

Utah Bar[®] JOURNAL

The background of the cover is a photograph of a dark, textured rock surface covered in ancient petroglyphs. The petroglyphs are etched into the rock and appear in a light tan or brown color. They include various geometric shapes like circles, squares, and triangles, as well as more complex designs like a large figure with outstretched arms, a circular symbol with a cross inside, and a circular symbol with concentric rings. The rock surface is cracked and uneven, adding to the historical feel of the image.

Volume 30 No. 2
Mar/Apr 2017



The best tool to combat fraud is the citizen whistleblower.



Eisenberg Gilchrist and Cutt, located in Salt Lake City, has one of the largest Qui Tam practices in the intermountain West. Robert Sherlock directs EGC's whistleblower practice.

EGC is presently litigating a broad spectrum of Qui Tam cases throughout the Western United States, with a special emphasis on health care related cases. We invite you to contact us to discuss co-counseling or referral of significant whistleblower cases.

The Federal False Claims Act (also known as the "Qui Tam" statute) protects the United States and American taxpayers by encouraging individuals to come forward and expose financial wrongdoing, connected with the US government projects and contracts.

Mr. Sherlock is uniquely qualified to evaluate and litigate Qui Tam cases. A former Editor in Chief of the Utah Law Review, Mr. Sherlock spent 18 years in the health care industry before joining EGC. His positions include: General Counsel, Chief Financial Officer, and Chief Operation Officer for several hospitals and health care entities, and Director of Health Care Compliance for Utah's leading health care system.

We look forward to the privilege of working with your firm.

Table of Contents

Letters to the Editor	6
Candidates President-Elect & Bar Commission Candidates	9
President's Message The Utah Center for Legal Inclusion by Robert O. Rice	12
The Utah Bar Commission Utah State Bar Finances: Where Do Your Bar Dues Go? by Kate Conyers	15
Article Considerations for Successfully Litigating a Traumatic Brain Injury Case by Michael W. Young	18
Article The Times They Are A Changin' by Learned Ham	22
Utah Law Developments Appellate Highlights by Rodney R. Parker, Dani N. Cepernich, Scott A. Elder, Nathanael J. Mitchell, and Adam M. Pace	25
Book Review My Own Words by Ruth Bader Ginsburg with Mary Hartnett and Wendy W. Williams Reviewed by Judge Jill M. Pohlman	28
Book Review Hard-Won Wisdom: True Stories from the Management Trenches by Jathan Janove Reviewed by Judge David Nuffer	30
Article Five Steves, Five Practices, One City by Trent Christiansen	32
Focus on Ethics & Civility What to Do When a Third Party Pays Your Fees by Keith A. Call	36
State Bar News	38
Young Lawyers Division Get it in Writing by Thomas R. McCosh	55
Paralegal Division Paralegal Division Membership Benefits by Candace Gleed	59
CLE Calendar	61
Classified Ads	62



Like the *Utah Bar Journal* on Facebook at www.facebook.com/UtahBarJournal.

The *Utah Bar Journal* is published bimonthly by the Utah State Bar. One copy of each issue is furnished to members as part of their Bar dues. Subscription price to others: \$30; single copies, \$5. For information on advertising rates and space reservations visit www.utahbarjournal.com or contact Laniece Roberts at utahbarjournal@gmail.com or 801-910-0085. For classified advertising rates and information please call Christine Critchley at 801-297-7022.

Statements or opinions expressed by contributors are those of the authors and are not necessarily those of the *Utah Bar Journal* or the Utah State Bar. Publication of advertisements is not to be considered an endorsement of the product or service advertised.

Copyright © 2017 by the Utah State Bar. All rights reserved.

The Utah Bar Journal

Published by the Utah State Bar | 645 South 200 East, Salt Lake City, Utah 84111 | 801-531-9077 | www.utahbar.org

BAR JOURNAL EDITORIAL BOARD

Editor

William D. Holyoak

Departments Editor

Judge Catherine E. Roberts

Young Lawyer Representative

Emily M. Adams

Managing Editor

Alisha Giles

Utah Law Developments Editor

Paralegal Representative

Greg Wayment

Editor at Large

Todd Zagorec

Judicial Advisor

Judge Gregory K. Orme

Bar Staff Liaison

Christine Critchley

Articles Editors

Nicole G. Farrell

Lee Killian

Andrea Valenti Arthur

Copy Editors

Hal Armstrong

Paul Justensen

Advertising/Design Manager

Laniece Roberts

MISSION & VISION OF THE BAR:

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

Cover Photo

Newspaper Rock, Newspaper Rock State Historic Monument, San Juan County, Utah. Photo by Utah State Bar member Robert J. Church.

