

TAB
1

Executive Committee Meeting and Bar Commission Meeting

2019 – 2020 Schedule

Executive Committee Meeting	Bar Commission Meeting
Tuesday, August 6, 2019 12:00 p.m. <i>Location: Law & Justice Center and via Videoconference</i>	Friday, August 16, 2019 12:00 p.m. Commission Retreat Saturday, August 17, 2018 9:00 a.m. Commission Meeting <i>Location: TBD</i>
Friday, September 27, 2019 12:00 p.m. <i>Location: Law & Justice Center and via Videoconference</i>	Friday, October 4, 2019 9:00 a.m. <i>Location: TBD</i>
Friday, November 1, 2019 12:00 p.m. <i>Location: Law & Justice Center and via Videoconference</i>	Friday, November 8, 2019 9:00 a.m. <i>Location: Law & Justice Center</i>
Friday, December 13, 2019 12:00 p.m. <i>Location: Law & Justice Center and via Videoconference</i>	Friday, December 20, 2019 9:00 a.m. <i>Location: Law & Justice Center</i>
Friday, January 17, 2020 12:00 p.m. <i>Location: Law & Justice Center and via Videoconference</i>	Friday, January 24, 2020 9:00 a.m. <i>Location: Law & Justice Center</i>
Friday, March 6, 2020 12:00 p.m. <i>Location: Law & Justice Center and via Videoconference</i>	Thursday, March 12, 2020 1:00 p.m. <i>Location: Spring Convention - St. George, Utah</i>
Friday, April 10, 2020 12:00 p.m. <i>Location: Law & Justice Center and via Videoconference</i>	Friday, April 17, 2020 9:00 a.m. <i>Location: TBD</i>
Friday, May 29, 2020 12:00 p.m. <i>Location: Law & Justice Center and via Videoconference</i>	Friday, June 5, 2020 9:00 a.m. <i>Location: Law & Justice Center (Past Presidents and 50-year Pin Recipients)</i>
Friday, July 10, 2020 12:00 p.m. <i>Location: Law & Justice Center and via Videoconference</i>	Thursday, July 16, 2020 9:00 a.m. <i>Location: Park City, Utah</i>

TAB
2

Bar Implementation of Recommendations of Joint Well-Being Committee Report

The Court's Committee on Lawyer and Judge Well-Being has issued its report to the Court, which has adopted recommendations on dealing with adverse conditions in the practice and the need for actions to improve the emotional, psychological and mental well-being of lawyers. The Bar has already also contributed \$50,000 to hire a part-time Executive Director to further the objectives and work of the Well-being Committee.

Recommendations for Bar Consideration include:

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

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

Action Taken.

In addition to the events at the 2018 Fall Forum, the 2019 Spring Bar Convention included an afternoon plenary session on well-being presented by Justice Paige Petersen, Dr. Kim Free, Dr. Matt Thiese and Martha Knudson. The Bar has approached the Court's MCLE Board and asked them to consider including well-being as either a stand along requirement for CLE hours or to be permitted in the professionalism/civility required hours.

Planned Action.

The 2019 Summer Convention will include a plenary speaker addressing addiction and recovery and a breakout session with Justice Petersen, Dr. Free, Dr. Thiese and Martha Knudson on the "Movement to Improve Attorney Well-Being in the Utah Legal Profession." The Bar will continue to stress the need for well-being seminars and is hopeful that the Court will permit well-being to qualify for CLE required hours.

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

There is controversy regarding whether bar admission agencies should eliminate inquiries about applicants' mental health as part of fitness evaluations for licensure. Some argue that those inquiries discourage people in need of help from seeking it. Others contend

that this information is necessary to evaluate the risk applicants might pose to the public. In 2015, the ABA adopted a resolution that such inquiries should be more narrowly focused “on conduct or behavior that impairs an applicant’s ability to practice law in a competent, ethical, and professional manner.” We recommend evaluating current admission inquiries to ensure they closely focus on such conduct or behavior rather than more general diagnosis or treatment history, as appropriate.

Action Taken.

The Admissions Application has been amended to focus on conduct and illegal activities rather than simply asking about mental health. It does ask about whether an applicant has conducted him or herself “in such a manner as to endanger the health or safety of” him or herself or others (like suicide or reckless driving or substance abuse) and asks if an applicant has a current condition or impairment which affects his or her conduct “that has not been or is not currently being treated effectively or for which the treatment is instable” and also the existence of “other incidents, issues or behaviors” bearing on an applicant’s character or fitness for admission to the Bar, including excessive alcohol use or illegal activities. The Admissions Committee believes these questions are appropriate to evaluate an applicant’s required character and fitness to practice and seeks additional information to assure that issues are being dealt with and are not continuing without professional or other help.

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

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

Action Taken.

The Bar Commission contributed \$50,000 for the Committee to hire an expert from the University of Utah to conduct the study. The study is ongoing.

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

These studies will measure changes from the baseline and evaluate where well-being has improved or worsened, which efforts are working, which efforts are not working, and what specific challenges Utah lawyers continue to face. This information will ensure that we continue to improve our efforts to increase lawyer well-being in an evidence-based manner. These studies will be confidential and scientifically valid. Because there will be a financial cost for this, we recommend coordinating with similar studies of judges and law students, if possible, to share costs.

Planned Action.

Further action by the Bar will depend on the results of the initial study and the determination then of what resources are available to contribute for additional efforts.

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

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

Planned Action.

As addressed above, the Bar CLE Department will work to include well-being into its regular CLE offerings and convention planning depending on the Courts approval of credit hours.

F. Consider creating “best practice” model policies.

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

Planned Action.

The Bar will need to consider the issue of “best practice models” with the Committee and determine the best means to incorporate those ideals into CLE and general education to Bar members through marketing and events.

Creating a Well-Being Movement in the Utah Legal Community

Report and Recommendations from **The Utah Task Force on Lawyer and Judge Well-Being**

February 2019



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Introduction: A Call to Action

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

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

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

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

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

- (1) identifying stakeholders and the role each of us can play in reducing the level of toxicity in the legal profession;
- (2) eliminating the stigma associated with help-seeking behaviors;

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

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

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

⁴ *Id.* at 35.

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

(3) emphasizing that well-being is an indispensable part of a lawyer's duty of competence;

(4) educating lawyers, judges, law schools, and law students on lawyer well-being issues; and

(5) taking small, incremental steps to change how law is practiced and how lawyers are regulated to instill greater well-being in the profession.

The National Task Force issued a call to action, challenging leaders in the legal profession to "get serious" about the well-being of lawyers. The Utah Supreme Court and the Utah State Bar have accepted the challenge. Together, we have established the Utah Task Force on Lawyer and Judge Well-Being to create a well-being movement in the Utah legal community.

Task Force Chairs

Justice Paige Petersen
Dickson Burton

Chief Staff

Kim Free, PhD

Staff Attorney

Elizabeth Wright

Committee Members

Wendy Archibald
Barbara Dickey
Robert Denny
Cathy Dupont
Dr. Valerie Hale
Hon. Kim Hornak
Hon. Elizabeth Hruby-Mills
Brent Kelsey
Martha Knudson
Cassie Medura
Brooke Millard
Andrew Morse
Chris Newbold
James Sorenson
Cara Tangero

Consultants

Rick Schwermer.
John Baldwin

The Utah Task Force on Lawyer and Judge Well-Being

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

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

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

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

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

The Problem⁶

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

problem drinking - 21–36%

depression - 28%

anxiety - 19%

elevated stress - 23%

work addiction - 25%

suicide

sleep deprivation

work-life conflict

avoid seeking help

job dissatisfaction and ambivalence

attrition

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

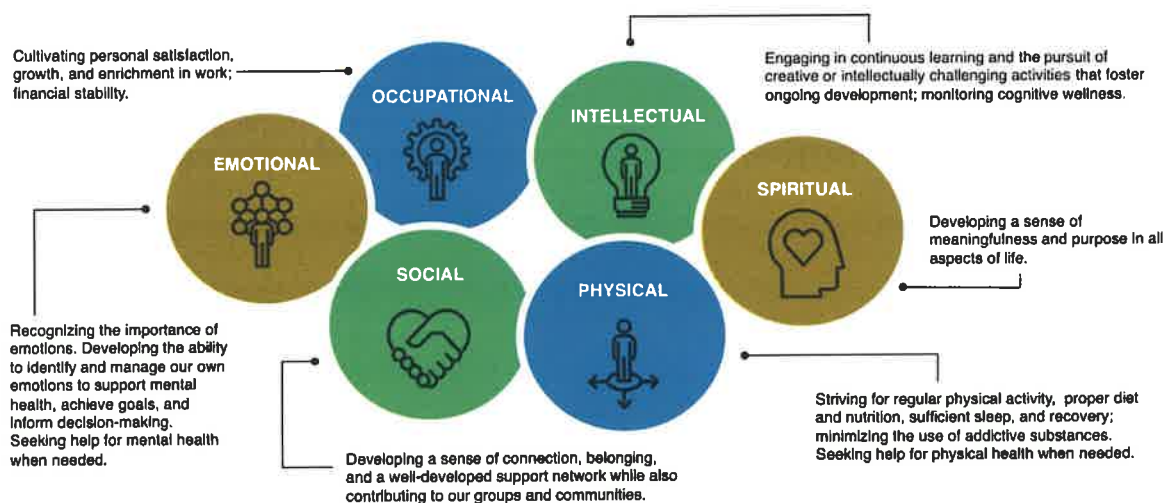
What is Well-Being?

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

- **Emotional:** Recognizing the importance of emotions; developing the ability to identify and manage our own emotions to support mental health, achieve goals, and inform our decision-making; seeking help for mental health when needed.
- **Occupational:** Cultivating personal satisfaction, growth, and enrichment in our work; obtaining financial stability.
- **Intellectual:** Engaging in continuous learning and the pursuit of creative or intellectually challenging activities that foster ongoing development; monitoring cognitive wellness.
- **Spiritual:** Developing a sense of meaning and purpose in one’s life.
- **Physical:** Striving for regular physical activity, proper diet and nutrition, sufficient sleep, and recovery; minimizing the use of addictive substances; seeking help for physical health when needed.
- **Social:** Developing a sense of connection, belonging, and a well-developed support network while also contributing to our groups and communities.

Defining Lawyer Well-Being

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



THE PATH TO LAWYER WELL-BEING 9.

⁷ THE PATH TO LAWYER WELL-BEING 9.

The Case for Well-Being

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

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

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

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

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

⁹ UTAH SUPREME COURT RULES OF PROF'L CONDUCT 1.1 (2019).

¹⁰ THE PATH TO LAWYER WELL-BEING 8–9.

¹¹ *Id.* at 8.

How Do We Begin?

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

- Judges
- Lawyers and Legal Employers
- Regulators
- Utah State Bar
- Law Schools

Recommendations for Judges

1. Communicate that well-being is a priority. We encourage judges and other leaders in the judicial branch to communicate the importance of well-being whenever possible and in multiple media. This can be done not only during presentations and speeches or in written articles, but more informally in judges' interactions with lawyers and other judges in and outside of court. We note that these efforts are already underway. At the 2018 Utah State Bar Summer Convention in Sun Valley, Idaho, Chief Justice Matthew Durrant focused on the importance of lawyer well-being in his address to the convention. And as co-chair of this Task Force, Justice Petersen has spoken about well-being to incoming law students at the University of Utah College of Law during orientation week, to judges at the 2018 annual judicial conference, to lawyers at the 2018 Utah State Bar Fall Forum, to firm leaders/managing partners at a Bar-sponsored breakfast for leaders of large law firms, and to women lawyers at the 2019 Banter With the Bench event.
2. Develop high quality training on well-being for new judge orientation, the annual judicial conference, and annual bench-level conferences. Well-being education should be integrated into new judge training in order to prepare new judges for the challenges and stressors they will face and provide them with tools to handle those challenges as effectively as possible. High quality well-being education should also be included at the judicial conference and bench-level conferences. Topic ideas can be found in Appendix B to the National Task Force Report.
3. Update policies regarding impaired judges and educate judges about those policies. The courts currently have policies and procedures for impaired judges. These policies should be reviewed and modified as necessary to reflect the current understanding of behavioral and mental health issues. These policies and procedures should be communicated to judges and presiding judges through educational materials, trainings, and bench meetings.
4. Reduce the stigma attached to substance abuse and mental health disorders and encourage help-seeking behavior. Train presiding judges to identify mental health and substance use disorders amongst judges, and eliminate the stigma associated with mental health and substance use disorders. Encourage presiding judges to convey an attitude of support. Include this role in presiding judge education.

