surveys conducted by federal, state and local bar associations, national and local legal newspapers, and various other organizations and publications. The surveys provide insight about lawyers – why they are burning out and what they think of their jobs in the changing legal profession.

Whether we embrace it or not, the change train (and even the disruption bullet) of the former ways of legal practice has left the station and continues to build a head of steam. Just look at technology in the law, or recent legislative initiatives to broaden the legal practitioner base. *See* Rules Governing the State Bar, Rule 14-802. While some attorneys lament the decline of professional esteem/honor and eschew the change, *see* Sol M. Linowitz, *The Betrayed Profession* (Charles Scribner's Sons 1994), others are embracing it head on, *see* Program for ABA's First Annual Lawyer Retreat, October 5, 2018, Vail, Colorado, chaired by ABA Law Practice Division Chair, Katy Goshtasbi.

To begin a healthy, open discussion of ways to avoid burnout, cope with rising dissatisfaction, and embrace and thrive in the culture of profound legal profession change, the ABA sponsored a ground-breaking, first-ever lawyer retreat last October. *See id.* Now, before you choke on that oxymoron, allow me to point out the location – the world class, five-star Four Seasons Resort in

Vail, Colorado (think Stein Erickson's at Deer Valley with more majestic mountains).

Over 120 attendees were drawn to this unique and seminal experience “specifically designed to equip each attending lawyer with new tools, perspectives to immediately implement in our professional practice and personal lives.” *See id.* It was far from your typical day-long CLE seminar where most people play on their phones, text, or doodle. Each of the six sessions was high-energy, impactful, and insightful, loaded with practical application to the daily legal grind and our personal lives. Allow me to highlight a few of my favorite sessions from this day-long retreat.

A 6:30 a.m. yoga session started us off, as the sun filtered through the golden Aspen and Douglas-fir trees in the beautiful alpine setting.¹ Over a healthy breakfast, ABA President Bob Carlson gave the introductory remarks about how this “retreat” came to be. He outlined the benefits of striving for balance in all aspects of our lives and how we as participants in the legal community can find personal fulfillment when we are in greater balance. He introduced the retreat concept as envisioned by the brilliant Katy Goshtasbi, the chair of the Law Practice Division. Both Bob and Katy stressed that the overall goal of learning, or being reminded of, key, fundamental tools can transform our professional and personal lives.

First up was a refresher or crash course on *mindfulness*, what it is and why it is important. Our expert facilitator, Bridgette

JAMES JUDD LUND serves as General Counsel for Siskin Enterprises, Inc/PermaPlate Company LLC, a manufacturer and wholesaler of a suite of Automotive Appearance Protection Products and Services from its North American headquarters in Salt Lake City, Utah.



Christiansen, taught that mindfulness involves “paying attention to the present moment and current experiences with openness, curiosity, and a willingness to be with what is!” It involves the Stephen R. Covey-taught concept of focusing on what matters most. When we focus on our past we are often flooded with negativity because of our failings and mistakes. A focus on the future can create anxiety; after all, that is what most attorneys are paid to do, right? However, a present, mindful concentration allows us to be the best versions of ourselves. When we can anchor our minds to the present, our creativity increases, our thinking is crisper, we have a greater sense of well-being, we are calmer, our communication is more effective, our respect and gratitude increases, and our relationships with others improve.

Don’t believe me, just Google mindfulness; more than twenty-six million results came up on my search engine. Or check out the self-help section of your favorite bookstore. You will see many NY Times bestsellers available to help you practice mindfulness. Don’t overlook the role that technology plays in this arena. Bridgette pointed out how our minds are on digital overload, on any day there are over forty years’ worth of YouTube videos uploaded. There are apps such as Calm, Head Spa, and 10% Happier that millions of users turn to each day to help them in their quest to be mindful. We should strive to maintain a moment-by-moment awareness of our thoughts, feelings, breath, and environment through a gentle, nurturing lens – the benefits conscious mindfulness delivers in the short term and long term. When we are mindful, greatness can occur.

Next up was a powerful ninety-minute session on mastering **crucial conversations**. See Kerry Patterson et al., *Crucial Conversations – Tools for Talking When the Stakes are High* (McGraw-Hill Education 2002). We have all had them, too many of us continue to avoid them, while few have mastered critical consistency in this area. The more important the issue, when stakes are high, really high, and opinions differ (usually mixed with strong emotion), the most impressive individuals, the most effective teams, and great organizations know how to have these key discussions. They talk openly and honestly, always with persuasion, never abrasion, with the right people about the right issues for synergistic results, long-term successful results.

The Training Professionals at Vital Smarts, headquartered in Provo, Utah, walked us through self-affirming truths such as “What we permit is what we promote.” “Psychological safety” causes too many of us to bite our tongues when we should speak up and encourage others to do the same. Armed with intellectual honesty, individuals, teams, and organizations can freely share their best ideas, make wise decisions, and then act on those

decisions with conviction for the greater good. Stacey Nelson, Ed. D., a powerful educator, taught us how mastering crucial conversations can allow us, individually and in a family or group, to achieve alignment, agreement, and successful execution.

The final session just before lunch may have been the most impactful for this group of practicing attorneys, sitting judges, and legal administrators. The topic was *The Benefits of Adding Emotional Intelligence (EQ) to your JDs*. EQ is the artful capacity of recognizing, understanding, and managing our own emotions and handling interpersonal relationships judiciously and empathetically. The articulate and adroit facilitator, Austin Houghtaling, Ph. D.,² masterfully engaged nearly every attendee. By this time, most CLEs have dragged on and lunch cannot come fast enough – not the case this day. We were learning and teaching one another from personal experiences. Heads were nodding, and “ah ha moments” were evident.

In this “experiential presentation,” we learned the importance of increasing our EQ and the impact such growth can have on our professional and personal lives. Emotional awareness and vulnerability are often overlooked and even minimized, or criticized, in certain professional and business circles. Austin presented a compelling case for the powerful return on investment (ROI) that comes from enhanced EQ. He stated many groups, large and small, are realizing and recognizing greater employee satisfaction, engagement, and loyalty, as well as increased productivity. To most employers, EQ is twice as valuable as IQ. He encouraged each participant on this learning journey to find greater satisfaction, personal and professional, by connecting our heads with our hearts. Our actions should reflect our core values.