ROBERT J. CHURCH is the Director of the Utah Prosecution Council. He is also a Colonel in the Utah Army National Guard. His jobs take him all over the state and the world, including Afghanistan, Krygyzstan, Kuwait, Ukraine, Germany, Austria, France, Japan, Korea, and Iceland. He always takes his camera to document his many travels. Southern Utah is one of his favorite places to photograph. While training prosecutors and law enforcement officers in southern Utah, he made a detour to Newspaper Rock to marvel at these 2,000 year old petroglyphs, finding his sense of awe only slightly diminished by the more recent contributions of vandals.



SUBMIT A COVER PHOTO

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



We're different. Because the rules are different.

No one knows the appellate process better than we do. As Utah's only appellate law firm, we bring valuable expertise to your case. We're happy to consult with you, team up with you, or handle the entire case for you. **801.924.0200** | zjbappeals.com



ZIMMERMAN JONES BOOHER
APPELLATE ATTORNEYS

Letters to the Editor

Dear Editor,

In the November/December 2016 issue of the *Utah Bar Journal*, The Utah Chapter of the American Immigration Lawyers Association authored an article entitled, *The Broader Universe: A Response*. This article was in response to an article I wrote and was published in the July/August 2016 *Utah Bar Journal: The U Visa: Why Are State Prosecutors Involved in Federal Immigration Issues?* In today's environment, individuals who disagree with each other often resort to name-calling or criticism. I want to commend the Utah Chapter of America Immigration Lawyers Association for providing a different perspective and the professional tone they took throughout their article. We clearly perceive things differently regarding U-visas. However, I commend them for sharing their thoughts but especially for the professional way they responded. It is nice to see that people can disagree without labeling the opposing side as a 'jerk'.

Timothy L. Taylor

Dear Editor:

I quite enjoyed Greg Wayment's article *The Litigation Paralegal's Role at Trial* (Volume 29 No. 6 Nov/Dec 2016). It might also have been titled: *An Outline On How To Get Ready For Your Trial With Or Without The Able Assistance Of A Paralegal* as it is an excellent guide for attorneys on the practical aspects of getting ready for a trial. Another useful tip, give your paralegal a bunch of cash, in small bills, at the start of a trial to buy snacks for the attorneys, client and witnesses. Trial is stressful, people forget to eat, and low blood sugar can make attorneys and witnesses forgetful, argumentative and mean (just like the *Snickers* commercials).

Morris Haggerty

Letter Submission Guidelines

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

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

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

GUIDELINES FOR SUBMISSION OF ARTICLES TO THE UTAH BAR JOURNAL

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

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

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

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

NO FOOTNOTES: Articles may not have footnotes. Endnotes will be permitted on a very limited basis, but the editorial board strongly discourages their use, and may reject any submission containing more than five endnotes. The *Utah Bar Journal* is not a law review, and articles that require substantial endnotes to convey the author's intended message may be more suitable

for another publication.

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

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

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

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



Find out why more law firms choose ALPS as their direct option for malpractice insurance at www.alpsnet.com/utah.

WITH ALPS, YOU'RE NOT BUYING A POLICY. YOU'RE BUYING A PROMISE.

 **ALPS**
The nation's largest direct writer of lawyers' malpractice insurance.

 (800) 367-2577
 learnmore@alpsnet.com



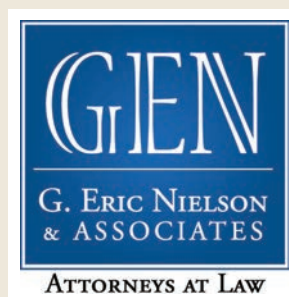
Medical malpractice defense attorneys don't want to beat you. They want to destroy you.