Recommendations for Lawyers and Legal Employers

1. Educate law firms on how to form a well-being committee. We will conduct in-person meetings with a number of local law firms, yet to be determined. We will communicate why it is in a firm's interest to prioritize lawyer well-being, including that lawyers who are well balanced mentally, physically, and emotionally are more successful in their performance and better stewards of the practice of law. We will guide any interested law firm in establishing its own internal well-being committee.
2. Assist firms in establishing policies and practices to support lawyer well-being. We suggest using the Lawyer Well-Being Tool Kit as a guide when speaking to firms/partners/boards.¹²

¹² See Appendix B of THE PATH TO LAWYER WELL-BEING.

Recommendations for Regulators

“Regulators” are broadly defined by the ABA as including the highest court in each state and all stakeholders who assist that court in regulating the practice of law.¹³ This “includes lawyers and staff in regulatory offices; volunteer lawyer and non-lawyer committee, board, and commission members; and professional liability lawyers who advise law firms and represent lawyers in the regulatory process.”¹⁴ In Utah, “regulators” include the Utah Supreme Court, the Utah State Bar, the Office of Professional Conduct, the Committee on Ethics and Discipline of the Supreme Court, the Supreme Court’s Advisory Committee on Continuing Legal Education, the Utah State Bar’s Admissions Committee, and the Utah State Bar’s Character and Fitness Committee.

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

1. Revise rules as needed to prioritize lawyer well-being. We recommend evaluating relevant rules to prioritize rehabilitation over punishment where appropriate. This would include evaluating the rules governing Lawyer Discipline and Disability and any other relevant rules and considering alternatives to discipline such as diversion programs. The ABA has recognized that to accomplish other professional objectives, the profession must first have healthy, competent lawyers.¹⁵ Healthiness, competency, and contentedness stem from effective rehabilitation. Amendments that prioritize rehabilitation over punishment will promote lawyer well-being, provide a healthier, more competent bar, and will ultimately protect clients.
2. Evaluate amending the rules of professional responsibility to endorse well-being as part of a lawyer’s duty of competence. Lawyers owe a duty of competence to their clients.¹⁶ “Competent” representation is defined as requiring “the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”¹⁷ We should study amending applicable rules to include well-being as part of a lawyer’s duty of competence. In the event of such an amendment, the intention would not be for lawyers to be punished for failing to satisfy the well-being requirement. Instead, enforcement of this provision would proceed only in the case of actionable misconduct

¹³ Resolution 105, AMERICAN BAR ASSOCIATION (Feb. 5, 2018), https://www.americanbar.org/news/reporter_resources/midyear-meeting-2018/house-of-delegates-resolutions/105/.

¹⁴ THE PATH TO LAWYER WELL-BEING 25.

¹⁵ *Id.*

¹⁶ MODEL RULES OF PROF’L CONDUCT r. 1.1 (AM. BAR ASS’N 2018), https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents/.

¹⁷ *Id.*

in client representation or in connection with disability proceedings.¹⁸ The intent of this proposed modification is to “remind lawyers that their mental and physical health impacts clients and the administration of justice.”¹⁹

3. Expand continuing education curriculum to include well-being topics. Regulators should evaluate expanding continuing education curriculum to include well-being topics. We should consider whether this should take the form of a required well-being hour of credit per reporting period, or simply granting CLE credit for this type of programming. In 2017, the ABA proposed a new rule that would require “lawyers to earn at least one credit hour every three years of CLE programming that addresses the prevention, detection, and/or treatment of ‘mental health and substance use disorders.’”²⁰ Topic ideas can be found in Appendix B to the National Task Force Report. We note that this effort is already underway: for example, at the 2018 Utah State Bar Fall Forum, the MCLE Board granted CLE credit for well-being-related programming, including a plenary session addressing well-being topics and a day-long track of well-being-related sessions.
4. Re-evaluate bar application inquiries about mental health history. There is controversy regarding whether bar admission agencies should eliminate inquiries about applicants’ mental health as part of fitness evaluations for licensure. Some argue that those inquiries discourage people in need of help from seeking it. Others contend that this information is necessary to evaluate the risk applicants might pose to the public. In 2015, the ABA adopted a resolution that such inquiries should be more narrowly focused “on conduct or behavior that impairs an applicant’s ability to practice law in a competent, ethical, and professional manner.”²¹ We recommend evaluating current admission inquiries to ensure they closely focus on such conduct or behavior rather than more general diagnosis or treatment history, as appropriate.

¹⁸ THE PATH TO LAWYER WELL-BEING 26.

¹⁹ *Id.*

²⁰ *Id.* (citing RULES OF THE STATE BAR OF CAL., Title 2, Div. 4, R. 2.72 (2017)).

²¹ AM. BAR ASS’N RESOL. 102 (August 2015).

Recommendations for the Utah State Bar

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

1. Sponsor a study to determine Utah lawyers' well-being baseline. Commission a scientific study of Utah lawyers to measure well-being, including stress, depression, anxiety, substance abuse, and attitudes toward seeking mental health and substance abuse treatment. The study will be confidential and scientifically valid. Because there will be a financial cost to this, we recommend coordinating with similar studies of law students, if possible, to share costs.
2. Create a framework for future studies at regular intervals. These studies will measure changes from the baseline and evaluate where well-being has improved or worsened, which efforts are working, which efforts are not working, and what specific challenges Utah lawyers continue to face. This information will ensure that we continue to improve our efforts to increase lawyer well-being in an evidence-based manner. These studies will be confidential and scientifically valid. Because there will be a financial cost for this, we recommend coordinating with similar studies of law students, if possible, to share costs.
3. Sponsor high-quality CLE programming on well-being-related topics. Develop and gather existing educational programming on well-being-related topics. Bar leadership should adopt a goal of providing at least one well-being-related educational opportunity at the Spring and Summer Conventions and the Fall Forum, and at other Bar-sponsored events where appropriate and possible. As noted above, these efforts have already begun: the 2018 Fall Forum included a plenary session addressing well-being and a day-long track of sessions filled with well-being-related topics. These sessions were full and well-received. The Bar has planned additional well-being-related programming for its 2019 events and conventions.
4. Consider creating "best practice" model policies. The National Task Force recommends that state bar associations develop "best practice" model policies for legal employers in areas that affect well-being, such as: responding to lawyers in distress, responding to lawyers with substance abuse problems, diversity and inclusion, mentoring, work-life balance, etc.²² We should assess whether any such policies are already being developed (for example, by the Utah Center for Legal Inclusion), and if not, whether this is something the Bar would want to undertake.

²² THE PATH TO LAWYER WELL-BEING 41.

Recommendations for Law Schools

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

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

The strategies they have in common include:

- disseminating information about University and community resources (Wellness Center; Counseling Center; OEO; Title IX Office; Center for Sexual Assault; etc.);
- working with Career Services to provide more information to students about non-law firm and other non-traditional employment opportunities; and
- actively encouraging employers to focus on critical professional skills that are not reflected in grades.

Additional strategies at the University of Utah College of Law include:

- mindfulness/ meditation sessions (Mindful Mondays);

- a new spring upper-division course titled Mindful Lawyering taught by professor Cliff Rosky (students will complete pre- and post-course empirically validated assessments that will measure stress, well-being, and mindfulness. Professor Rosky is willing to share his findings with the committee);
- mandatory stress management sessions for first-year students; and
- therapy dogs during exams.

Additional strategies at Brigham Young University Law include:

- leadership training – communicating to students that a law degree is a leadership degree through a variety of leadership courses and newly created leadership fellowships;
 - professional identity formation – based on Neil Hamilton’s book “Road Map,” first-year curriculum includes weekly classes on the development of twenty professional competencies. Five of those competencies are reflected in students’ grade point averages. Other competencies include trustworthiness, good judgment, problem solving, work ethic, and interpersonal and organizational skills;
 - training all faculty and employees on this approach;
 - hiring a counselor charged, in part, with developing a more robust well-being program; and
 - instituting a Wednesday Forum, which focuses on innovative changes in legal practice that broaden the range of career alternatives for students.
4. Create a new student organization to promote student well-being and/or a student well-being committee. The group would: a) sponsor well-being-related activities that would be student-led and student-driven; b) sponsor a series of presentations on student well-being (stress management, physical health, resiliency training) by either the student well-being group or by the law school; and c) coordinate with the Student Counseling Center to have an on-site counselor for a portion of the week (subject to budgetary approval).
 5. Continue developing peer-to-peer mentoring programs. Both schools have mentoring programs that pair incoming first-year students with either second or third-year students. The law schools will continue to train the mentors to focus on more than academic success. Mentors can provide encouragement and perspective to first-year students, with emphasis on mental and emotional well-being. Further, mentors can help detect when a student is struggling, and assist in getting help.
 6. Educate professors on well-being issues specific to law students. Topics relevant to law students can be found in Appendix E of the National Task Force Report.

Next Steps

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

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



Conclusion

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

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

Appendix A

Implementation Plan Timeline:

2019

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

2020

June	Distribute local study to compare data
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2023

June	Distribute local study to compare data/ revisit work
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TAB
3

John Baldwin

From: Philip Lietaer <philip.lietaer@gmail.com>
Sent: Tuesday, June 18, 2019 3:31 PM
To: H. Dickson Burton; John Baldwin
Subject: ABA Resolution 10B
Attachments: CBA Resolution 10B Packet (Bar Assoc).pdf

Dear Mr. Burton & Mr. Baldwin,

I am an attorney in Colorado working with our state bar President, John Vaught, and the Colorado delegation to the ABA House of Delegates. We are seeking the support of the Utah State Bar for the proposed Resolution we will be introducing at the ABA's annual meeting this August in San Francisco. There is absolutely no financial commitment. Our Resolution aims to deploy broadband infrastructure throughout the United States. We believe increasing access to high-speed internet is a matter of critical importance not only to the legal profession but also to our country as a whole.

Resolution 10B is co-sponsored by the State Bar of Montana, the ABA Standing Committee on the Delivery of Legal Services, the ABA Solo, Small Firm and General Practice Division, and the ABA Tort Trial & Insurance Practice Section. We have already received support from the bar associations of Iowa, Nevada, New York, Ohio, and South Dakota, as well as the ABA Judicial Division, ABA National Conference of the Administrative Law Judiciary, and the ABA Law Student Division. However, we are in great need of letters of support from additional state bar associations.

If you support our Resolution, please send a brief one-page letter of support by August 8, 2019 to John Vaught at vaught@wtotrial.com. We have attached a sample letter of support for your use, along with our Resolution with Report, General Information Form, and Executive Summary. Thank you for your time and we hope to hear from you soon.

Sincerely,

Philip H. Lietaer



1290 BROADWAY, STE. 1700
DENVER CO 80203-4336
303-860-1115
COBAR.ORG

JOHN VAUGHT
TEL: 303.847.1435
VAUGHT@WTOTRIAL.COM

Re: Proposed Broadband Resolution for ABA HOD Annual Meeting

Dear Bar President and Executive Director:

As President of the Colorado Bar Association and a member of the Colorado delegation to the ABA House of Delegates, I am writing in follow-up to my previous letter to you regarding a proposed ABA Resolution to address the critical need to expand broadband access in this country. We have achieved several successes in reaching our goal, but we still need your help.

Increasing access to broadband is a matter of critical importance not only to the legal profession but also to our country as a whole. We are facing a modern day barrier similar to generations past of having no electricity or telephone lines. This barrier is a lack of broadband access (high-speed internet) in rural areas. These communities are vital to the future of our profession and we cannot wait any longer to act. We are seeking your support of our proposed ABA Resolution to ensure equal access to justice for Americans living in rural communities by deploying broadband infrastructure to at least 98% of the United States population. For additional information, please find enclosed our Resolution with Report, which was timely filed with the ABA on May 7th. An Executive Summary is also attached.

If your association would be so kind to provide us a letter of support before the ABA House of Delegates meeting on August 12, 2019 in San Francisco, I will be able to represent to the entire delegation at the time of presentation that your state bar association stands in support of the Resolution. There is absolutely no financial commitment.

Due to some procedural requirements, we have limited our co-sponsorships of the Resolution to the State Bar of Montana, the ABA Standing Committee on the Delivery of Legal Services, the ABA Solo, Small Firm and General Practice Division, and the ABA Tort Trial & Insurance Practice Section. However, we are in great need of letters of support from you, our colleague state bar associations.

We have already received support from the bar associations of Iowa, Nevada, New York, Ohio, and South Dakota, as well as the ABA Judicial Division, ABA National Conference of the Administrative Law Judiciary, and the ABA Law Student Division. If you support our Resolution, please send a brief one-page letter stating your position by August 8, 2019 to me at vaught@wtotrial.com.

We have attached a sample letter of support for your use and approval, along with our Resolution with Report, General Information Form, and Executive Summary. Thank you for your time and I hope to hear from you soon.