Stay tuned for more on this timely topic and further helpful tools from the Utah State Bar to help us increase our legal practice satisfaction and avoid burnout. For example, plan to attend the 2019 Summer Convention in Park City. Don’t miss the consummate Professor James R. Holbrook’s session on professionalism and civility. He will lead an experiential learning hour on Thursday, July 18 at 4:00 entitled, *Empathy and Sympathy for Lawyers*. Besides a mindful yoga session Friday morning, consider listening to the sage insight of Friday’s keynote luncheon speaker, Antonia Hernandez, on *Genuine, Problem Solving Dialogue across Differences*. See you there!

1. See Harvard Medical School, *Yoga – Benefits Beyond the Mat*, Harvard Health Publishing (February 2015).
2. See Dr. Austin Houghtaling, a licensed MFT, serves as Chief Clinical Officer at ONSITE Workshops, at <https://www.onsiteworkshops.com/>.

Utah State Bar New Lawyer Training Program

by Carrie T. Boren and Josh Player

“Law school teaches you how to ‘think like a lawyer.’”

— Every law professor during every “Intro to Law” orientation speech ever.

“What, exactly, does ‘being a lawyer’ entail?”

— Every new lawyer, immediately after taking the attorney’s oath.

For those attorneys, like us, who were sworn in before 2009, you might not be aware of the New Lawyer Training Program (NLTP), the Utah State Bar’s award-winning mentoring program, which matches attorneys in their first years of practice with more experienced attorneys who can help them start their careers off on the right foot. Since its implementation nearly ten years ago, more than 2,000 new attorneys have completed the program and nearly 1,000 attorneys have been approved to be mentors, with more being approved every month. Mentors are entitled to twelve hours of CLE credit, including nine regular credits, two ethics credits, and one professionalism and civility credit. Essentially, if an attorney mentors at least one new lawyer every year, the mentor will complete all the requirements for her or his MCLE reporting period. If you would like more information about being a mentor, please visit <https://www.utahbar.org/member-services/nltp/#mentors>.

The NLTP has become a national model upon which many other states have relied when establishing their own mentoring programs. One reason behind the NLTP’s success is the members of the Committee on New Lawyer Training (NLTP Committee or Committee): attorneys and judges who are each committed to continuously improving the program and promptly responding,

not only to the needs of the new attorneys, but to the needs of the legal community as a whole.

To that end, over the past year, the NLTP Committee has been evaluating the feasibility of adding practical experiences to the program that will necessitate the new attorney’s management of a case, or significant aspects of a case. The addition of this provision required making changes to the model mentoring plan. The Committee will be formally presenting the program changes at the Saturday morning session of the Utah State Bar 2019 Summer Convention. This article will explain why the changes were necessary and how the changes will help new lawyers gain practical skills they might not have learned in law school.

New attorneys feeling they are ill-prepared for the transition from student to practicing attorney is hardly a new problem in the legal community. More than forty years ago, educational psychologist Leonard Baird published the results of a survey of attorneys who had been practicing for twenty-two years, twelve years, and seven years (graduating from law school in 1955, 1965, and 1970, respectively). See Leonard Baird, *A Survey of the Relevance of Legal Training to Law School Graduates*, 29

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JOSH PLAYER is the New Lawyer Training Program Committee Chair.



J. LEGAL EDUC. 264 (1977–78). Baird’s results indicated that all three groups felt law school did not adequately prepare them for the practice of law. Indeed, in the same article, Baird summarizes prior studies, some going back as far as 1962, where the prevailing opinion of the attorneys surveyed (most in the mid-career stage) was that law schools needed to place greater focus on practical skills. *Id.* at 265. As noted above, Baird’s survey did not yield different results; as one respondent to the survey aptly stated, law school provided an “excellent theoretical background, but as far as putting that background into practical results such as how to try a lawsuit, the format of law school was not helpful.” *Id.* at 270.

Unfortunately, opinions about this have not changed much in the intervening forty-plus years. *See* Few MBA, Law Grads Say Their Degree Prepared Them Well, https://news.gallup.com/poll/227039/few-mba-law-grads-say-degree-prepared.aspx?g_source=link_NEWSV9&g_medium=NEWSFEED&g_campaign=item_&g_content=Few%20MBA,%20Law%20Grads%20Say%20Their%20Degree%20Prepared%20Them%20Well (showing that only 20% of graduates felt law school prepared them for life after graduation) (last visited June 3, 2019). What

has changed, however, is the belief that this is a problem only law schools can solve. After participating in a round table discussion about the lack of practical training with leaders in Utah’s legal community, John Lund, then the president of the Utah State Bar, called a meeting in January 2018 with the Utah State Bar Commission (the Commission), representatives from both law schools in Utah, and members of the NLTP Committee to discuss the issue and determine how best to work *together* towards achieving the goal of providing new attorneys with the resources and support they need to be successful.

Starting in the spring of 2018, the NLTP Committee reviewed the model mentor plan requirements and determined that the current structure of the program did not include enough requirements that the new lawyer actually participate in any hands-on experiences during their NLTP term. The Committee decided to form a subcommittee tasked with establishing what specific changes needed to be made to the current program to allow for the addition of a practical training requirement.

The subcommittee began by discussing feedback provided by NLTP Committee member Kayla Quam, who had recently completed

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Victoria B. Finlinson Begins Term as President of Young Lawyers Division

Clyde Snow is pleased to announce that attorney Victoria B. Finlinson will begin as President of the Young Lawyers Division of the Utah State Bar for the 2019-2020 term this July. We look forward to seeing what she will accomplish in that role. Congratulations, Torie!

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the program as a new lawyer. Ms. Quam provided insight regarding her own experience as a new lawyer in the NLTP, as well as feedback she had received from numerous colleagues who had recently completed the program. Ms. Quam's insights provided an excellent starting point for creating the practical skills requirement.

The subcommittee also had the benefit of being formed shortly before the National Legal Mentoring Consortium was held in Columbia, South Carolina in April 2018. Carrie Boren, Lesley Manley, and R. Josh Player attended the conference with the objectives of seeing how other programs across the country had addressed the issue of providing practical experience to the mentees of their respective programs. It was discovered that the issue of providing practical experience had been addressed in different ways by several programs. Some of the other mentoring programs encouraged practical experience, but they did not require new lawyers to gain experience on their own. For example, some of the programs offered or required pro-bono experiences. Other programs offered or required the mentees to observe videos or podcasts of mock hearings. Finally, some programs offered or required that the mentee engage in certain experiences with the mentor. What was clear is that Utah needed to add a practical experience component to the program that was flexible and effective, but not unreasonably burdensome.