You need experienced co-counsel to win.

In a medical malpractice suit, you can expect seasoned defense attorneys with years of experience and an army of experts to do everything they can to destroy your client's case. You're already doing everything you can. Now let us do everything we can to help you win.

At G. Eric Nielson & Associates, we have a track record of providing exceptional co-counsel assistance for attorneys with complex medical negligence claims. Do you need someone that can contact six pediatric neuroradiologists at a moment's notice? Or someone who knows exactly what a placental pathologist does? Call us.

We'll work with you as a dedicated partner, adding our decades of experience to your expertise. The defense wants you to go it alone. Don't give them the upper hand. Medical malpractice is all we do.



MEDICAL MALPRACTICE EXPERTS

Call 801.424.9088
Toll Free: 866.605.4556
www.ericnielson.com

President-Elect & Bar Commission Candidates

Candidate for President-Elect

H. Dickson Burton is the sole candidate for the office of President-elect. No other nominations were made to the Bar Commission. Utah State Bar bylaws state: In the event that there is only one candidate for the office of President-elect, the ballot shall be considered as a retention vote and a majority of those voting shall be required to accept or reject the sole candidate.



H. DICKSON BURTON

It is a privilege to be a member of the Utah Bar. While we have many different practices and a variety of views in the Bar, we share a mutual interest in serving our clients as best we can. We also seek improved public understanding of the essential role of lawyers in resolving conflicts, helping individuals and protecting society's frameworks. Finally, we share a dramatically changing profession impacted by technology, economic and political pressures, and disparate opportunities for both lawyers and the public. As president of the Utah State Bar I will be committed to working with all of you to meet these challenges as well as to strengthen the Bar as an organization serving both the public and the profession. I have been fortunate to have worked with remarkable and committed professionals as my mentors, colleagues and friends. I look forward now to giving back more to the profession and I ask for your vote as President-elect. Please reach out to me with any suggestions or questions at hdburton@traskbritt.com or 801-994-8706. Also, if you don't know much (or anything) about me, my biographical sketch can be found at www.hdburton.com.

First Division Commissioner

Uncontested Election: According to the Utah State Bar Bylaws, "In the event an insufficient number of nominating petitions are filed to require balloting in a division, the person or persons nominated shall be declared elected." Herm Olsen is running uncontested in the First Division and will therefore be declared elected.



HERM OLSEN

I was admitted to the Utah State Bar in 1976 and the Navajo Nation Trial Bar in 1977. My education includes: B.S., Utah State University, magna cum laude; J.D. from the University of Utah. I have been a member of the District of Columbia Bar, Navajo Nation Bar, and the American Association for Justice. I serve on the Board of Directors for the Navajo Legal Aid Services, 1993–present. I was President of the Cache Chamber of Commerce, 2005–2006. My practice areas are personal injury, municipal law, and criminal defense. Prior to returning to Utah in 1980, I worked for the U. S. House of Representatives, Appropriations Committee, and served as Congressman Gunn McKay's legislative counsel.

I have appreciated the opportunity of serving as the Bar Commissioner representing the First Division. As a practicing attorney for over thirty years, I hope to bring to the Bar a sense of awareness for small firm practice. Bar leadership has done an excellent job of keeping members informed and providing meaningful input to legislative initiatives. We must remain vigilant in protecting Utah citizens' rights of and ensuring access to the legal system from increasing attacks by special interest groups. I appreciate your support.

Third Division Commissioner



HEATHER ORME FARNSWORTH

Please consider me for another opportunity to represent the Third Division as a Bar Commissioner. It has been my honor to serve for five years as a commissioner and as an ex-officio representative of the Women Lawyers

of Utah. I have been involved in leadership of the bar serving on the Executive Committee and as chair for the 85th Anniversary Event. I have participated in multiple committees including the Futures Commission and the Summer Bar Convention Review Committee.

In addition to my bar experience, I have leadership experience as a former President of the Women Lawyers of Utah and as the co-owner of Match and Farnsworth, a high-volume small firm. I offer a unique legal experience through my work representing disabled individuals in obtaining government benefits.