Sincerely,

John Vaught
ABA House of Delegates, Colorado
President, Colorado Bar Association

LETTER OF SUPPORT TEMPLATE

American Bar Association
Rules and Calendar Standing Committee
321 North Clark Street
Chicago, IL 60654
Janae.Leflore@americanbar.org
Attn: Janae Leflore

**Re: Colorado Bar Association's 2019 Proposed Resolution Regarding the
Deployment of Broadband Access Throughout the United States**

Dear ABA House of Delegates:

On behalf of the [INSERT BAR ASSOCIATION], I am writing in support of the Colorado Bar Association's proposed resolution regarding the deployment of broadband access throughout the United States. This resolution will be submitted for consideration at the 2019 ABA House of Delegates Annual Meeting.

This is a critical issue in rural areas in our state as well as across the country. Lacking proper broadband access affects practically every field, including the legal profession. We owe it to the attorneys and self-represented litigants living in rural areas to recommend the enactment of legislation and appropriate funding to correct this issue, and not leave a vital part of our country behind.

It is our great pleasure to support wholeheartedly this 2019 proposed resolution of the Colorado Bar Association regarding broadband access. Thank you for the opportunity to express our support on this important matter.

Sincerely,

**AMERICAN BAR ASSOCIATION
COLORADO BAR ASSOCIATION
MONTANA BAR ASSOCIATION
TORT TRIAL & INSURANCE PRACTICE SECTION
SOLO, SMALL FIRM AND GENERAL PRACTICE DIVISION
STANDING COMMITTEE ON THE DELIVERY OF LEGAL SERVICES
REPORT TO THE HOUSE OF DELEGATES**

RESOLUTION

- 1 RESOLVED, That the American Bar Association urges federal, state, local, territorial,
- 2 and tribal legislatures to enact legislation and appropriate adequate funding to ensure
- 3 equal access to justice for Americans living in rural communities by deploying, to at
- 4 least 98% of the population, broadband infrastructure with a download speed of at least
- 5 100 megabits per second, and an upload speed of at least 30 megabits per second.

REPORT

I. Introduction

Rural America is at risk of being left behind in an increasingly digital age. While reports of broadband and high-speed Internet coverage in rural areas vary, the overarching message is clear: Americans in rural areas have far less consistent access to high-speed Internet. In addition, the main street attorney in rural America is continuously becoming a thing of the past. This landscape creates two main problems for ensuring equal access to justice for those living in these areas: (1) rural communities are struggling to attract new attorneys partially based on difficulties to practice law, and (2) self-represented litigants have a heightened barrier to accessing court resources and non-profit organizations and being able to prosecute or defend their cases.

Approximately 24 million Americans lack broadband (high-speed Internet) access, 96% of whom live in rural areas.¹ Broadband has been called the great infrastructure challenge of our time, and it is increasingly being referred to as the fourth utility.² Even more striking, is less than half of households living on under \$20,000 are connected.³ “The collective deficit in opportunity, education and prospects—everything implied in ‘being connected’—further separates [Americans] into haves and have-nots.”⁴

In rural Caledonia, Missouri, for example, Jeanne Johnson raises sheep and goats, but has to drive four miles to a local gas station for internet access.⁵ At her 420-acre farm, Ms. Johnson pays \$170 a month for satellite internet service, but it is too

¹ 2018 *Broadband Deployment Report*, FED. COMM. COMM’N (Feb. 2, 2018), <https://www.fcc.gov/reports-research/reports/broadband-progress-reports/2018-broadband-deployment-report>. Another study by Microsoft suggests, however, that this figure is inaccurately low, and that 162.8 million Americans do not have access to high speed Internet. Anthony Izaguirre, *With Billions to Spend, Feds Unsure Who Lacks Broadband*, The Washington Post (Apr. 5, 2015), https://www.washingtonpost.com/business/technology/questions-over-coverage-plague-rural-broadband-expansion/2019/04/15/e779ca4e-5f81-11e9-bf24-db4b9fb62aa2_story.html. See also *Courts Need to Enhance Access to Justice in Rural America*, CONF. OF ST. CT. ADMINS., 4 (2018), <https://cosca.ncsc.org/~media/Microsites/Files/COSCA/Policy%20Papers/Policy-Paper-1-28-2019.ashx> (“Rural Americans lack access to high-speed broadband at a rate four times higher than the national average.”).

² *Connecting America: The National Broadband Plan*, FED. COMM. COMM’N, XI (Mar. 17, 2010), <https://transition.fcc.gov/national-broadband-plan/national-broadband-plan.pdf>; *What Every County Commissioner Needs to Know About Broadband*, COLO. COUNTIES, INC., 4, <http://ccionline.org/download/Broadband%20White%20Paper.pdf> (last visited Apr. 20, 2019); Susan Jesuroga, *Overview of Highspeed Broadband*, CHAFFEE COUNTY ECON. DEVEL. CORP., 5 (Oct. 2011), <http://www.consideryumacounty.com/Overview.pdf>. See also *Luring Doctors and Lawyers to Rural America*, NEW HAMPSHIRE PUBLIC RADIO (2018), <https://www.nhpr.org/post/luring-doctors-and-lawyers-rural-america#stream/0> (“Small-town life is not selling with certain professions”).

³ Karl Vick, *The Digital Divide: A Quarter of the Nation is Without Broadband*, TIME (Mar. 30, 2017), <http://time.com/4718032/the-digital-divide/>.

⁴ *Id.*

⁵ Jenniver Levitz & Valerie Bauerlein, *Rural America is Stranded in the Dial-Up Age*, THE WALL ST. J. (June 15, 2017), available at <https://ecfsapi.fcc.gov/file/10920553313176/Filing%20articles%20group%204.pdf>.

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slow to even upload photos, let alone conduct business.⁶ Ms. Johnson is 60-years-old and describes the feeling of not having access to proper high-speed internet, “We don’t feel like we’re worth it.”⁷ Even the county’s 911 dispatch center sometimes loses its connection to the state emergency system.⁸ The ability to successfully operate a law practice under such conditions is nearly impossible.

The ABA has a long history of striving to ensure equal access to justice by supporting resolutions⁹ and dedicating resources to its access to justice committee and legal aid. The Resolution urges Congress, state, local, territorial, and tribal legislatures to enact legislation and appropriate adequate funding to ensure equal access to justice for Americans living in rural communities by deploying broadband infrastructure throughout the United States. This Report explains why ABA policy is necessary—not only for the legal profession, but across all professions. It also explains how broadband is defined, the history of the government’s role in the deployment of utilities, as well as government funding and existing legislation.

Rural Americans face plenty of uphill battles without adding unnecessary hurdles. Action must be taken to deploy broadband infrastructure to ensure these rural communities do not remain on the other side of the digital divide.

II. Access to Justice in Rural America

Access to justice is a problem throughout the United States. In rural America, however, the problem is worse. Geographic distance, declining and aging populations, problems attracting and retaining lawyers, outdated technology, and slow or nonexistent Internet connectivity contribute to the problem.¹⁰ Removing the internet connectivity barrier is an important place to start to help remedy the problem. Electricity was harnessed to turn the lights on, but ended up completely transforming society.¹¹ Eliminating this digital divide and providing broadband access in rural communities across the country could have a similar impact.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *E.g.*, 12A10B, when the ABA approved the State Bar of South Dakota’s 2012 proposed Resolution urging federal, state, territorial, tribal, and local governments to support efforts to address the decline in the number of lawyers practicing in rural areas and to address access to justice issues for residents in rural America. *Report on the ABA Annual Meeting*, AM. BAR ASS’N, 9 (Aug. 29, 2012), <https://cdn.ymaws.com/www.nabernet.org/resource/resmgr/imported/Report%20on%20ABA%20Annual%20Meeting.pdf>; *Impact of Resolutions: Access to Rural Justice*, AM. BAR ASS’N (Nov. 19, 2017), https://www.americanbar.org/news/abanews/aba-news-archives/2016/08/impact_of_resolution. See also 06A112B, where the ABA “adopt[ed] the principles of a state system for the delivery of civil legal aid,” and 06A112A, advocating for the right to counsel to low income persons where basic human rights are at stake.

¹⁰ *Courts Need to Enhance Access to Justice in Rural America*, *supra* note 1, at 1.

¹¹ Dianne Kruse, *The Importance of Broadband: Why It Matters*, NEO CONNECT, 5, <http://neoconnect.us/wp-content/uploads/2016/07/Importance-of-Broadband-Why-this-Matters.pdf> (last visited Apr. 20, 2019) (“Much like electricity, advanced broadband networks are the enabling technology in which all things are impacted.”).

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The Internet experience for millions of Americans in rural areas is appalling. Librarians in rural areas are observing students sitting in library parking lots after hours in order to use the free Wi-Fi to finish their homework.¹² People are required to leave their homes to find fast enough Internet to upload or download files for work.¹³ An online college teacher in Weston, West Virginia has to regularly drive a half an hour to her brother's house just to be able to enter grades in a database.¹⁴ Even using a cell phone in rural areas to access the Internet is not guaranteed, as Verizon has been known to terminate coverage to rural residents due to excessive roaming charges.¹⁵ Although some rural areas may be lucky enough to have high-speed Internet and cell phone service, the costs may be prohibitively expensive.¹⁶

A. Attorneys in Rural America

A shortage of professionals exists in rural communities across our country. Attorneys, physicians, nurses, mental health counselors, and translators increasingly do not want to live in these areas.¹⁷ Many professionals who left their rural hometown for educational opportunities in urban centers stay because of the perceived potential of high-income and necessity to pay off high-debt.¹⁸ The fear of unemployment back home is not enticing.¹⁹ Nor is the potential of being digitally disconnected.

Regarding access to justice, there is an increasing shortage of attorneys, judges, and court staff in rural communities. The inability for a small town to attract these

¹² 164 Cong. Rec. H6609 (July 23, 2018) (statement of Rep. Tonko).

¹³ *Id.*

¹⁴ Izaguirre, *supra* note 1 ("There is a way around the notoriously sluggish Internet in West Virginia. You just need a car and some time. . . . I just kept wanting to beat my head into a wall. . . . It added so much additional work for me, and I just don't have the time.").

¹⁵ Kristen Inbody, *Verizon's Nixing Some Cell Service in Rural Montana has Locals Scared About Emergencies*, USA TODAY (Sept. 17, 2017), <https://www.usatoday.com/story/tech/2017/09/17/verizon-nixing-some-cell-service-rural-montana-has-locals-scared-emergencies/674986001/>. See also *Rural Pro Bono Delivery: A Guide to Pro Bono Legal Services in Rural Areas*, AM. BAR ASS'N STANDING COMM. ON PRO BONO & PUB. SERV. & THE CTR. FOR PRO BONO, 11-12 (2003), https://www.americanbar.org/content/dam/aba/images/probono_public_service/ts/aba_rural_book.pdf.

¹⁶ Jennifer Levitz & Valerie Bauerlein, *Rural America is Stranded in the Dial-Up Age*, WALL ST. J. (June 15, 2017), <https://www.wsj.com/articles/rural-america-is-stranded-in-the-dial-up-age-1497535841> ("Rural America can't seem to afford broadband: Too few customers are spread over too great a distance. The gold standard is fiber-optic service, but rural internet providers say they can't invest in door-to-door connections with such a limited number of subscribers.").

¹⁷ *Courts Need to Enhance Access to Justice in Rural America*, *supra* note 1, at 8; Kirk Siegler, *Doctor Shortage In Rural Arizona Sparks Another Crisis In 'Forgotten America'*, NPR (July 14, 2017), <https://www.npr.org/sections/health-shots/2017/07/14/535792864/doctor-shortage-in-rural-arizona-sparks-another-crisis-in-forgotten-america>.

¹⁸ Lisa R. Pruitt, et al., *Legal Deserts: A Multi-State Perspective on Rural Access to Justice*, 13 HARV. L. & POL'Y REV. 15, 122 (2018). See also *Courts Need to Enhance Access to Justice in Rural America*, *supra* note 1, at 2 ("Automated corporate farming, the depletion of natural resources, a desire for greater education and employment opportunities, and the lure of urban life have drawn the population away from rural areas to ever-expanding urban centers.").

¹⁹ Michael Ungar, *The End of Rural Communities: Why Young People Leave*, PSYCHOL. TODAY (Nov. 22, 2015), <https://www.psychologytoday.com/us/blog/nurturing-resilience/201511/the-end-rural-communities-why-young-people-leave>.