After months of hard and diligent work, the subcommittee revised the "Litigation and Transaction Handling Experience" section of the NLTP Mentoring Plan to include a list of required practical experiences in which the new lawyer must take an *active* role, not just an observational one. As this new requirement would necessitate far more time and energy than previous requirements, the subcommittee proposed that the number of two-hour meetings be decreased from twelve to ten to allow for more flexibility when completing this section.

Many new lawyers have not been given the opportunity to learn or practice skills, such as something as simple as making an appearance in court, during their first few years of practice. This requirement is intended to give new lawyers the opportunity to handle a significant litigation step in a case that will require the use of several practical skills. As noted above, the new lawyer is required to be *actively involved* in completing the required experiences. For example, instead of watching their mentor argue a motion in a case and discussing it afterwards, the new lawyer would be required to argue a motion on his or her own. If a new attorney is not actively practicing law, the NLTP Administrator will assist new lawyers in finding suitable experiences to satisfy the requirements as the practical experience criteria cannot be waived.

During its review, the subcommittee determined the need for a consent form allowing a mentor to establish a limited attorney-client relationship with their (new lawyer) mentee's pro bono client, if the mentor and mentee believe that it is in the best interests of the client AND if the client agrees. Subcommittee member Lesley Manley helpfully engaged her Jones Waldo colleague, Gary Sackett, who generously volunteered his time to develop the Limited Representation and Waiver Form that resolves these issues.

Additionally, the subcommittee added a clarification of Supreme Court Rule of Professional Practice 14-808(h), dealing with conflicts and confidentiality in "outside" mentoring relationships, to assist in resolving possible conflict, confidentiality, and malpractice issues when a new lawyer wants/needs to work on an actual matter with their mentor's assistance. An "outside" mentor or mentoring relationship means that the new lawyer and the mentor are completing the NLTP, but they are not employed by the same employer.

The subcommittee's changes to the mentoring plan were approved by the full Committee in December 2018 and by the Bar Commission in February 2019. The changes will be effective beginning with the July 2019 term. Because of this, every mentor who was approved before the July 2019 term will need to be trained on the new requirements. Therefore, the Committee has secured time during the Utah State Bar Summer Convention to hold a mentor training presentation discussing the new aspects of the model mentoring plan. The training will be held during the Saturday morning session on July 20, 2019, from 10:15–11:15 a.m. This training is open to anyone interested in hearing more about the changes to the model mentoring plan and the additional practical requirements, but it will also count as the mentor training required to remain an approved mentor in the NLTP.

The NLTP Committee would like to recognize the subcommittee members for their commitment to helping improve the NLTP: Sharon Donovan (Chair), Hon. Su Chon, Laura Rasmussen, R. Josh Player, Kayla Quam, and Lesley Manley. Most especially, the Committee extends its thanks to Sharon Donovan who commendably led the subcommittee in completing its task. The Committee also gives special thanks to Kayla Quam, who provided important feedback regarding the current program and was instrumental in drafting the subcommittee's suggested changes. Finally, the Committee would like to express tremendous gratitude to Lesley Manley and Gary Sackett for drafting the Limited Representation and Waiver Form that resolved a major roadblock to adding the practical experience requirement to the mentoring plan.

Why You Don't Want a Bucket List

by R. Steven Chambers

Lawyers, like most everyone else, often have bucket lists. You shouldn't have a bucket list. Here's why.

They're Linear.

By definition, a bucket list is a list of things to do, just like a shopping list is a list of things to buy. How exciting is checking off a shopping list? Soap, check. Lettuce, check. Aspirin, check. Similarly, a bucket list proceeds from one item to the next without a real, overarching goal, other than to finish the list. Life is meant to be more than a finite number of things you did or got.

They're Mostly Insignificant.

What's on the typical bucket list? Go skydiving. Climb Mt. Everest. Swim with dolphins. By and large, the standard bucket list can be completed if you have enough money. Is the world a better place if you summit Mt. Everest? Arguably, the world is worse off if you go. Have you seen pictures of the junk yard that base camp has become? Stay home and save the planet! More importantly, are *you* a better person if you climb Mt. Everest?

Your Desires Will Change Over Time.

Your bucket list at age twenty-five will be far different from your list at age fifty. At age twenty-five a person barely has any idea of what he or she wants out of life. How can a person be expected to make a definitive list of things that will be significant to accomplish before he or she dies? And if the list doesn't change in twenty-five years, there's a good argument to be made that the person hasn't grown a whit, bucket list or not.

Life Happens.

When I was in my junior year of college, my buddies and I made our own bucket lists (we didn't know that's what they were called). They were short and were the same: (1) graduate from college; (2) be ski bums in Colorado for a year; and (3) start our adult lives. Actually, number three was assumed – it never really made the list. All of us accomplished number one; none

of us even started number two. Why? Because life happened. One got married. Another got married and went to grad school and had a baby, all within a year. Another went to grad school and then got married.

We're all going to die without completing our bucket lists. Does that mean our lives have been wasted? Out of that group of three came three marriages that have survived forty-plus years each; a successful business started and sold; three successful careers; ten children who have grown into responsible adults; countless hours of volunteer service; and no criminal convictions. None of those things were on our lists and I would wager nothing like that makes the typical bucket list, but such are the things that make a life.

Lists Hold You Prisoner.

There's a delightful series of children's books called Frog and Toad. Frog and Toad are best friends. In one of the stories, Frog wakes up in the morning and sees his list of things to do: wake up; get dressed; have breakfast; play with Toad; etc. He starts on his list but while he and Toad are playing the list blows away. Without his list, Frog doesn't know what to do next, so he spends the rest of the day sitting morosely under a tree until Toad says, "It's late, Frog. I'm going home to dinner." Suddenly Frog remembers "have dinner" and "go to bed." Frog goes home happy because he can finish his list.

What's the point of making a list if you aren't going to follow it?

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But if you follow it, you're excluding all sorts of things, just like Frog because he couldn't remember what he had to do next. Even making a career-path list is restricting. It closes you off to other opportunities that might come along.

They're All About Me.

Bucket lists are the ultimate selfie: "Hey, look at ME!" They're meant to start conversations about you. "Well, I crossed off another thing on my bucket list," you casually say at a social function. The other person feels compelled to say something

like, "Oh, what's that?" BAM! There's your opening to pummel them about how fantastic you are. Bucket lists are this generation's version of having the neighbors over to show slides of your vacation.