It has been my goal to be a voice for those who may fall outside of the traditional practice experience, who are often under-represented in bar leadership. If elected, I will continue to share my perspective while representing your concerns. I will work to strengthen the profession and the value of bar membership. I commit to diligently represent your needs within the Bar and within the community. Thank you for considering my candidacy.



TONY F. GRAF

I remember the first time I appeared in court wearing a bead necklace, Hawaiian shirt, lava-lava (a traditional Samoan skirt worn by men) and sandals. The judge took one glance at me and said "nice shirt counselor." Such was life practicing law in American Samoa.

The island life encouraged attorneys to take a different approach in both their careers and life. This included being

more relaxed, finding balance in one's life, being more open in one's communication, and the importance of looking for ways to serve the community. This experience changed how I work as an attorney and instilled in me the importance of serving the community I live in.

My name is Tony Graf, and I am seeking your vote for Bar Commissioner for the Third District.

I believe that the Utah Bar can become better as we increase our service to the community, refine the civility of our interactions with each other, and find ways to bolster our skill sets as attorneys. While I don't recommend our district adopting lava-lavas as our court attire, I believe a more balanced approach will help us become more effective advocates to those we serve and create a stronger Bar.



MARK O. MORRIS

Once more unto the breach, dear friends.

I am very grateful for the support I received last year when I unsuccessfully ran for Bar Commissioner representing the Third Division. I was happy to see the enthusiasm in the new Bar

Commissioners, and look forward to continued excellent service and representation from them. I want to join them. After another year I continue to believe that my thirty-one years of private practice primarily in this Division, and being witness to the changes from the red pen and IBM Selectrics to tracked changes and smartphones, provide me with a unique perspective that I happily offer along with my time and judgment. My associations with other lawyers have provided wonderful camaraderie and fellowship, and taught me the importance of regular association with our peers outside of our roles as advocates. I admit to actually liking lawyers, and I am proud to be a member of a Bar full of people whom I genuinely like and respect. I welcome and appreciate your support in my wanting to make Utah an even better place to live and practice law, and willingness to devote real time to it.



CARA M. TANGARO

My name is Cara Tangaro, and I am running for Third District Bar Commissioner. I was fortunate to be on the Bar Commission in 2016. I have been an integral part of a Committee working on revamping our Website and creating a

practice portal which will benefit attorneys (especially solo practitioners and small firms). I was a voice for small firms and solo practitioners.

I have been a practicing attorney for sixteen years, with experience as both a prosecutor and defense attorney. With experience on both sides of the “v”, I have a unique

perspective of the complexities of both prosecuting and defending criminal cases.

I am also a full-time mother of three wonderful kids. Running my own law practice and being a full-time attorney all the while raising three young children has been difficult, but also awarding. As a business owner, lawyer, mother, and wife, I have learned the importance of compromise and strategic planning, both of which I plan on continuing to use as a Bar Commissioner.

I want to use my unique experiences to benefit attorneys statewide as a voice. I also want to specifically be a voice for criminal defense and small/solo practitioners throughout the state.



DKOW has the resources, expertise & experience for your next catastrophic injury case.

dkowlaw.com ■ 801.533.0400 or 800.404.8520

The Utah Center for Legal Inclusion

by Robert O. Rice

Permit me to introduce you to a new organization, the Utah Center for Legal Inclusion (UCLI), co-chaired by Utah Supreme Court Justice Christine Durham and Parsons Behle & Latimer attorney Fran Wikstrom. UCLI is a new organization dedicated to promoting diversity in Utah's law schools, in its Bar, and on its bench. Its aim is to reach deep into the community to touch the lives of young and diverse children and students to be sure that they have among their hopes and dreams the prospect of attending law school and making a mark on our profession. Perhaps the seeds for UCLI were first planted 150 years ago, when Utah welcomed its first women and African American lawyers into the practice of law, decades before others in our profession would do the same.