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professionals threatens the residents' ability to access the justice system. Rural communities are struggling to attract new attorneys while the older attorneys are retiring.²⁰ Even though 20% of people in the United States live in rural America, only 2% of small law practices are located in rural America.²¹ In South Dakota, "the strain on local budgets as a result of not having local lawyers is astronomical."²² Rural governments sometimes need to pay judges, prosecutors, and private defense attorneys to handle local cases. In order to find legal help, a rural resident has to overcome vast distances, insufficient public transit, and a lack of Internet service.²³

Many states offer additional examples of the same problem. For example, Colorado's Delta County is approximately 1,150 square miles with a population of over 31,000 people—comparable, for example, to Rhode Island, which is approximately 1,200 square miles. Only 22 practicing attorneys remain in Delta County, the youngest of whom is 55. In rural Inyo and Mono counties in California, there are approximately 22 attorneys in private practice—only a handful who are under 62.²⁴ In Wishek, North Dakota, the situation became even more dire when Wishek's only lawyer retired.²⁵ Residents were left without anyone nearby to handle their basic legal needs.²⁶ Likewise, in Bennett County, South Dakota, after the only attorney retired, the closest lawyer is now 120 miles away.²⁷

Practically every state has a Delta County—a county or municipality in a similar situation. The average age of lawyers across the nation is reaching 49-years-old.²⁸ As attorneys in rural communities begin retiring without anyone to replace them, many more counties like the ones above will begin appearing. Rural America constitutes approximately 97% of the land area of the United States and every state has a county or municipality with a population of less than 2,500.²⁹ Providing equal access to justice in rural communities should therefore be a priority for every state in the country.

²⁰ Lorelei Laird, *In Rural America, There are Job Opportunities and a Need for Lawyers*, ABA J. (Oct. 2014), http://www.abajournal.com/magazine/article/too_many_lawyers_not_here_in_rural_america_lawyers_are_few_and_far_between. The problem includes criminal defense attorneys. See Jacob Kang-Brown & Ram Subramanian, *Out of Sight: The Growth of Jails in Rural America*, VERA INST. OF JUST., 18-19 (June 2017) ("Many rural counties lack skilled practitioners—judges, prosecutors, investigators, public defenders, and court administrators—to run or oversee the basic functions of a local criminal justice system, posing serious operational challenges.").

²¹ Pruitt, *supra* note 18, at 22 (noting the number is likely inflated as it counts attorneys who are inactive, working for the government, and working in non-legal jobs).

²² Laird, *supra* note 20 (quoting 2011-12 president of the State Bar of South Dakota).

²³ Pruitt, *supra* note 18, at 22; Levitz, *supra* note 16 (About 39% of the U.S. rural population, or 23 million people, lack access to broadband internet service . . . compared with 4% of the urban residents.).

²⁴ *Courts Need to Enhance Access to Justice in Rural America*, *supra* note 1, at 3.

²⁵ Laird, *supra* note 20.

²⁶ *Id.* (residents were left "without anyone nearby to handle their basic legal needs. . . . 'It's always a challenge to get professionals into a rural area'").

²⁷ *Id.*

²⁸ *Courts Need to Enhance Access to Justice in Rural America*, *supra* note 1, at 3.

²⁹ *Id.* at 1.

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Part of the access to justice problem in rural America is clearly due to attorney shortages. Without proper high-speed Internet, however, these communities have little chance of attracting new lawyers. High-speed Internet has great potential to attract attorneys to work in these places, as well as providing the ability to work remotely. Legal research, communication, and filings are all done primarily over the Internet today. Sufficient download and upload speeds are required. Non-metro-area attorneys cannot thrive without the ability to communicate and file documents electronically in their practices.

Most new lawyers will not accept inadequate Internet service in their practices. Young lawyers consider it a basic utility, as important as ensuring that the lights are on and the phones are working. The practice of law is no longer pursued with manila folders and 17-inch pleadings. In law school and in urban areas, practically everything is done over the Internet. In rural areas, however, stories about lawyers needing to drive over an hour to upload a pleading or motion are all too common.³⁰ This type of antiquated practice is so far outside the norm within law schools, newly graduated lawyers are simply not prepared or willing to make it the focus of their practice.

Some law schools and states are now putting forth efforts to attract law students to rural areas. For example, the State Bar of Wisconsin has organized an annual tour, taking law students and recent law grads to rural areas to familiarize them with practice opportunities.³¹ Similarly, the Maine Law Rural Lawyer Project pairs law students with lawyers in underserved rural communities with hopes they may practice there after graduation.³² On the national level, LSC and Equal Justice Works offer Rural Summer Legal Corps, which places students with civil legal aid organizations across the country.³³ South Dakota has taken the most comprehensive approach through its Rural Attorney Recruitment Program, where attorneys receive a significant financial incentive to practice in a rural area for five continuous years.³⁴ These efforts, coupled with the rising costs of living in many large cities, demonstrate some potential for attracting attorneys to rural areas.³⁵ Without broadband access throughout the United States, however, these efforts will fall short.

Assuring these rural attorneys have proper broadband access can help them and their clients immensely. In addition to the basic legal practice needs of communication, research, and filings, technology allows lawyers to increase their client pool by drawing

³⁰ Steve Evenson, *Rural Lawyers in the Changing Marketplace*, AM. BAR ASS'N (Jan. 1, 2013), https://www.americanbar.org/groups/gpsolo/publications/gp_solo/2013/january_february/rural_lawyers_changing_marketplace/.

³¹ *Greater Wisconsin Initiative*, ST. B. OF WIS., <https://www.wisbar.org/aboutus/leadership/pages/greater-wisconsin-initiative.aspx> (last visited Apr. 20, 2019).

³² *Preparing for Rural Practice*, UNIV. ME. SCH. L., <https://www.mainerlawcommunity.org/s/184/16/interior.aspx?sid=184&gid=1&pgid=1049&cid=1924&ecid=1924> (last visited Apr. 20, 2019).

³³ RURAL SUMMER LEGAL CORPS PROGRAM, <https://rurallegalcorps.org> (last visited Apr. 20, 2019).

³⁴ *Rural Attorney Recruitment Program*, S.D. LEGAL SELF-HELP, <https://ujslawhelp.sd.gov/rarprogram.aspx> (last visited Apr. 20, 2019).

³⁵ Mark Gimein, *Why the High Cost of Big-City Living is Bad for Everyone*, NEW YORKER (Aug. 25, 2016), <https://www.newyorker.com/business/currency/why-the-high-cost-of-big-city-living-is-bad-for-everyone>.

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from a larger area while reducing potential conflicts of interest. With adequate broadband access, modern lawyers can run virtual offices, permitting longer-distance client relationships allowing lawyers and clients to participate in video conferences and share documents which can be accessed remotely through client portals.

Indeed, Nebraska has demonstrated the potential of extending broadband to rural areas. As a result of improving broadband in Cherry and Cheyenne, Internet speeds increased 60%, which allowed the use of video interpreters in courts and participation by incarcerated individuals in court by video from correctional facilities. This not only increased access to justice and saved money, but also lowered the inherent risk in transporting inmates.³⁶ The time has come to assure the practice of law in rural areas is not impractical and undesirable due to poor Internet connection.

B. Self-Represented Litigants in Rural America

Similarly affected are self-represented litigants in rural America. Not having a basic utility like broadband access creates an unnecessary burden on people who are already less likely to receive justice. One of the most pressing issues affecting access to justice is the staggering amount of people foregoing an attorney, primarily due to the rising costs of legal services. Approximately 86% of low-income Americans with a civil legal problem receive either inadequate or no help.³⁷ This is not a small amount of people, as approximately ten million rural Americans have incomes below 125% of the federal poverty line.³⁸ This demand far surpasses the supply of help, as only one legal aid attorney is available for every 6,415 eligible people.³⁹ In Colorado, for example, it is estimated that more than 60% of all litigants arrive at the courthouse without a lawyer.⁴⁰

Rural life does not mean a simple life without the need for legal help. Three-quarters of America's low-income rural residents face at least one civil legal problem a year, while a quarter face six or more.⁴¹ The primary legal issues involve health, consumer and finance, and employment.⁴² Even more concerning is that elderly, disabled, and veterans are affected the worst in rural areas.⁴³

³⁶ *Courts Need to Enhance Access to Justice in Rural America*, *supra* note 1, at 7.

³⁷ Debra Cassens Weiss, *86 percent of low-income Americans' civil legal issues get inadequate or no legal help, study says*, ABA J. (June 14, 2017), http://www.abajournal.com/news/article/86_percent_of_civil_legal_issues_of_low_income_americans_get_inadequate_or.

³⁸ *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-Income Americans*, LEGAL SERVS. CORP., 19 (June 2017), <https://www.lsc.gov/sites/default/files/images/TheJusticeGap-FullReport.pdf>.

³⁹ Laird, *supra* note 20.

⁴⁰ Erika Holmes, *Modern Representation: A Win-Win for Clients and Lawyers*, 46 COLO.LAW. 77, (March 2017) ("Statistics from the State Court Administrator's Office show that for fiscal year 2015, 75% of the parties in domestic relations cases, 37% of parties in district civil cases, and 60% of parties in county court civil cases proceeded pro se.").

⁴¹ *The Justice Gap*, *supra* note 38, at 21.

⁴² *Id.* at 48.

⁴³ Lisa Pruitt, *Law Stretched Thin: Access to Justice in Rural America*, 59 S.D. L. REV. 466, 487–88 (2014) ("The elderly, disabled, and veterans—all disproportionately represented in rural America—need a wide array of supports.").

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Even if a person can afford an attorney, there may be none around, as discussed above. Rural residents may have to drive 100 miles or more to take care of routine matters like estate planning, taxes, and child custody.⁴⁴ In North Dakota, for example, only 85 out of 357 towns have an attorney, while six rural counties in South Dakota and 12 in Nebraska have no attorneys at all.⁴⁵

For some, travelling to obtain legal help is not an option. Many people living in rural areas—particularly low-income rural residents—may not have the means to travel considerable distances to meet with a lawyer or go to court.⁴⁶ Travel is even more difficult in locations like Colorado and California due to landscape and weather. Census information shows that rural communities are disproportionately poor, and with a day away from work, the gas required, and possibility of an overnight stay, travel becomes a logistical hardship widening the justice gap.⁴⁷

Due to the cost and/or the shortage of rural attorneys, rural residents may be left to represent themselves. This difficult task now becomes even worse without broadband access. Similar to the demands of attorneys, these individuals need the ability to download forms from courts' websites and need to be able to communicate with organizations that provide assistance to self-represented litigants. Access to justice in the United States "should not be made daunting or dangerous because a person lives in a rural area."⁴⁸

Technology, particularly broadband access, has already demonstrated its ability to help with access to justice for self-represented litigants. For example, Online Dispute Resolution provides opportunities to help with legal disputes outside of the courtroom.⁴⁹ This umbrella term includes a range of services, which can be as simple as email or as complex as conducting an entire mediation session online.⁵⁰ Across the country, states are utilizing broadband to create self-help programs. In Georgia, a law library provides Internet and computer access for legal research. In Wisconsin, a legal aid provider started an online legal advice program. In Montana, courts use video conferencing to better serve rural populations. In South Dakota, people can call "Ask a Lawyer" toll-free and ask for free advice on family issues contracts, wills, and real estate.⁵¹ Such efforts are of little use, however, in areas where Internet access is slow or non-existent.

⁴⁴ Laird, *supra* note 20. See also Robin Runge, *Addressing the Access to Justice Crisis in Rural America*, A.B.A. HUM. RTS. MAG. (Sept. 26, 2014), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/2014_vol_40/vol_40_no_3_poverty/access_justice_rural_america/.

⁴⁵ *Courts Need to Enhance Access to Justice in Rural America*, *supra* note 1, at 3.

⁴⁶ Pruitt, *supra* note 18, at 25 n.42.

⁴⁷ Laird, *supra* note 20.

⁴⁸ *Courts Need to Enhance Access to Justice in Rural America*, *supra* note 1, at 1.

⁴⁹ *Access to Justice through Alternative Dispute Resolution White Paper*, AM. BAR ASS'N, 12, https://www.americanbar.org/content/dam/aba/administrative/dispute_resolution/access-to-justice-project-white-paper.pdf (last visited Apr. 21, 2019).

⁵⁰ *Id.* at 12. See also Margaret Hagen, *Participatory Design for Innovation in Access to Justice*, AM. ACAD. OF ARTS & SCI (2009), <https://www.amacad.org/publication/participatory-design-innovation-access-justice> ("the civil justice sector can experiment with community-led agendas for innovation efforts and better situate and launch new technologies and services.").

⁵¹ Pruitt, *supra* note 18, at 136.

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"Technology may offer several opportunities to connect rural residents with urban legal services, but its effectiveness depends on the existence of technology infrastructure, like high-speed Internet and cell reception, in the rural communities to be served."⁵²

Many self-represented litigants find themselves on the wrong side of this digital divide. A lack of broadband access affects attorneys in rural areas as well as those who represent themselves. Without universal broadband access in our country, these rural self-represented litigants may lose the opportunity to meaningfully defend or prosecute their cases. With such a high barrier, "rural residents may cease to recognize their legal rights."⁵³ They may begin to see the legal system as irrelevant to them, and these vulnerable populations will become even more disconnected from the rest of the country.⁵⁴

III. National Importance Beyond the Legal Profession

Deploying broadband access throughout the United States will not only benefit access to justice, but also will provide countless opportunities for rural communities to participate in national and global economies on a broader scale. A brief discussion of the scope of the issue is important to mention. When you start to look closely, it becomes apparent that practically every field requires high-speed Internet in today's digital age.⁵⁵

Traditionally, when people used the Internet only for email and simple websites, speeds of 1-2 Mbps would suffice.⁵⁶ Today, however, with video conferencing, modern websites, the ability to work remotely, streaming video, and high volume file transfers, broadband speeds are essential. Without such access, rural communities are being left behind.