Lists are useful. They help you through the day. They remind you of tasks that need completion. But the really important things in your life don't have to be written down because they are important. You know what they are; you don't need a list.

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<https://www.utahbar.org/member-services/nltp/#mentors>

Wellness and You

by John Hurst and Heather Thuet

Editor's note: Both Chief Justice Durrant and Bar leadership have embraced lawyer well-being as an important objective. The Bar Journal will periodically include articles addressing aspects of lawyer health and wellness.

The Litigation Section is concerned about the wellness of our legal community and is always looking for ways to help us improve our health. Exercise is a key component of an individual's wellness goals and the section has worked to sponsor healthy activities. The Department of Health and Human Services recently released its second edition of Physical Activity Guidelines for Americans. According to the report, adults should do at least 150 minutes a week of moderate aerobic activity (anything that gets your heart beating faster) or seventy-five minutes of vigorous intensity aerobic activity, or an equivalent combination of both. 2018 Physical Activity Guidelines Advisory Comm., U.S. Dep't of Health & Human Servs., 2018 Physical Activity Guidelines Advisory Committee Scientific Report, 8, 11 (2018). Adults should also do muscle strengthening activities on two or more days a week. *Id.* And as we get older, we should incorporate balance training into our exercise routines. *Id.* at 9.

Weekly yoga classes is an activity that the section is currently sponsoring in conjunction with Zimmerman Booher. Bailey

Swingle, the instructor, has taught yoga in Salt Lake City for six years after returning from yoga teacher training in India. She is passionate about yoga, having experienced first-hand the benefits of reducing anxiety and stress in her life. Regarding teaching yoga to lawyers, Bailey said:



I believe there are exponential benefits that are received by taking time out for yourself and slowing down, especially in an industry that tends to be very demanding. Yoga is widely known for reducing stress for a better quality of life. Twice a week the opportunity to practice is a great opportunity to improve oneself. Wednesday you can come and get a great work out, achieving more of the physical benefits of yoga, and Friday we slow it down and stretch everything out, most of the time

not even getting up off of the floor. Whether the class is physically challenging or restorative it always reminds you to focus on your breath, allowing you to leave a little more relaxed than when you showed up. It has been a great pleasure of mine to watch this group of people that come on a regular basis transform into a positive, all-inclusive, tight-knit community.

Everyone is welcome, and individuals of different physical levels and ages regularly participate. Bailey is always quick to remind

JOHN HURST is an appellate attorney with Zimmerman Booher.



HEATHER THUET is a shareholder with Christensen & Jensen.





Yoga Star Chart Winners – from left: Heather Thuett, Bailey Swingle (instructor), Nathalie Skibine, Kelly Madson, Steve Geary, and Alexa McCallum.

us that everything she says is a suggestion. If a move seems too intense, she encourages participants to do something else and suggests less intensive movements that may feel better. Safety is always key, and Bailey provides alternative moves if one has bad knees or a move is otherwise uncomfortable. In addition to regular yoga classes, Bailey sometimes teaches a beginner class that introduces basic poses and helps take away some of the mystery that some people feel about the activity.

Recently, the Litigation Section and Zimmerman Booher sponsored a star chart for yoga participants. During the first three months of this year, each participant put a star by their name after each class. Something as simple as a star, and the chance to win prizes, was a good motivator and we had good participation. In early April, the top three winners received new yoga mats. Everyone else was entered into a raffle of one ticket for every star for additional prizes. It was a fun competition that kept us active through the winter months. Future star chart competitions are being planned. The

Litigation Section is also sponsoring yoga at the upcoming Summer Convention in Park City. Join us Friday, July 19 at 7:30 am at the Grand Summit to start your day with movement and stretching, surrounded by the beautiful Wasatch Mountains.


In addition to yoga, the Litigation Section has sponsored weekly running groups and is looking to sponsor additional activities that are of interest to our community. Is there is a particular activity that you enjoy and would like to work with the section in promoting? Please let us know. A hiking group, aerobics, or biking are all potential activities. Jen Tomchak, the incoming president of the section, is planning to implement monthly wellness activities and fitness challenges during her tenure. Look forward to messages from the section about these monthly wellness activities.


If you would like to be added to the weekly yoga email list, or if you have ideas for additional activities, please contact John Hurst at jhurst@zbappeals.com.


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Serve Utah's Veterans

Back in the Spring of 2018, Sean Reyes and Brian Tarbet met with USB President, John Lund, and DVMA Director, Gary Harter, to form a partnership intended to support a new program, Utah@EASE. U@E is a pro bono legal referral program for veterans and servicemembers based upon honorable military service.

Reyes and Tarbet reached out to the principals in Utah's big firms seeking support. In 2018, the Utah Legislature passed and GOV signed a concurrent resolution (HCR13) recognizing U@E. USB made U@E a "signature" program thereby extending its professional liability insurance to U@E volunteer attorneys.

The parties agreed to a limited range of legal services in the partnership that include only civil matters: Military Rights, Property/Landlord, Creditor/Debtor, Consumer Fraud,



Naturalization/Immigration, Predatory Lending, Employment and Re-employment Rights, Wills/Powers of Attorney. Family Law, Personal Injury, and legal matters against the USA or a State are specifically excluded.

More than 100 veterans have been served since inception ten months ago. Nearly forty attorneys have volunteered. It's time to get involved. Look for Utah@EASE at the Summer Convention in Park City.

2019 Fall Forum Awards

The Board of Bar Commissioners is seeking nominations for the 2019 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.

Please submit your nomination for a 2019 Summer Convention Award no later than Friday, September 27, 2019. Use the Award Form located at www.utahbar.org/nomination-for-utah-state-bar-awards to propose your candidate in the following categories:

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

Mandatory Online Licensing

The annual Bar licensing renewal process has begun and can be done online only. An email containing the necessary steps to re-license online at <https://services.utahbar.org> was sent the week of June 3rd. **Online renewals and fees must be submitted by July 1 and will be late August 1. Your license will be suspended unless the online renewal is completed and payment received by September 1.** Upon completion of the online renewal process, you will receive a licensing confirmation email.

To receive support for your online licensing transaction, please contact us either by email to onlineservices@utahbar.org or, call 801-297-7021. Additional information on licensing policies, procedures, and guidelines can be found at <http://www.utahbar.org/licensing>.