For example, one of Utah's first woman lawyers, Cora Georgiana Snow, learned the law at the side of her father, Zerubbabel Snow, who later became an associate justice on the Utah Supreme Court and Attorney General for the Utah Territory. Brooke Edwards, *Voices From the Past: Georgia Snow – 1st Utah Female Lawyer*, Aspiring Mormon Women (July 6, 2015), *available at* <http://aspiringmormonwomen.org/2015/07/06/voices-from-the-past-georgia-snow-1st-lds-female-lawyer/>. Ms. Snow was admitted to the practice of law along with Utah's second woman lawyer, Phoebe W. Couzins, who was the first woman in the country to graduate from law school. Katharine T. Corbett, *In Her Place: A Guide to St. Louis Women's History* (1999).

Ms. Snow and Ms. Couzins earned their law licenses in 1872. Utah State Bar, Honoring Utah's Women Trailblazers in the Law (Sept. 7, 2011), *available at* <http://www.utahbar.org/utah-bar-journal/article/honoring-utahs-women-trailblazers-in-the-law/>. It would be another 36 years before the American Bar Association, formed in 1878, began accepting women members, in 1918. American Bar Association, ABA Timeline, http://www.americanbar.org/about_the_aba/timeline.html (last visited Feb. 1, 2017).

The first African American lawyer to be admitted to the practice

of law in Utah, Lawrence Marsh, was sworn in in 1909. Angie Welling, *Minority Bar Hails Pioneers*, DESERET NEWS, Oct. 16, 2005. The ABA did not allow African American members until 1943. Katie Johnston, *Paulette Brown to Take Reins of American Bar Association*, BOSTON GLOBE (Sept. 7, 2014), *available at* <https://www.bostonglobe.com/business/2014/09/06/paulette-brown-become-first-african-american-woman-head-american-bar-association/dFc460FXfVoONCOAAcAWWJ/story.html>.

It's not surprising that in the dawn of Utah's legal community, the state was leading the nation in welcoming diversity in our profession. Utah was founded in part by individuals who understood how it was to be viewed as an outsider. Still today, Utah Governor Gary Herbert recognizes how Utah has supported those who don't necessarily look like the rest of us. Commenting on President Donald Trump's executive order banning certain immigrants from entering the United States, Governor Herbert remarked that "Utah has always been a very welcoming state for refugees, for immigrants," he said. "We appreciate the diversity they bring, and certainly they are part of the fabric of our state." Lee Davidson, *Utah Gov. Herbert not on Board with Trump's Refugee, Immigrant Actions*, THE SALT LAKE TRIBUNE (Jan. 27, 2017), *available at* www.sltrib.com/news/4872517-155/utah-gov-herbert-not-on-board.

But since Ms. Snow, Ms. Couzins, and Mr. Marsh entered the practice of law in Utah, the number of women and minority lawyers in our community has increased slowly. It took until 1976 before there had been 100 women lawyers in Utah. *Women Lawyers of Utah, Women Trailblazers in the Law: First 100 Women Lawyers*, (May 15, 2014), *available at* <http://utahwomenlawyers.org/programs/women-trailblazers-in-the-law-first-100-women-lawyers/>. And it was not until the 1990s that Utah had 100 minority lawyers in the state. Linda Thomson &



Deborah Bulkeley, DESERET NEWS, Oct. 14, 2005, *available at* <http://www.deseretnews.com/article/635153215/Utahs-first-minority-lawyers-saluted.html>.

Still today, the number of women and minority lawyers practicing in the Salt Lake legal market is a fraction of the number of white, male lawyers, and hardly comparable to the number of women and minority Utahns in the population at large. *See* National Association for Law Placement, Inc., 2016 Report on Diversity in U.S. Law Firms (2017), *available at* www.nalp.org/uploads/2016NALPReportonDiversityinUSLawFirms.pdf (NALP Report). The NALP annually surveys demographics in major legal markets, including Salt Lake City. The NALP analyzed Salt Lake City's legal market with respect to the percentage of women, minority and minority women among partners and associates, finding the following:

- 12.78% of partners are women
- 5% of partners are minority
- 1.11% of partners are minority women
- 29.27% of associates are women
- 8.13% of associates are minority
- 3.25% of associates are minority women

NALP Report, Table 3. With regard to the total number of women and minority lawyers at law firms in Salt Lake City, the NALP found as follows:

- 22.2% are women
- 5.98% are minority
- 1.71% are minority women

NALP Report, Table 4.