Extending broadband to rural America is not just about faster Internet. Rather, it is about connecting these communities to the rest of the country in the digital age. "Broadband is a platform to create today's high-performance America—an America of universal opportunity and unceasing innovation, an America that can continue to lead the global economy."⁵⁷ Here are some additional reasons why broadband access is essential:

⁵² Hillary A. Wandler, *Spreading Justice to Rural Montana: Expanding Local Legal Services in Underserved Rural Communities*, 77 MONT. L. REV. 235, 261 (2016).

⁵³ Pruitt, *supra* note 18, at 127.

⁵⁴ *Id.*

⁵⁵ *Rural America At a Glance*, U.S. DEP'T OF AGRIC., 5 (Nov. 2017), <https://www.ers.usda.gov/webdocs/publications/85740/eib-182.pdf?v=0> ("Large-scale projects to upgrade transportation networks, utilities, and internet connectivity could benefit rural communities. Increased access to high-speed internet, in particular, could improve delivery of education, healthcare, public safety, and other services.").

⁵⁶ *Broadband White Paper*, S.W. COLO. COUNCIL OF GOV'TS, 2, <http://www.swccog.org/assets/SWCCOG%20Broadband%20White%20Paper-1.pdf> (last visited Apr. 21, 2019).

⁵⁷ *Connecting America: The National Broadband Plan*, *supra* note 2, at 3.

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- A. **Public Safety.** Broadband can assure everyone has proper access to emergency services, as well as improve how Americans are notified about emergencies. Providing broadband access to emergency personnel provides these professionals with the resources they need to serve and better protect citizens.⁵⁸
- B. **Health Care.** Broadband can improve access to health records, doctors, and prescriptions. Such access is also necessary for many medical devices today. Medical professionals can communicate in real time with global specialists around the world, as well as quickly send large files and images for review.⁵⁹
- C. **Education.** Broadband provides students with the technology they need in the 21st century. For example, approximately 12 million school-aged children do not have the broadband at home that they need for nightly schoolwork.⁶⁰ Broadband allows students to engage in proper research, as well as earn degrees remotely and connect with teachers in different countries.
- D. **Agriculture.** Broadband can help farmers take advantage of precision agriculture technology and increase their efficiency by upward of 10%.⁶¹ Rural farmers could also sell their products all over the world. "Using GPS, the harvester could, in real time, map, monitor, and record massive amounts of data—such as crop yield and soil moisture levels—which would let a farmer know exactly which rows required attention."⁶²
- E. **Environment.** An increase in the ability to work remotely can help decrease carbon emissions from excess commuting. Broadband can play a major role in the transition to a clean energy economy, as well as modernize the electrical grid by making it more reliable and efficient.⁶³
- F. **Civic Engagement.** Broadband can improve the quality and quantity of engagement with representatives and agencies. With proper broadband access, government can become more open and transparent, and allow those in rural areas to participate in the democratic process easily and efficiently.⁶⁴

⁵⁸ *Id.* at XIV.

⁵⁹ Kruse, *supra* note 11, at 3.

⁶⁰ 2018 Broadband Deployment Report, FED. COMM. COMMISSION, 89 (Feb. 2, 2018), https://transition.fcc.gov/Daily_Releases/Daily_Business/2018/db0202/FCC-18-10A1.pdf.

⁶¹ Whitelaw Reid, *Stuck In Mud: Broadband 'Disconnect' has Big Consequences for Midwest Farmers*, UVA TODAY (Oct. 8, 2018), <https://news.virginia.edu/content/stuck-mud-broadband-disconnect-has-big-consequences-midwest-farmers>.

⁶² *Id.*

⁶³ *Connecting America: The National Broadband Plan*, *supra* note 2, at XIV.

⁶⁴ *Id.*

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- G. **Technology.** Impending technological advancements such as driverless cars will require a high-speed connection. As homes and appliances become “smart,” for example, with smoke alarms and thermostats connected to the Internet, a reliable and fast broadband connection is essential. With the rise of smart phones, tablets, streaming video, etc., the demand for high-speed, reliable Internet is widespread.⁶⁵
- H. **Business.** For business, broadband access is a key infrastructure to capitalize on the benefits of the Internet.⁶⁶ “Research demonstrates a direct correlation between businesses’ use of Internet applications and revenue growth and productivity.”⁶⁷ Businesses can store their data offsite, reducing the risk of loss, and can now sell their goods anywhere in the world over the Internet.

IV. Broadband Internet Service

The term broadband originally described a type of data transmission where a single wire could carry multiple signals at once.⁶⁸ In contrast, baseband transmission could carry only one signal at a time.⁶⁹ Practically, however, the term broadband has become synonymous with high-speed Internet, which is faster than outdated dial-up access. It implies a certain threshold speed for an Internet connection.⁷⁰

Internet speed is measured by how many bits of data can be received and sent to and from your Internet connection. This speed is measured in “bits per second” (bps) units, and contains a downstream figure (the download speed) and an upstream figure (the upload speed).⁷¹ The two speeds are not always equal. The FCC is the primary authority on providing the minimum speed to be considered broadband. The current FCC minimum speed is 25 megabits (1,000,000 bps) per second (Mbps) download and 3 Mbps upload (25 Mbps/3 Mbps).⁷² As indicated above, approximately 24 million Americans and 30% of rural Americans do not have access to these speeds.

Broadband can be provided through various delivery technologies, including wireless connections. Unlike dial-up Internet, broadband ensures a continuous connection to the Internet. All of the following may be considered broadband:⁷³

⁶⁵ Kruse, *supra* note 11, at 6.

⁶⁶ *Id.* at 2.

⁶⁷ *Id.*

⁶⁸ *Federal Standard*, GEN. SERVICES ADMIN., <https://www.its.bldrdoc.gov/fs-1037/fs-1037c.htm> (last visited Apr. 21, 2019).

⁶⁹ *Id.*

⁷⁰ Darrell M. West, *An International Look at High-Speed Broadband*, BROOKINGS.EDU (Feb. 2010), https://www.brookings.edu/wp-content/uploads/2016/06/0223_broadband_west.pdf.

⁷¹ *What Every County Commissioner Needs to Know About Broadband*, *supra* note 2, at 3.

⁷² *2018 Broadband Deployment Report*, *supra* note 1.

⁷³ Kruse, *supra* note 11, at 3-4.

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- A. **Fiber.** Considered the gold standard of broadband. Fiber optic cables convert electrical signals to light and send the light through glass fibers about the size of a human hair. Speeds up to 1000 Mbps ("Gigabit Internet") are possible. Fiber is often the most expensive to build.
- B. **Cable.** Delivers an Internet connection through the coaxial cables already installed for cable TV. Speeds typically range from 30-150 Mbps. Cable is a shared service where speed can decrease with many people using it in the area.
- C. **DSL (Digital Subscriber Line).** Delivers an Internet connection through the existing copper telephone lines. Speeds typically range from 1.5-30 Mbps. Speed diminishes with distance from telephone company's central office.
- D. **Wireless Broadband.** Wireless Internet is a way of using radio waves to send and receive data. Often used to provide service to rural areas where the above varieties are not available. The Wi-Fi used in homes and businesses converts a physical connection into short-range radio waves. The term encompasses mobile, fixed wireless, and satellite.
 - 1. **Mobile Broadband.** Mobile phone carriers began using the term "mobile broadband" as a synonym for Internet access to a portable device. Wireless Internet access is delivered through cellular towers to smartphones and other digital devices. A mobile service must have a base station that is connected to a landline.
 - 2. **Fixed Wireless.** A type of wireless Internet access different than mobile broadband where the connection to service providers again use radio signals rather than cables. Small stations transfer data at high speeds to each other similar to satellites. Unlike satellites, however, the speed is not affected by bad weather. These dedicated wireless connections are usually faster than cellular networks
 - 3. **Satellite Broadband.** Satellites orbiting the Earth provide necessary links for broadband. Service can be disrupted in extreme weather conditions and are typically oversubscribed. Due to the large distance from satellites, there can be latency issues (high lag time between sending and receiving data). A home satellite dish is required.

The range of speeds can vary dramatically between the various technologies listed above. Many rural locations simply do not have any broadband options, or may have to pay high costs for very slow technology, typically in the range of 1.5-3 Mbps.⁷⁴

⁷⁴ Susan Jesuroga, *Why Should We Care About Broadband?*, CHAFFEE COUNTY ECON. DEVEL. CORP. (Oct. 2011), <http://www.consideryumacounty.com/Introduction.pdf>.

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Sometimes only dial-up Internet may be available, which is slower than broadband by a huge magnitude, typically averaging only 0.05 Mbps. With bandwidth consumption by homes and businesses doubling every year, rural communities will not be able to keep up.

Fiber-optic cables have frequently been laid along highways and railroad lines. This infrastructure is referred to as the “middle mile.” Many rural areas require connection from this middle mile backbone to individual residences and businesses. The end-user connection (via copper, satellite, microwave, hardwire, etc.) is known as the “last mile.” The last mile must yield enough subscriber dollars to entice private enterprise to invest in that infrastructure. The last mile is frequently missing because it is not economical based purely on private investment. The last mile, however, is necessary to make high-speed service possible.

The cost to deploy FCC minimum broadband infrastructure and connect this last mile using fiber cables is estimated to be \$40 billion—less than 1 percent of the federal government’s 2019 budget as currently proposed.⁷⁵ The proposed Resolution recommends deploying broadband infrastructure with a download speed of at least 100 megabits per second and an upload speed of at least 30 megabits per second to at least 98% of the United States population. These speeds were chosen to assure rural residents have proper high-speed Internet for the foreseeable future. Achieving minimum broadband deployment to the remaining 2% of the population is estimated to cost another \$40 billion based on the challenges associated with the extreme remoteness and/or topography of these areas.⁷⁶

V. History of Government Involvement in Utilities and Current Governmental Funding and Legislation

In the 1930s, many parts of rural America were left in the dark without electricity or telephone lines.⁷⁷ An electrical divide existed between rural and urban America. Due to a lack of return on investment, electrical and telephone companies were unwilling to lay the infrastructure necessary to connect these areas to the rest of the country. Similar to the creation of the transcontinental railroad of the prior century, the federal government eventually intervened in 1936 by creating and funding the Rural Electrification Administration.⁷⁸ Along with help from private utilities and cooperatives,

⁷⁵ H.R. 3994, 115th Cong. (2018) (requesting \$40 billion from 2018 to 2022 to expand broadband access to unserved areas).

⁷⁶ *Improving The Nation’s Digital Infrastructure*, FCC OFF. OF STRATEGIC PLANNING AND POL’Y ANALYSIS, 2-3 (Jan 17, 2017), https://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0119/DOC-343135A1.pdf (explaining that universal broadband service in the United States would cost approximately \$80 billion, but because of the shape of the cost curve, 98% coverage could be attained for approximately \$40 billion).

⁷⁷ Ronald R. Kline, *CONSUMERS IN THE COUNTRY: TECH. AND SOC. CHANGE IN RURAL AM.* 219 (2000); Christopher Ali, *We Need a National Rural Broadband Plan*, N.Y. TIMES (Feb. 6, 2009), <https://www.nytimes.com/2019/02/06/opinion/rural-broadband-fcc.html>.

⁷⁸ Kline, *supra* note 77, at 141; Rural Electrification Act of 1936, 7 U.S.C. § 901 et seq. (effective May 20, 1936).

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rural electrification was finished in a remarkably short time. In nine years, more than nine thousand miles of line was laid, connecting 1.6 million new consumers.⁷⁹ From 1945 to 1954, the percentage of electrified farms grew from 48 to 93 percent, and the postwar years have been called “the climax of the great transformation of rural America.”⁸⁰

It is now time for the government to focus on the “fourth utility” and create and fund a program to deploy broadband infrastructure. The proposed Resolution from the Colorado Bar Association requests the ABA to urge Congress, state, local, territorial, and tribal legislatures to enact legislation and provide adequate funding for broadband expansion into rural America. Broadband should be a top priority for any future infrastructure legislation. Past efforts thus far from the government and private entities have not been particularly successful on a broad scale across the country. New legislation and funding will be necessary to complete the last mile and bridge the divide.