Check Yes for Pro Bono!

The Pro Bono Commission of the Utah State Bar will be holding a recruitment event at the 2019 Summer Convention. Stop by the registration table to make sure you're signed up to receive occasional communication from the Pro Bono Commission about ongoing projects and enter to win a prize! Don't forget to get your "I checked yes for Pro Bono" sticker to show off your commitment to assisting less fortunate Utahns.



UTAH STATE BAR® 2019 Summer Convention Awards

During the Utah State Bar's 2019 Summer Convention in Park City, Utah
the following awards will be presented:



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Paul C. Burke
Lawyer of the Year



Patricia W. Christensen
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Hon. Paul Michael Warner
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Hon. Brooke C. Wells
Lifetime Service Award

Litigation Section
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Durham, Jones & Pinegar
FabianVanCott

Jones, Waldo, Holbrook & McDonough
Kaufman, Nichols & Kaufman, PLLC
Kipp & Christian
Kirtan & McConkie
Manning Curtis Bradshaw & Bednar
Parr Brown Gee & Loveless
Parsons Behle & Latimer
Randy S. Kester

Ray, Quinney & Nebeker
Richards Brandt Miller & Nelson
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And Justice for All Celebrates 20 Years of Service

"And Justice For All" (AJFA) raised more than \$450,000 in May as it celebrated its 20th year of operation. Since 1999, the organization has raised funds to support free and reduced-cost civil representation across the state.

At a special fundraiser breakfast, AJFA's staff honored four of the organizations who have significantly impacted the organization, namely: The Church of Jesus Christ of Latter-day Saints, the George S. and Dolores Doré Eccles Foundation, the Utah Bar Foundation, and the Utah State Bar.



Utah State Bar President Dickson Burton at the podium



John Baldwin, ED of the Utah State Bar with Robert Graham of the Eccles Foundation.

A representative from the Church accepted an award from AJFA and made a one-time gift of \$100,000 in support of AJFA's 2019 campaign. A representative from the Eccles Foundation accepted an award and presented AJFA's executive director, Kelly Striefel, with a \$50,000 special one-time gift.

"We are so grateful to our many supporters who understand the importance of legal aid in Utah," said Striefel. "For every dollar invested in civil legal aid, our community receives \$7.24 in social return. Legal aid family law programs not only provide over one million dollars in annual cost savings to Utah's court system, they help lessen demands on state welfare and social service organizations."



Ira Rubinfeld (left) and Lauren Scholnick (right) – seen here with Bar President Dickson Burton – were co-hosts of the AJFA event.

"and Justice for all"

Pro Bono Honor Roll

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

Bountiful Landlord–Tenant Debt Collection Calendar

Jon-David Jorgensen
Joseph Perkins

Community Legal Clinic – Ogden

Ali Barker
Jonny Benson
Craig Ebert
Chad McKay
Hollie Petersen
Francisco Roman
Gary Wilkinson

Community Legal Clinic – Salt Lake

Skyler Anderson
Jonny Benson
Dan Black
McKay Corbett
Craig Ebert
Katey Pepin
Leonor Perretta
Brian Rothschild
Paul Simmons
Kate Sundwall
Ian Wang
Mark Williams
Russell Yaune

Community Legal Clinic – Sugarhouse

Skyler Anderson
Brent Chipman
Sue Crismon
Sergio Garcia
Mel Moeinvairi
Reid Tateoka

Debtor's Legal Clinic

Michael Brown
Ellen Ostrow

Brian Rothschild
Paul Simmons
Jeff Trousdale
Brent Wamsley
Tami Gadd Willardson

Expugement Law Clinic

Matt Cloward
Grant Miller
Stephanie Miya
Andres Morelli

Family Justice Center

Steve Averett
Kate Barber
Elaine Cochran
Michael Harrison
Brandon Merrill
Samuel Poff
Babata Sonnenberg
Nancy Van Slooten

Family Law Clinic

Stewart Ralphs
Linda Smith
Kris Snow
Leilani Whitmer

Fifth District Guardianship Pro Se Calendar

Aaron Randall

Homeless Youth Legal Clinic

Victor Copeland
Jennifer Foresta
Jason Greene
Krystaly Koch
Nicole McBride
Cecilee Price-Huish
Lisa Marie Schull

Medical Legal Clinic

Stephanie Miya

Pro Se Debt Collection Calendar – Matheson

Jesse Davis
Rick Davis
Lauren DiFrancesco
Kimberly Hammond
Karra Porter
Brian Rothschild
Lauren Shurman
George Sutton
Francis Wikstrom

Pro Se Landlord–Tenant Calendar – Matheson

Marty Blaustein
Marcus Degen
Christopher M. Glauser
Heather Lester
Joshua Lucherini
Jack Nelson
Nicholas Stiles
Reid Tateoka
Michael Thomson
Matt Vanek
Nathan Williams

Rainbow Law Clinic

Allison Phillips Belnap
Jess Couser
Shane Dominguez
Russell Evans
John Hurst
Beth Jennings
Stewart Ralphs

Street Law Clinic

Devin Bybee
Dara Cohen
Dave Duncan
Karma French
Jennie Garner
Jeffrey Gittins
Cameron Platt

Clayton Preece
Brian Rothschild
Elliot Scruggs
Shane Smith
Richard Snow
Katy Steffey
Nick Stiles
Kristen Sweeney
Brian Tuttle

SUBA Talk to a Lawyer Clinic

Alan Boyack
Kimball Forbes
James Purcell
Lewis Reece
Marshall Witt

Timpanogos Legal Center

Randall Allen
Linda Barclay
Bryan R. Baron
Marca Tanner Brewington
Justin Caplin
Elaine Cochran
Emy Cordano
Rebekah-Anne Gebler
Mandy Larsen
Megan Mustoe
Scott Porter
Candace Reid
Zakia Richardson
Katie Secrest
Michael Winn

Tuesday Night Bar

Mark Andrus
Mike Black
Dani Cepernich
Cole Crowther
Bryce Dalton
T. Richard Davis
Bret Evans
Steve Glauser

Stephen Hale
Kerry Heard
Rosemary Hollinger
John Hurst
Adrienne Jack
Parker Jenkins
Braden Johnson
Patrick Johnson
Elise Walker Jones
Kurt London
Brad Lowe
David McKenzie
Ash McMurray
Nathanael Mitchell
Sean Mosman
Jonathan Paz
Luke Pepperman
Kyle Petersen
Rachel Phillipos
Andrew Roth
LaShel Shaw
George Sutton
Jeff Tuttle
Lucy Wasmund

Bruce Wycoff

Utah Legal Services, Pro Bono Case

Irshad Aadil
Anabel Alvarado
Cara Baldwin
Brandon Baxter
Jason Boren
Ashley Bown
Cleve Burns
Gage Crowther
Donald George
Rori Hendrix
Darrin Johns
Alyson Johnson
Jenny Jones
Dominique Kiahtipes
Andrew Kolter
Gretchen Lee
Joshua Lucherini
Thomas Luchs
Craig McArthur
Colton McKay

Nizhone Meza
Maureen Minson
Malone Molgard
Keil Myers
Aaron Pacini
Sidney Sandberg
Katherine Secrest
Christine Seminario
Laura Seusser
Ryan Valentine
Brad Voss
Jennie Wingad
Brent Wride

Veterans Legal Clinic

Tyler Ayres
Aaron Drake
Brent Huff
Thomas Kelley
Jonathan Rupp
Joseph Rupp
Kate Strand

Wills For Heroes

Tyler Ahlstrom
Elizabeth Apgood
Adam Balinski
Ryan Baxter
Jonathan Bench
Cleve Burns
Dave Ellsworth
Mallorie Goguen
Shelby Hughes
Jennifer Jackson
Peter Jay
Alyson Johnson
Thomas Kelley
Brandon Merrill
Nizhone Meza
Andres Morelli
Brad Rice
Marianne Schumann
Michael Squires
Karly Walton

MCLE Reminder – Odd Year Reporting Cycle

July 1, 2017–June 30, 2019

Active Status Lawyers complying in 2019 are required to complete a minimum of twenty-four hours of Utah approved CLE, which must include a minimum of three hours of accredited ethics. **One of the ethics hours must be in the area of professionalism and civility.** At least twelve hours must be completed by attending live in-person CLE.

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

Fees:

- \$15.00 filing fee – Certificate of Compliance (July 1, 2017 – June 30, 2019);
- \$100.00 late filing fee will be added for CLE hours completed after June 30, 2019; or
- Certificate of Compliance filed after July 31, 2019.

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

If a lawyer elects inactive status at the end of the licensing cycle (June 1–September 30) when his or her CLE reporting is due and elects to change back to active status within the first three months of the following licensing cycle, the lawyer will be required to complete the CLE requirement for the previous CLE reporting period before returning to active status.

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



Attorney Discipline

Discipline Process Information Office Update

What should you do if you receive a letter from Office of Professional Conduct explaining you have become the subject of a Bar complaint? Call Jeannine Timothy! Jeannine will answer all your questions about the disciplinary process. Jeannine is happy to be of service to you, so please call her.

801-257-5515 | DisciplineInfo@UtahBar.org



ADMONITION

On April 8, 2019, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

In summary:

The OPC received a non-sufficient funds (NSF) notification from a bank that an attorney's trust account had insufficient funds. The OPC sent two letters and a Notice of Informal Complaint (NOIC) to the attorney requesting an explanation for the deficiency. The attorney did not respond to the letters or the NOIC and no mail was returned. The attorney ultimately filed a late response explaining that the overdraft was caused by simple negligence and was cured quickly.

Mitigating Factors:

Personal or emotional problems.

ADMONITION

On March 20, 2019, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rules 1.15(a) (Safekeeping Property), 1.15(b) (Safekeeping Property), 1.15(c) (Safekeeping Property), and 5.3(a) (Responsibilities Regarding Nonlawyer Assistants) of the Rules

of Professional Conduct.

In summary:

Settlement funds associated with a personal injury matter were deposited into the trust account for the attorney's law firm. The firm wrote a check to their client, one of the plaintiffs in the personal injury case. However, when the client attempted to deposit the check, it was returned. Similarly, settlement funds associated with a different personal injury matter were deposited into the trust account for the attorney's law firm. Subsequently, the firm wrote a check to their client, one of the plaintiffs in the personal injury matter. However, when the client attempted to deposit the check that same day, it was returned.

Following the disbursement of fees associated with the second matter, the client was entitled to receive the remaining portion of the settlement amount. Although the attorney issued a check to the client for that amount, the check was never presented for payment. Rather than continue to hold these funds in trust, the attorney chose to gradually transfer the funds from the trust account into the law firm's operating account.

Aggravating Factors:

Multiple offenses; substantial experience in the practice of law

Mitigating Factors:

Absence of a prior record of discipline; absence of a dishonest

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September 18, 2019 | 9:00 am – 3:45 pm.

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or selfish motive; timely good faith effort to make restitution or to rectify the consequences of the misconduct involved; and physical disability.

INTERIM SUSPENSION

On April 22, 2019, the Honorable Michael D. Direda, Second Judicial District Court, entered an Order of Interim Suspension, pursuant to Rule 14-519 of the Rules of Lawyer Discipline and Disability, against Tony B. Miles, pending resolution of the disciplinary matter against him.

In summary:

Mr. Miles was placed on interim suspension based upon his criminal convictions for two counts of Possession of a Controlled Substance Within a Correction Facility, a Third Degree Felony; one count of Possession or Use of a Controlled Substance, a Class A Misdemeanor; and two counts of Possession or Use of a Controlled Substance, a Third Degree Felony.

RESIGNATION WITH DISCIPLINE PENDING

On March 27, 2019, the Utah Supreme Court entered an Order Accepting Resignation with Discipline Pending concerning F. Chad Copier, for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.15(a) (Safekeeping Property), 1.15(c) (Safekeeping Property), 1.16(d) (Declining or Terminating Representation), and 8.4(c) (Misconduct) of the Rules of Professional Conduct.

In summary:

A client retained Mr. Copier for patent application work on two devices. Mr. Copier met with the client and accepted a retainer payment that was deposited directly into Mr. Copier's savings account. Mr. Copier did not have a trust account and had not earned the advance fee when he deposited it into his savings account. The client sent text messages and emails to Mr. Copier requesting status updates but Mr. Copier provided little or no information. After being unable to contact Mr. Copier for some time, the client located Mr. Copier's home address and eventually was able to meet with him. Mr. Copier informed the client the work was almost finished. Later, Mr. Copier informed the client his computer had crashed and that he had lost the client's contact information but that the work would be completed within a few days. Mr. Copier did not provide any draft applications or any other work that he stated he performed for the client. Mr. Copier never filed any provisional patent applications for the client's case. The client terminated Mr. Copier's representation and requested a refund of the unused portion of the retainer. At the time of the termination, Mr. Copier no longer had the fees the client had paid him. Mr. Copier did not respond to the termination letter.