Following a 2008 release of broadband statistics, which suggested that the U.S. may be lagging in broadband, Congress passed the American Recovery and Reinvestment Act of 2009, requiring the FCC to draft a National Broadband Plan.⁸¹ In March 2010, the FCC released its 360-page plan, which set out a roadmap for extending broadband and maximizing its benefits.⁸² The Obama administration stated that universal broadband access was a top priority and such access was critical to America’s future.⁸³ A federal grant program to expand wireless Internet in rural areas looked helpful but is on hold while the FCC investigates whether carriers submitted incorrect data for the maps used to allocate funds.⁸⁴ More coordination, funding, and legislation need to be implemented.⁸⁵

More recently, on April 12, 2019, the White House and the FCC announced a \$20.4 billion “Rural Divide Opportunity Fund” to help connect up to four million rural homes and small businesses over the next decade.⁸⁶ The program would be part of a Universal Service Fund, an existing program from the prior administration. Although lacking details, the FCC intends to utilize a physical broadband base along with upcoming 5G technology to deliver high-speed Internet to rural communities.

⁷⁹ Kline, *supra* note 77, at 220.

⁸⁰ *Id.* at 215, 219.

⁸¹ See *Connecting America: The National Broadband Plan*, *supra* note 2, at XI.

⁸² *Id.*

⁸³ Broadband: The Electricity of the 21st Century, The White House (Jan. 15, 2015), <https://obamawhitehouse.archives.gov/blog/2015/01/15/broadband-electricity-21st-century>.

⁸⁴ Izaguirre, *supra* note 1; Jenniver Levitz & Valerie Bauerlein, *Rural America is Stranded in the Dial-Up Age*, THE WALL ST. J. (June 15, 2017), available at <https://ecfsapi.fcc.gov/file/10920553313176/Filing%20articles%20group%204.pdf>.

⁸⁵ “Despite its importance, Federal resources supporting broadband expansion are poorly tracked with little coordination across agencies or departments that are doing this work, making it harder for our local businesses and community leaders to access them.” Press Release, Tonko Reintroduces House-Passed Bill to Increase Broadband Access in Underserved Areas (Apr. 4, 2019), available at <https://tonko.house.gov/news/documentsingle.aspx?DocumentID=839>.

⁸⁶ *Bridging The Digital Divide for All Americans*, FED. COMM. COMMISSION, <https://www.fcc.gov/about-fcc/fcc-initiatives/bridging-digital-divide-all-americans> (last visited Apr. 21, 2019).

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New 5G technology stands for the 5th Generation of digital cellular networks. The speed of 5G could be in the range of 200-634 Mbps, which would be significantly faster than the current 4G and could be widespread by 2020.⁸⁷ A broadband base, however, is still required as 5G mobile networks need fiber lines to cell sites, and will likely not be a solution for rural communities.⁸⁸ The nature of 5G infrastructure does not make sense in rural America, and will likely only be available in larger cities for the foreseeable future.⁸⁹

The Rural Divide Opportunity Fund is still in its infancy and proper oversight and adequate funding will be required. The inclusion of state and local governments⁹⁰ and cooperatives, research on the safety of future technology, the creation of accurate and up-to-date broadband maps, along with the accountability of participating private carriers⁹¹ will all be necessary in order to properly deliver high-speed Internet at a fair price to rural America.

A recent bill in Congress, House Bill 1328, called the Access Broadband Act, is relevant to this Resolution.⁹² This bill was first introduced last year (H.R. 3994),⁹³ where

⁸⁷ Don Clark, *What is 5G? Here's What You Need to Know About the New Cellular Network*, N.Y. TIMES (Dec. 31, 2018), <https://www.nytimes.com/2018/12/31/technology/personaltech/5g-what-you-need-to-know.html>; Jessica Dolcourt, *Testing Verizon's Early 5G Speeds Was a Mess, But I'm Still Excited about Our Data Future*, CBS INTERACTIVE INC. (Apr. 10, 2019), <https://www.cnet.com/news/home-security-systems-video-doorbells-user-privacy-data-security-abode-adt-comcast-nest-ring-simplisafe/>.

⁸⁸ Jon Brodtkin, *Ajit Pai Proposes \$20 Billion for "Up To" Gigabit-Speed Rural Broadband*, CONDE NAST (Apr. 12, 2019), <https://arstechnica.com/tech-policy/2019/04/ajit-pai-proposes-20-billion-for-up-to-gigabit-speed-rural-broadband/> ("The FCC said the home and business broadband buildout will 'help support future 5G technologies,' which may be a reference to the fact that mobile networks require plenty of fiber to provide bandwidth to cell sites."); Ali Breland, *Rural America Worries it Will Miss Out On 5G*, THE HILL (Sept. 26, 2018), <https://thehill.com/policy/technology/408416-rural-america-worries-it-will-miss-out-on-5g>.

⁸⁹ Shara Tibken, *Why 5G is Out of Reach for More People Than You Think*, CBS INTERACTIVE INC. (Oct. 25, 2018), <https://www.cnet.com/news/why-5gs-out-of-reach-for-more-people-than-you-think/> ("The key spectrum needed for 5G only covers short distances, runs into problems when there's even a tree in the way and requires lots of expensive towers installed close to each other.").

⁹⁰ Kendra Chamberlain, *Municipal Broadband is Roadblocked or Outlawed in 26 States*, BROADBANDNOW (Apr. 17, 2019), <https://broadbandnow.com/report/municipal-broadband-roadblocks> ("There are now 26 states with laws on the books that either roadblock or ban outright municipally-owned broadband networks.").

⁹¹ See *What Every County Commissioner Needs to Know About Broadband*, *supra* note 2, at 2 ("It has become obvious to most rural leaders that deferring to private industry or 'leaving it up to the market' is not a course of action likely to result in better service, and that more direct involvement is needed at the local level.").

⁹² Access Broadband Act, H.R. 1328, 116th Cong. (2019). The Access Broadband Act was first introduced in 2017 and failed to pass the House. This bill is significantly different than the "Leading Infrastructure for Tomorrow's America Act," H.R. 2479, which contains some of the same language as this Resolution. H.R. 2479, 115th Cong. (2017). The "Leading Infrastructure for Tomorrow's America Act" was a massive infrastructure bill that mandated the expansion of broadband (as well as improvements to many other areas such as drinking water, natural gas, clean energy, and hospital infrastructure.), including minimum broadband speeds and asking for \$40 billion over five years. H.R. 2479 failed to pass the House.

⁹³ H.R. 3994, 115th Cong. (2018).

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it passed the House but failed to move forward in the Senate. The bill was re-introduced this year with a companion bill in the Senate (S. 1046).⁹⁴

The Access Broadband Act is a bipartisan act that would establish the Office of Internet Connectivity and Growth within the National Telecommunications and Information Administration. The act is primarily administrative in nature and calls for no additional funding. One of the current problems regarding federal broadband funding is the patchwork of agencies and applications handling the limited funds. The Office of Internet Connectivity and Growth would streamline the management of federal broadband resources and simplify the process for small businesses and local developers.

The act would also establish a single point of contact to tap into existing federal broadband resources, and only one application would need to be submitted to apply for all federal broadband support programs. The new office would conduct outreach, including holding workshops to help rural communities develop the best plan for their specific needs. Additional funding and the establishment of minimum broadband speeds in rural areas, however, will still need to be addressed.

VI. Conclusion

This resolution will allow ABA staff and members to educate Congress, state, local, territorial, and tribal legislatures about ensuring rural communities are not left behind in the digital age. Providing access to the fourth utility of high-speed Internet to rural communities is a nationwide issue that touches practically every sector of our economy from the legal profession, to healthcare, to the education of our children. The United Kingdom, Spain, Switzerland, and Finland all consider broadband service a “universal service obligation,” and ensure all their citizens have proper Internet access.⁹⁵ The United States should too. The digital divide needs to be bridged before Americans living in rural communities are left behind.

Respectfully Submitted,

John M. Vaught, President
Colorado Bar Association
August 2019

⁹⁴ Advancing Critical Connectivity Expands Service, Small Business Resources, Opportunities, Access, and Data Based on Assessed Need and Demand Act, S. 1046, 116th Cong. (2019).

⁹⁵ See Georgia Hutton, *A Universal Service Obligation (USO) for Broadband*, HOUSE OF COMMONS LIBR. (June 5, 2018), available at <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-8146>; *Universal Service Obligation For Broadband Internet*, CESiFO (March 2011), <https://www.cesifo-group.de/DocDL/dicereport311-db1.pdf>.

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GENERAL INFORMATION FORM

Submitting Entity: Colorado Bar Association

Submitted By: John M. Vaught, Colorado Bar Association President

1. Summary of Resolution

The Resolution calls for the American Bar Association to adopt policy urging federal, state, local, territorial, and tribal legislatures to enact legislation and appropriate adequate funding to ensure at least 98% of the United States population has proper broadband access (high-speed internet). The policy would call for a download speed of at least 100 megabits per second and an upload speed of at least 30 megabits per second across the country. Slow or non-existent broadband access is a major issue in many rural communities throughout the United States, affecting practically every field including the legal profession. Without proper high-speed internet, attorneys and self-represented litigants in rural areas face extremely high barriers, and these communities cannot attract new lawyers. The result is a pressing access to justice issue. Federal, state, and local funding, legislation, and oversight is necessary to successfully bridge this digital divide.

2. Approval by Submitting Entity

The Colorado Bar Association Board of Governors approved this Resolution on May 7, 2019. The following organizations have also approved co-sponsorship of this Resolution: the State Bar of Montana on May 3, 2019; the ABA Tort Trial & Insurance Practice Section on May 4, 2019; the ABA Standing Committee on the Delivery of Legal Services on May 24, 2019; and the ABA Solo, Small Firm, and General Practice Division on May 4, 2019.

3. Has this or a similar resolution been submitted to the House or Board previously?

No.

4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

This Resolution compliments Resolution 12A10B by helping address access to justice in rural communities through improvements in broadband access. Resolution 01AM105A addresses the need for access to technology in underserved communities. This Resolution relates to 01AM105A but provides a more modern and specific solution. This Resolution also supports ABA policy favoring access to justice, such as 06A112A and 06A112B, which support civil legal aid and the right to counsel.

5. If this is a late report, what urgency exists which requires action at this meeting of the House?

N/A.

6. Status of Legislation. (If applicable)

House Bill 1328, called the Access Broadband Act, was first introduced last year, where it passed the House but failed to move forward in the Senate. The bill was re-introduced this year with a companion bill in the Senate, S. 1046. The Access Broadband Act is a bipartisan act that would establish the Office of Internet Connectivity and Growth within the National Telecommunications and Information Administration. This new office would streamline the management of federal broadband resources and simplify the process for small businesses and local developers to apply for government grants.

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

The policy would allow ABA staff and members to educate federal, state, local, territorial, and tribal legislatures to appropriate adequate funding to ensure that the future of our American rural communities includes access to justice for each of its citizens. Additionally, adopting this policy would permit the ABA president to speak on behalf of this cause, as well as provide ABA support for legislation.

8. Cost to the Association. (Both direct and indirect costs)

None.

9. Disclosure of Interest. (If applicable)

None.

10. Referrals.

This Resolution is in the process of being referred to the bar associations for all 50 states as well as the following ABA entities that may have an interest in the subject matter:

Center for Professional Responsibility
Coalition on Racial and Ethnic Justice
Commission on Hispanic Legal Rights and Responsibilities
Commission on Immigration
Commission on Racial and Ethnic Diversity in the Profession
Commission on Sexual Orientation and Gender Identity

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Commission on Women
 Commission on Youth at Risk
 Criminal Justice Section
 Delivery of Legal Services Standing Committee
 Family Law Section
 Judicial Division
 Legal Aid and Indigent Defendants Standing Committee
 Pro Bono and Public Service Standing Committee
 Section of Litigation
 Solo, Small Firm and General Practice Division
 Tort Trial & Insurance Practice Section
 Young Lawyers Division

11. Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address)

John M. Vaught
 President, Colorado Bar Association
 1290 Broadway, 17th Fl.
 Denver, Colorado 80203
 Tel: 303-244-1876
 vaught@wtotrial.com

12. Contact Name and Address Information. (Who will present the Resolution with Report to the House? Please include best contact information to use when on-site at the meeting. *Be aware that this information will be available to anyone who views the House of Delegates agenda online.*)

John M. Vaught
 President, Colorado Bar Association
 1290 Broadway, 17th Fl.
 Denver, Colorado 80203
 Tel: 303-244-1876
 vaught@wtotrial.com

EXECUTIVE SUMMARY

1. Summary of the Resolution

The Resolution calls for the American Bar Association to adopt policy urging federal, state, local, territorial, and tribal legislatures to enact legislation and appropriate adequate funding to ensure equal access to justice for Americans living in rural communities by assuring proper broadband access is provided throughout the United States.