A second client retained Mr. Copier to write three provisional patents for his company. The client paid a retainer but Mr. Copier did not deposit the funds into a trust account. Mr. Copier exchanged emails and had telephone conversations with the client regarding what was needed for the patents and he began

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work on the patent applications. Later, Mr. Copier informed the client that he had almost completed work on the applications and hoped to have the first one sent to the client within a few days. The client attempted to contact Mr. Copier after that but Mr. Copier did not respond. The client did not receive any work or proof of any work from Mr. Copier. The client terminated Mr. Copier's representation and requested a refund of the unused portion of the retainer. The client requested a stop payment and received the retainer money back from his bank.

SUSPENSION

On April 8, 2019, the Honorable James T. Blanch, Third Judicial District, entered an Order of Suspension against Amy L. Butters, suspending her license to practice law for a period of six months and one day.

In summary:

On August 8, 2017, the Court entered an Order of Discipline: Probation against Ms. Butters. Ms. Butters was given a twelve-month probation which became effective the date the Order was signed. The Order stated that if the OPC received a complaint during the period of this probation involving legal services rendered by her during the period of the probation, the OPC had the discretion to petition the court for consideration of

the complaint as a possible violation of the probation.

An informal complaint came into the OPC's office during the probation period from a client of Ms. Butters indicating that she hired Ms. Butters to file a bankruptcy petition. The client stated that Ms. Butters did not meet with her to advise her before the creditor's meeting. The client provided documents to Ms. Butters but when they were requested at the creditor's meeting, they had not been submitted. The client sent the documents to Ms. Butters a second time but then later received notice that her bankruptcy was going to be dismissed because Ms. Butters had still not submitted the documents. Although the bankruptcy was eventually discharged, Ms. Butters did not perform all the duties outlined in their fee agreement.

During the probation period the OPC received a "self-report" of misconduct from Ms. Butters. Ms. Butters provided a stipulation confirming an agreement with the Bankruptcy Trustee that she would be sanctioned by the Bankruptcy Court for various acts of misconduct.

By engaging in misconduct in the Bankruptcy Court and because the OPC received another informal complaint regarding Ms. Butters' conduct, Ms. Butters breached the requirements of her probation.

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You Asked, We Listened: A Seat at the Table

by Victoria Finlinson

The Utah Young Lawyers' Division (YLD) is pleased to announce its latest initiative, "A Seat at the Table." A Seat at the Table is the culmination of both formal and informal surveys of our members that have made clear what young attorneys in Utah want: opportunities to serve their communities in a meaningful way. With that goal in mind, YLD is committed to encouraging young attorneys to get involved in their communities by running for office, serving on local, state and nonprofit boards and commissions, and advocating on issues of importance to young lawyers and the legal profession at large through this new initiative.

Specifically, A Seat at the Table will focus on three primary aspects of civic engagement of interest to young lawyers:

- (1) Running for office;
- (2) Pursuing an appointment/judgeship; and
- (3) Non-Profits/Community involvement.

Running for Office

YLD knows it represents the next generation of dynamic, innovative leaders and that Utah could only benefit from having such individuals in office. As such, A Seat at the Table seeks to provide the tools necessary for young lawyers to organize and mount a successful campaign. In furtherance of this goal, YLD will be hosting various events throughout the year, including a "Running for Office 101" clinic, debate watch parties, CLEs, and networking events with politicians who can shed light on the process overall and the benefits to serving in public office.

Pursuing an Appointment/Judgeship

Whether you envision yourself sitting behind the bench as a member of the judiciary or being selected to join a commission, A Seat at the Table will provide resources designed to provide you with the information and skills to reach these goals. Aside from

hosting a database with up-to-date appointment/judgeship opportunities, YLD plans on hosting a social for judges and young lawyers, panels, and CLEs relevant to pursuing a career on the bench.

Non-Profits/Community Involvement

Young lawyers are smart, hungry, and perfectly poised for making a difference in their local community, state, and country. To motivate and assist young lawyers to get involved with non-profit organizations and other community initiatives, YLD will keep young lawyers apprised of open positions within non-profits and organize events to learn from and socialize with those whom have already made the leap to non-profit work.

YLD is confident that, via this new initiative, members will have all the resources they need to overcome the most common hurdle facing young lawyers when deciding whether to pursue civic service – uncertainty.

To learn more about A Seat at the Table, please join YLD at its kick-off CLE on Saturday, July 20th at 11:30 a.m., "A Seat at the Table: A Discussion on Civic Engagement." This CLE will include a panel of impressive examples from all three aspects of A Seat at the Table that will share their journeys and tips on how you too can make a meaningful difference in your community.

VICTORIA FINLINSON is an associate attorney at Clyde Snow & Sessions. Her practice focuses on labor and employment, as well as general civil litigation. She will serve as the Utah Young Lawyer Division's President for the 2019–2020 term, beginning in July.



2019 Paralegal of the Year Award: Congratulations Julie Emery!

by Greg Wayment

On Thursday, May 16, 2019, the Paralegal Division of the Utah State Bar and the Utah Paralegal Association held the Annual Paralegal Day Luncheon at the Marriott in downtown Salt Lake City. The Honorable Dustin B. Pead was the keynote speaker and talked about current immigration issues. The division would like to heartily thank all those who organized and hosted this event.

One of the highlights of the luncheon is the opportunity to recognize the individuals who have achieved their national certification through NALA. This year there were seven individuals recognized: Cindy Disraeli, Jenny McBride, Tonya Wright, Lauren Pump, Peter Vanderhoof, Meredith Farrell, and Rheane Swenson. Well done!

Paralegal Day is also the day to recognize the Distinguished Paralegal of the Year. The purpose of this award is to honor a Utah paralegal who, over a long and distinguished career, has by his or her ethical and personal conduct, commitment, and activities rendered extraordinary contributions and service to the paralegal profession.

This year we received a number of outstanding nominations and are pleased to announce that the winner of the 2019 Distinguished Paralegal of the Year award is Julie Emery. Julie is a Utah native from Holladay. She graduated from Bingham High School and then went on to study at the University of Utah.

Julie started working as a paralegal in 1991 and has worked in many capacities, including owning her own company (from 1999 through 2005) called Litigation Resources. She has also worked

at Snow Christensen, Chapman and Cutler, and at the firm she is currently with, Parsons Behle.

One of the longest cases she has worked on was a long-term coal contract case that lasted nine years. For Julie, "It was satisfying to work on that case from the day the complaint was filed until resolution nine years later." The most high-profile case she has worked on was the Olympic bribery trial.

She currently works primarily in commercial litigation but has also worked in the areas of product liability defense, insurer bad faith defense, and

personal injury defense.

Julie was the chair of the Paralegal Division from 2016 through 2017 and has been the paralegal representative on the Bar Commission. She also has been very active the last couple of years serving as a committee member on the Utah Supreme Court Licensed Paralegal Practitioner (LPP) Steering Committee. When asked to describe one professional goal, she said, "To facilitate the new LPP profession. I would love to help the newly licensed LPP's get established and succeed."

In her spare time, Julie likes to work with stained glass, paint,



and hike and loves to play on the water (including boating, swimming, kayaking, and paddle boarding). She has also been known to play a mean hand of cards and tell a good joke.

Julie enjoys reading biographies and especially appreciates works written by Paul Johnson. Some of her favorites include the series, *Socrates: A Man for Our Times*, *Napoleon: A Life*, and *Churchill*. She says of Johnson's books, "They are succinct and still give you captivating information about the subjects."

Candace Gleed, the current chair of the Paralegal Division, said of Julie:

I first met Julie in 2016 when I joined the Board as Education Chair. I am so grateful for the many things I learned working with Julie including the friendship and mentoring I continue to enjoy to this day. She has proved to be an invaluable resource both professionally and personally. I can think of no one more deserving of this award for her professional example and the countless volunteer hours aimed at advancing the paralegal profession.

Judge Himonas said of Julie:

About three years ago, the Utah Supreme Court authorized the creation of the Licensed Paralegal Practitioner (LPP) profession. The LPP program will allow licensed paralegals to provide legal advice in areas of family law, wrongful detainer/eviction, and debt collection on their own. Utah is the second state in the United States to adopt this program

A number of people have contributed to the LPP program. But none, and I mean none, have been more instrumental in its launch. As a member of the task force implementing the LPP program, Julie has led our survey and information efforts and has been involved in nearly aspect of the program preparation. Thanks to her selfless giving of her time and talent, we are expecting our first cohort of LPPs this fall.

Julianne Blanch said of Julie:

Julie is an all-around top-notch paralegal. I have

not given her any assignment she cannot do, and some of them have been atypical for litigation. She is not afraid to offer a more logical or cost-effective way of doing something. Even though I've been working with her for years, we just went to trial together for the first time earlier this year, and was it fun to try a case with her! As I expected, she was on top of everything. She dealt well with clients and witnesses. She quickly fixed the inevitable glitches with the courtroom's technology setup. She offered helpful input on questions to ask witnesses. And after that, we each got six bottles of nice alcohol from the client – a great end to a great experience with Julie.

And finally John Lund's comments include:

Julie Emery is, hands down, the most capable, hardworking and professional person I know. Yes, that is person, not paralegal. When Julie is on the team, she raises the bar for everyone. She has trained many young lawyers to become more effective, organized and professional in their own right. Her dedication to her work, to her co-workers and to our clients in without equal. There have been many evenings, over the course of the decade that Julie and I have worked together, when I have done final reviews of pleadings or discovery productions and then headed home for dinner while Julie has stayed into the night to make sure everything gets filed and serve appropriately. I trust her completely to handle very substantial projects with care, patience and thoroughness. Honestly, whatever success I've enjoyed in my practice is largely explained by having Julie's able support. She builds rapport with clients, she keeps track of deadlines, she makes sure I am prepared, she does it all.

In recognition of Julie's dedication to the paralegal profession including her leadership of the Paralegal Division, mentoring and training, and her role with the LLP program, we are honored to recognize her as Paralegal of the Year. Congratulations, Julie Emery!

The Paralegal Division would also like to especially thank Judge Todd Shaughnesy, J.D. Kesler, Steve Kelson, and Izamar Espinoza for their work on the Paralegal of the Year Selection Committee.



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 18–20, 2019 up to 10 hrs. CLE, including up to 4 hrs. Ethics and up to 3 hrs. Prof/Civ



Summer Convention in Park City. Join us for hometown adventures, innovative CLE, and more! Keynote speakers include Wolf Blitzer, CNN's lead political anchor; Andrew McKenna, author of *Sheer Madness: From Federal Prosecutor to Federal Prisoner*; and Antonia Hernandez, social justice advocate for more than forty years. Twenty-three CLE tracks to choose from. To register online visit: www.utahbar.org/cle/utah-bar-conventions/.

August 16, 2019 | 8:00 am – 4:00 pm

Mangrum & Benson on Expert Testimony. Save the date! Registration will be available soon.

August 28, 2019 | 8:30 am – 4:30 pm

Innovation in Practice: the 2nd Annual Practice Management Symposium. Save the date! Registration will open soon.

September 18, 2019 | 9:00 am – 3:45 pm

5 hrs. Ethics, 1 hr. Prof/Civ

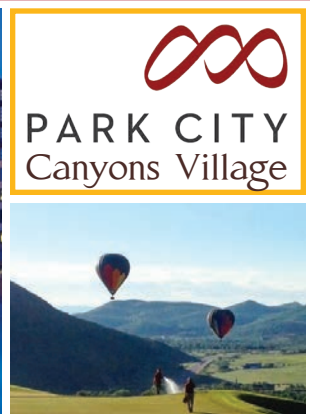
OPC Ethics School. Register at: https://services.utahbar.org/Events/Event-Info?sessionaltcd=20_9016. \$245 on or before August 30, \$270 after.

October 11, 2019 | 9:00 am – 3:00 pm

Annual ADR Academy. Tentative date. More details to follow.

November 15, 2019 | 8:30 am – 5:00 pm

Fall Forum. Save the date! Little America Hotel, 500 South Main St., Salt Lake City, UT 84101. More information as it becomes available. Please save the date.



**Online Registration
available until July 11**

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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.

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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.

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.

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Certificate of Compliance

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

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. Returned checks will be subject to a \$20 charge.

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