2. Summary of the Issue that the Resolution Addresses

Approximately 24 million Americans lack the bare minimum broadband speeds according to the Federal Communications Commission, 96% of whom live in rural areas. These individuals lack access to high-speed broadband at a rate four times higher than the national average. Non-metro-area attorneys cannot thrive without the ability to communicate and file documents electronically in their practices. Rural communities are struggling to attract new attorneys and the attorneys practicing in many of those areas are aging out. Self-represented litigants also need to be able to prosecute and defend their cases in rural communities. The ABA consistently hears concerns regarding the rising costs of legal services and the availability of lawyers in certain areas is limited. As a result, more and more people are forced to appear *pro se*. These individuals need the ability to download forms from courts' websites and communicate with organizations that provide assistance. Not having the ability to do so creates an unnecessary burden on people who are already less likely to receive justice.

3. Please Explain How the Proposed Policy Position Will Address the Issue

Deploying broadband infrastructure promotes access to justice by removing the electronic barrier of inadequate internet service affecting attorneys and self-represented litigants in rural areas. Reliable high-speed internet in rural communities will help bridge the divide between rural and urban areas, giving lawyers and self-represented litigants the tools they need in today's digital world. Solving the digital divide will also have tremendous consequences outside the legal profession, including public safety, health care, education, and agriculture.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

None identified.

TAB
4

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

MAY 17, 2019

LAW AND JUSTICE CENTER

In Attendance: President H. Dickson Burton and President-elect Herm Olsen.
Commissioners: John Bradley, Steven Burt, Heather Farnsworth, Mary Kay Griffin, Mark Morris, Mark Pugsley, Tom Seiler, Cara Tangaro, and Heather Thuet.

Ex-Officio Members: Dean Robert Adler, Nate Alder, Erik Christiansen, Abby Dizon-Maughan, Amy Fowler, Margaret Plane, Robert Rice, Kate Conyers, Bebe Vanek and Lorraine Wardle.

Not in Attendance: Grace Acosta, Chrystal Mancuso-Smith, and Katie Woods. Ex-Officio Members: John Lund, Dean Gordon Smith, and Sarah Starkey.

Also in Attendance: Executive Director John C. Baldwin, Assistant Executive Director Richard Dibblee, and General Counsel Elizabeth A. Wright, and Victoria Finlinson,

Minutes: 9:10 a.m. start

1. President's Report: H. Dickson Burton

1.1 Professional Services Tax Follow-up. Dickson Burton reported that the Legislature established a task force to study the issue of tax reform in Utah. Steve Young, a tax lawyer the Bar had recommended for appointment to the task force, was appointed as a non-voting member. Dickson also reported that the tax on professional services bill is probably dead, but the long-term problem of the disparity of sources of tax funding remains. The Commission discussed the fact that lawyers should be part of the solution for the long-term tax issues facing the state.

1.2 Reports on Commissioner Visits for Park City Convention Meeting. Commissioners reported on their efforts to reach out to law firms to encourage Summer Convention attendance.

1.3 Review Park City Summer Convention Schedule. Dickson reported on the new schedule for and the highlights of the 2019 Summer Convention.

2. Action Items. The Commission decided to discuss all award nominees at once.

OUT OF ORDER

2.5 Select Other Bar Award Recipients. Cara Tangaro moved to select Dean Robert Adler and Steve Johnson for the Distinguished Service Award. Heather Thuet seconded the motion which passed unopposed.

Heather Farnsworth moved to select Patricia Christensen, Paul Warner and Brooke Wells for the Lifetime Achievement Award. Cara Tangaro seconded the motion which passed unopposed.

- 2.1 Select Lawyer of the Year Award Recipient.** Heather Farnsworth moved to select Paul Burke for the Lawyer of the Year Award. Cara Tangaro seconded the motion which passed unopposed.
- 2.2 Select Judge of the Year Award Recipient.** Cara Tangaro voted to select Judge John Baxter for the Judge of the Year Award. Heather Farnsworth seconded the motion which passed unopposed.
- 2.3 Select Section of the Year of the Year Award Recipient.** After discussing the nominees, Cara Tangaro moved to select the Litigation Section for Section of the Year. Heather Farnsworth seconded the motion which passed unopposed.
- 2.4 Select Committee of the Year Award Recipient.** After discussing the nominees, Mar Pugsley moved to select the Bar Journal Committee for the Committee of the Year Award. John Bradley seconded the motion which passed unopposed.
- 2.5 Select Other Bar Award Recipients.** See above.
- 2.6 Confirm Representative to And Justice for All Board.** The Bar has a representative on the And Justice for All Board. Nanci Bockelie, the current representative, is stepping down. Heather Farnsworth moved to appoint Jaycee Skinner to serve as the Bar representative. Heather Thuet seconded the motion which passed unopposed.
- 2.7 Select Commission on Criminal and Juvenile Justice Nominees.** Statute requires the Bar to recommend three lawyers to the Governor so he can select one for appointment to the Commission. Tom Seiler moved to recommend Monica Diaz and Tasha Williams to the Governor. Cara Tangaro seconded the motion which passed unopposed. Commissioners were asked to send John Baldwin the names of additional qualified people so a vote can be conducted for the third recommendation.
- 2.8 Approve Proposed 2019-2020 Budget.** Bar Director of Finance Lauren Stout joined the meeting to present the proposed 2019-2020 budget. Before the Commission reviewed and discussed the proposed budget, it considered a letter from the Utah Center for Legal Inclusion (UCLI) asking the Bar for a \$50,000 contribution. Incoming Young Lawyer Division (YLD) President Victoria Finlinson also presented a letter request from the YLD for a \$2000 increase in the 2019-2020 YLD budget. Lauren Stout then presented the proposed 2019-2020 budget. Mary Kay Griffin reported that the Budget

and Finance Committee reviewed and approved the budget. After discussion, **Tom Seiler moved to approve the proposed 2019-2020 budget which includes the \$50,000 contribution to UCLI and will include the \$2,000 increase in the YLD budget. Mark Morris seconded the motion which passed unopposed.**

3. Discussion Items.

3.1 Well-Being Task Force Draft Report Recommendations. Tabled until next meeting.

3.2 Reimbursement for Speakers and Panelists. Tabled until next meeting.

4. Information Items.

4.1 Report on Bar Survey. Mark Morris reported that the survey committee had met twice. Important goal is to be able to measure changes since 2011 survey. Committee expects to send out an RFP to potential survey companies within the next 2-3 weeks.

5. Luncheon with 50 Year Award Recipients & Leadership Academy.

The meeting adjourned at 11:55 a.m.

Consent Agenda

1. Approved Minutes from the April 19, 2019 Commission Meeting.
2. Approve Public Member Committee Report.

Handouts:

1. Steve Johnson resume.
2. UCLI letter request for funds.
3. Young Lawyers Division letter regarding 2019-2020 budget.

BYLAWS OF THE FAMILY LAW SECTION OF THE UTAH STATE BAR

ARTICLE 1

Purpose

1.1 Creation. The Family Law Section of the Utah State Bar (the "Section") is established pursuant to Article X, Section 1 of the Bylaws of the Utah State Bar.

Commented [KB1]: Added ".1" to keep the numbering consistent with the other Articles.

1.2 Purpose. The purpose of the Section shall be to seek the participation of all interested members of the Bar and of local associations in order to:

- (1) provide the opportunity and forum for the interchange of ideas in the area of family law by sponsoring various programs and seminars and other forms of continuing legal education;
- (2) -assist the judiciary in family law-related projects as may be of benefit to the members, the legal profession and the public;
- (3) undertake such other services or projects as may be of benefit to the members, the legal profession and the public;
- (4) promote the sound development of ethical and professional practices and procedure.

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1.25 Values Statement. The Section values engaging all persons fully, including persons of different ages, disabilities, economic status, ethnicities, genders, geographic regions, national origins, sexual orientations, practice settings and areas, and races and religions. Inclusion is critical to the success of the Section, the legal profession, and the judicial system. In working towards the Section's stated purpose, the Section shall strive to:

Commented [KB2]: Language added to comply with Bar diversity requirements.

- (1) Increase members' awareness of implicit and explicit biases and their impact on people, the workplace, and the profession;
- (2) Make Section services and activities open, available, and accessible to all Section members;
- (3) Support the efforts of all Section members in reaching their highest professional potential;

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(4) Reach out to all Section members to welcome them to Section activities and committees; and

(5) Promote a culture that values all members of the legal profession and the judicial system.

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1.3 Limitations. These Bylaws have been adopted subject to applicable Utah statutes and the Bylaws of the Bar.

1.4 Office. The principal office of the Section shall be maintained in the offices of the Bar. The operating office of the Section shall be that of the Chair during his/her term of office.

1.5 Fiscal Year. The fiscal year of the Section shall coincide with that of the Utah State Bar.

ARTICLE 2

Membership

2.1 Enrollment. Any member in good standing of the Bar may be enrolled as a member of the Section by notifying the Bar of such desire and by the payment in advance of annual Section dues in the amount approved by the Executive Committee of the Section and the Board of Commissioners of the Utah State Bar.

2.2 Membership. Members enrolled as provided in Section 2.1 shall constitute the Membership of the Section.

2.3 Associate Membership. The members of the sSection may include persons who are members of the Legal Assistants Division of the Utah State Bar, and shall be known as "Associate Members." It is the policy of this Section to involve Associate Members for the limited purpose of advancing the Section's principal objectives that are set out in Section 1.2 (1)-(4) and of these Bylaws. As a specific condition for membership in the Section, Associate Members shall take all precautions to assure that they do not hold themselves out as being members of the Utah State Bar, and will follow all guidelines and directives from the Section Chair in connection with the implementation of this requirement. Membership as an Associate Member shall be at the absolute and sole discretion of a majority of the members of the Executive Committee. Associate Members may not hold office in the Section, but are otherwise entitled to all of the privileges and benefits of the Section membership.

2.4 Dues. Dues in the amount approved by the Executive Committee and the Board of Commissioners of the Bar shall be paid annually in advance; provided, however, that additional monies may be raised by the Executive Committee as needed to operate the Section.

ARTICLE 3

Meeting of the Section's Membership

3.1 Annual Meeting. Commencing with the year 2002, the Annual Meeting of the Section shall be held in conjunction with the Annual Seminar, unless a different time is previously determined by vote of the Executive Committee.

3.2 Quorum. The members of the Section present at any meeting shall constitute a quorum for the transaction of business.

3.3 Controlling Vote. Action of the Section shall be by majority vote of the members present at any duly notice meeting of the Section. Other acts of the Section shall be by majority vote of the Executive Committee.

3.4 Agenda. Among the business to be transacted at the annual meeting by the Membership shall be the appointment of officers and Executive Committee members.

3.5 Special Meetings. Special meetings of the Section Membership may be called by the Chair at such time and place as the Executive Committee may determine. Reasonable notice of any such meeting shall be given to the Membership.

ARTICLE 4

The Executive Committee

4.1 Powers. The Executive Committee shall be vested with the powers and duties necessary for the administration of the affairs of the Section.

4.2 Composition. The Executive Committee shall be composed of the following:

- (1) A District Court Commissioner;
- (2) A District Court Judge;
- (3) A Juvenile Court Judge;

- (4) A representative from the Utah Attorney General's Office;
- (5) A representative from the Legal Aid Society of Salt Lake;
- (6) A practitioner specializing in Juvenile Court;
- (7) A practitioner specializing in mediation;
- (8) A Guardian Ad Litem;
- (9) A representative from or liaison to the First Judicial District;
- (10) A representative from or liaison to the Second Judicial District;
- (11) A representative from or liaison to the Fourth Judicial District;
- (12) A representative from or liaison to the Fifth Judicial District;
- (13) A representative from or liaison to the Sixth, Seventh and Eighth Judicial District;
- (14) A representative from the Collaborative Law Center; and
- (15) and, Up to twenty-five, at large members appointed by the Executive Committee.

4.3 Appointment. At the Annual Meeting, the Executive Committee shall appoint appropriate persons to fill the vacancies in the positions set forth in Section 4.2, subject to ratification by a vote of a majority of the persons present. Persons appointed to the Executive Committee shall serve at the pleasure of a majority of the Committee, and continuing membership shall be reviewed at the Annual Meeting.

Commented [KB3]: Consistency – In other areas in the Bylaws “annual meeting” is capitalized.

4.4 Terms. Each member shall serve a five-year term. At the conclusion of their terms, a member may be reappointed for an additional five-year term consistent with the terms of appointment set forth in section 4.3 above.

4.5 Eligibility for Membership. No person shall be eligible for appointment as an Officer of the Section or a member of the Executive Committee unless he or she shall have been a member of the Section throughout the year in which an appointment is made. Any person who is appointed to the Executive Committee by virtue of either the position that person holds or the district in which that person practices, and that position or district thereafter changes, that

person shall no longer be eligible to serve as a member of the Executive Committee, in that capacity. Members appointed to a special projects committees shall serve until the special project is completed, or for a term defined by the Executive Committee.

4.6 Controlling Vote. Action of the Executive Committee shall be by majority vote of the Executive Committee members present and voting by proxy. A member of the Executive Committee may vote by written proxy by instructing the Secretary-Treasurer in writing of the manner in which such vote is to be cast

4.7 Meetings. The Annual Meeting of the Executive Committee shall be held in conjunction with the Annual Meeting of the Section. Special meetings shall be held at the time and place as may be designated by the Chair, or by any Officer of the Section. A meeting is not essential to action by the Executive Committee, provided response to any proposed action is elicited from all members of the Executive Committee and a majority of the members have approved said action.

4.8 Political and Other Public Positions. Political and other public position of the Section may be authorized by the Executive Committee without a vote of the Section Membership at large.

4.9 Vacancies. The Executive Committee, during the interim between Annual Meetings of the Section, may fill vacancies in its own membership or in the Office of Chair-Elect or Secretary-Treasurer, and in the event of a vacancy in both the office of Chair and Chair-Elect, then in the office of Chair. Members of the Committee and officers so selected shall serve until the close of the next Annual Meeting of the Section.

ARTICLE 5

Officers

5.1 Officers. The officers of the Section shall be the Chair, the Chair-Elect and the Secretary-Treasurer.

5.2 Chair. The Chair shall preside at all meetings of the Section and of the Executive Committee. The Chair shall formulate and present at the Annual Meeting of the Bar a report of the work of the Section for the past year. The Chair shall perform such other duties as usually pertain to, or are required by this office, or as may be delegated by the Executive Committee.

5.3 Chair-Elect. In the absence of the Chair, the Chair-Elect shall perform the duties of the chair. Upon the death, resignation, or during the disability of the Chair, or upon his/her refusal

to act, the Chair-Elect shall perform the duties of the Chair for the remainder of the Chair's term, except in case of the Chair's disability, and then only during so much of the term as the disability continues.

5.4 Secretary-Treasurer. The Secretary-Treasurer shall be the custodian of all books, papers, documents and other property of the Section. The Secretary-Treasurer shall keep a true record of the proceedings of all meetings of the Section and of the Executive Committee, whether assembled or acting under submission. In conjunction with the Chair and as authorized by the Committee, the Secretary-Treasurer shall attend generally to the business of the Section.

ARTICLE 6

Appointment of Officers

6.1 Appointed Officers. Each year the Executive Committee shall appoint a Chair-Elect and a Secretary-Treasurer to serve one-year terms.

6.2 Chair and Chair Elect. The Chair-Elect shall automatically succeed to the office of the Chair. In the event the office of Chair-Elect shall be vacant at the end of a Chair's term, then a new Chair shall be appointed in the same manner as set forth in Section 6.1 herein above. The Secretary shall automatically succeed to the office of the Chair-Elect. In the event the office of Secretary shall be vacant at the end of Chair-Elect's term, then a new Chair-Elect shall be appointed in the same manner as set forth in Section 6.1 herein above. The Chair shall serve on the Executive Committee in an ex-officio capacity for a period of one year following service as the Chair.

6.3 Term of Office. The term of office shall begin with the adjournment of the Annual Meeting following election, and shall end following the Annual Meeting at which a successor has been duly appointed.

ARTICLE 7

Committees

7.1 Standing Committees. The standing committees of the Section shall be the Newsletter Committee, the CLE Committee, the Annual Seminar Committee, and the Legislative Affairs Committee.

7.2 Newsletter Committee. The members of the Newsletter Committee shall be appointed by the Executive Committee. The Newsletter Committee shall be responsible for publishing "Utah Family Law", the Section's newsletter and shall endeavor to do so four times per year.

7.3 CLE Committee. The members of the CLE Committee shall be appointed by the Executive Committee. The CLE Committee shall be responsible for planning the Continuing Legal Education program of the Section, with the exception of the Annual Seminar, and conducting monthly CLE luncheons, as deemed appropriate.

7.4 Annual Seminar Committee. The members of the Annual Seminar Committee shall be appointed by the Executive Committee. The Annual Seminar Committee shall be responsible for planning and conducting the Annual Seminar of the Section, a one-day CLE program, ~~in the month of May.~~

7.5 Legislative Affairs Committee. ~~Legislative Affairs Committee.~~ The members of the Legislative Affairs Committee shall be appointed by the Executive Committee. The Legislative Affairs Committee shall be responsible for monitoring proposed legislation affecting Utah Family Law, reporting to the Executive Committee, and representing the Family Law Section to the legislature.

7.6 Special Committees. The Executive Committee may appoint special committees to perform such duties and exercise such powers as the Executive Committee may direct.

7.7 Committee Membership. The Executive Committee may appoint persons to the above committees who are not members of the Executive Committee and, in special circumstances, persons who are not members of the Bar.

ARTICLE 8

Amendments

These Bylaws may be amended at any meeting of the Section by a majority vote of the members of the Section present and voting, provided that such proposed amendment shall first have been approved by a majority of the Executive Committee and provided further, that no amendment so adopted shall become effective until approved by the Board of Commissioners of the Utah State Bar.

ARTICLE 9

Miscellaneous

9.1 Approval of Expenditures. All bills incurred by the Section, before being forwarded to the Utah State Bar for payment, shall be approved by the Chair or the Chair's designee.

Adopted by the Executive Committee of the Family Law Section on the date of _____.

Chair

Approved by the Board of Commissioners of the Utah State Bar on the date of _____.

By: _____

TAB
5

POSITION DESCRIPTION

TITLE: Bar Commissioner
REPORTS TO: Bar President and Constituents

Basic Functions:

1. Serves as member of Board of Bar Commissioners in establishing policies to fulfill obligations of the Bar as indicated under the Utah Supreme Court's Rules for Integration and Management and under the Bar's Bylaws and Commission's Policies and Procedures.
2. With Bar Commission, adopts yearly budget for operations and capital.
3. Works towards fulfilling vision of the Bar, which is: *"A just legal system that is understood, valued, and accessible to all."*
4. Strives to uphold mission of the Bar, which is: *"Lawyers serving the public and legal profession with excellence, civility, and integrity."*
5. Attends regularly scheduled Commission meetings, including those associated with Annual and Spring Bar Conventions.
6. Serves on various Commission committees, which may include admissions related reviews, *ad hoc* study or governance committees, long range planning, budget and finance, executive committee, program review committees, or others as assigned.
7. Serves as liaison with sections, committees, and local bars as assigned by Bar President. In this capacity, each commissioner should: (a) call his or her assigned sections, committees and local bars at least once a month; (b) attend at least one meeting for each of his or her assigned sections, committees and local bars per quarter; and (c) provide a status report to the Commission as requested by the President.
8. Attends, if possible, admissions ceremonies and Bar socials.
9. Communicates with lawyers in division and reports on Bar activities and receives input for communication to the Commission.
10. Contacts local state senators and representatives on issues of Bar interests within legislative policies.

Key Points from Charlotte Miller's Bar Commission Leadership Workshop - August 23, 2014

1. Remember why you joined the Bar Commission - What are your goals?
2. Remember – your goals are probably the same and/or similar to your colleagues on the Bar Commission , even if you think you come from a different perspective than everybody else.
3. Being the Bar Commission is a privilege, not a chore. Develop a mindset of “I *get* to do X” instead of “I *have* to do X.”
4. Attend all Bar Commission meetings; study the materials beforehand. Focus 100% of your attention while you are in the meeting. Do not text, or do other work during the Bar Commission meetings. Be engaged. Listen carefully. Offer thoughtful comments that are in the best interest of the Bar. Follow through and make a difference.
5. Your time on the Bar Commission is short, especially for an ex-officio member. Make the most of it.
6. Remember your role: Bar staff can handle the day-to-day operations of the Bar. Your job is the big picture and oversight.
7. Think about what consensus means to you. Do not undermine the decision once it is made.
8. If you do not like someone with whom you must work, use strategies to get to know the person that will enable you to better work with the person or even begin to like her/him.
9. Encourage and mentor others along in Bar leadership. Remember your “Bar story,” which probably included an invitation from a Bar leader to help.
10. Talk often about the Bar's Vision and Mission Statements to focus your work in a way that is consistent with those statements.
11. Think about the decision-making process. Consider the following factors:
 - a. What facts do you need? Data is very important to good decision-making.
 - b. What should the process be?
 - c. What unwritten Bar traditions impact the final decision?
 - d. How does the culture of the Bar impact the decision?
 - e. What items in Bar governance materials are relevant to the process?

Important responsibilities of a Bar Commissioner:

Represent the interests of the attorneys for whom we act. Be a voice for your division.

Ensure Bar activities and initiatives be consistent with the Bar's Vision and Mission.

Help fulfill Vision by devoting time and intellect.

Contribute ideas and work.

Serve lawyers in Utah.

Help accomplish goals of the Bar Commission.

Represent my division and my liaison groups.

Make the Bar meaningful to lawyers.

Speak honestly.

Contribute with ideas and feedback.

Fiduciary.

Forward-thinking visionary.

Communicate with Bar members.

Have programs that assist all attorneys and advance the profession.

Protect core functions.

Promote access to justice and diversity.

Know concerns of Bar membership.

Take action on members' needs.

Be conservative with Bar dues.

Attend the meetings.

Use sound judgement.

Serve the community.

Represent the unrepresented.

Access to justice.

Work together to assist sections of the Bar.

Support Rule of Law and integrity of the legal system.

Listen and participate.

Summary of Bar Commission Reimbursement Policies

1. Commission Meetings.

- (a) **Mileage or airfare**, if necessary, for distant meetings – if they are held far enough from your office to make reimbursement appropriate (i.e., travel from Logan, St. George, or Provo to Salt Lake City, or *vice versa*), and;
- (b) **Lodging** for those who must travel some distance (i.e., travel from Logan, St. George to meetings in Salt Lake City, etc.).

2. Commission Meetings held at Spring Convention.

- (a) **Mileage** plus tolls and parking or, **reasonable airfare**;
- (b) **Standard per diem** for two day's meals, incidentals, and gratuities;
- (c) **Two night's lodging in a standard room** in the convention hotel, and;
- (d) **Rental car**, if necessary.

3. Commission Meetings held at Summer Convention.

- (a) **Mileage** plus tolls and parking or, **reasonable airfare**;
- (b) **Standard per diem** for three day's meals, incidentals, and gratuities;
- (c) **Three night's lodging in a standard room** in the convention hotel, and;
- (d) **Rental car**, if necessary.

4. Worthwhile Educational Opportunities.

At the discretion of the Bar President and pursuant to approved travel budgets:

- (a) **Mileage** plus tolls and parking or, **reasonable airfare**;
- (b) **Meals, incidentals, and gratuities** while traveling to and at the event;
- (c) **Lodging at the event hotel**, and;
- (d) **Rental car**, if necessary.

5. Other General Office Expenses.

With the advance approval of the Bar President:

- (a) **Telephone, postage, supplies, copying**, and other similar expenses, but *not* expenses for secretarial or clerical assistance.

6. Procedures for Receiving Reimbursement.

- (a) **Spring and Summer Convention.** Reimbursement for Commission Meetings held at the Spring and Summer Conventions will be solicited by the Bar's Executive Secretary via e-mail immediately after the conventions. Commissioners indicating a desire for reimbursement will be reimbursed for lodging, per diem, and mileage at standard rates.
- (b) **Reimbursement for other travel** will require supporting documentation.

Utah State Bar®

M E M O R A N D U M

TO: The Utah State Bar Board of Bar Commissioners

FROM: Elizabeth A. Wright

RE: Summary of Insurance Coverage for Commissioners

DATE: July 3, 2019

Each year I work with a broker at Diversified Insurance to obtain insurance coverage for the Bar. The Bar has Workers Compensation Insurance, professional liability insurance for Bar lawyers and volunteer pro bono programs (Bar insurance is secondary for volunteers), property, general liability, business auto and umbrella coverage.

Bar Commissioners are covered by our Non-profit Directors and Officers policy through Traveler's. The policy has a \$2,000,000 limit of liability and includes defense. The policy also includes employment practices liability insurance (EPLI) covering wrongful employment claims such as sexual harassment, discrimination or unlawful termination. Fiduciary liability coverage is required by The Employee Retirement Income Security Act of 1974 (ERISA) for claims associated with the Bar's 401(k) and healthcare plans (\$1,000,000 limit). Crime coverage insures against employee theft of Bar or 401(k) monies, including forgery (\$500,000 limit). Crime coverage covers employee theft or damage to the Bar's computer programs or electronic data (\$500,000 limit). This is separate from our cyber insurance policy which covers data theft by non-Bar employees (\$2,000,000 limit).

Please feel free to call or email at any time with any insurance coverage questions you may have.