When it comes to women and minority representation on our bench, the statistics perhaps deserve even more attention. Utah ranks 51 of 51 with respect to women or minorities as a percentage of state court judges. Tracey E. George & Albert H. Yoon, *The Gavel Gap, Who Sits in Judgment of State Courts*, AMERICAN CONSTITUTIONAL SOCIETY FOR LAW AND POLICY, at 27 (2016),

available at gavelgap.org/pdf/gavel-gap-report.pdf. This statistic, notwithstanding, Governor Herbert has made great progress toward closing this gap. Governor Herbert deserves many accolades for his efforts to appoint women and minority lawyers to the bench, having appointed at least twenty women and four minority lawyers to the bench during his tenure. I've appeared before many of Herbert's appointments, and I can attest to their strong qualifications and to the fact that the governor has appointed the most qualified applicants possible in every instance.

Still, there is work to be done. Racial and ethnic minorities are estimated to be 18% of the Utah population, 24% in Salt Lake County, and 35% for the U.S. in 2007. By 2050, these proportions are expected to increase to 30%, 41%, and 54% respectively. Pamela S. Perlich, *Utah's Demographic Transformation: A View into the Future*, 68 UTAH ECON. & BUS. REV. 3 (2008), *available at* gardner.utah.edu/wp-content/uploads/2015/08/UEBRVolume68Number3-1.pdf. And Utah is hardly alone in facing this dilemma. According to Bureau of Labor statistics, law is one of the least racially diverse professions in the nation. Deborah L.

Mediator-Arbitrator **JOHN KENNEDY** JUDGE (RET.)

Complex Federal & State Civil and Administrative Disputes



Helping parties
find resolutions
through skill, insight
and experience

*To schedule a Mediation or Arbitration
with Judge Kennedy please contact:*

**Utah ADR Services at
801-943-3730 or mbstrassberg@msn.com**

Direct Phone: 801-230-1385 | www.johnkennedymediation.com

Rhode, *Law is the Least Diverse Profession in the Nation. And Lawyers Aren't Doing Enough to Change that*, THE WASHINGTON POST (May 27, 2015), available at <https://www.washingtonpost.com/posteverything/wp/2015/05/27/law-is-the-least-diverse-profession-in-the-nation-and-lawyers-arent-doing-enough-to-change-that>. Eighty-eight percent of lawyers are white. See *id.* According to the NALP,

[m]inority women and Black/African-American men and women continue to be the least well represented in law firms, at every level, and law firms must double down to make more dramatic headway among these groups most of all. And, while the relatively high level of diversity among the summer associate classes is always encouraging, the fact that representation falls off so dramatically for associates, and then again for partners, underscores that retention and promotion remain the primary challenges that law firms face with respect to diversity.

NALP Report at 3.

Enter UCLI, which will be a 501(c)(3) nonprofit organization dedicated to advancing diversity and inclusion goals in the legal profession through education, community outreach, research and accountability, and by helping the Utah bar and minority-focused legal organizations accomplish their diversity and inclusion goals. UCLI will provide law firms, bar associations, schools, and government agencies with tools to help eliminate discrimination in the workforce, manage implicit biases in hiring and operational decision, and promote inclusive policies so that all levels of the legal profession can benefit from diversity in race, ethnicity, culture, sex, gender identity, sexual orientation, and religion.

UCLI is the brainchild of several exceptionally hard-working lawyers, Kristen Olsen and Melinda Bowen, and the Utah Minority Bar Association (UMBA), who worked tirelessly to build a framework for a successful organization. UCLI made a huge splash at the Utah Bar's 2016 Fall Forum, when Justice Durham and Ms. Bowen, joined by Governor Herbert, announced the creation of UCLI and introduced its program to Utah Bar members.

UCLI is already hard at work recruiting members and forming subcommittees to work on the important tasks before it – such as building a pipeline of young and diverse students throughout the state who are inspired to attend law school. UCLI's education committee is focused on building programs at the K-12 level to ensure children consider a career in law. The Community Outreach Committee is busy identifying groups and individuals who have a stake in ensuring our profession is diverse and well-represented. The Professional Development Committee is tasked with ensuring CLE programs take diversity into account and promote diversity. The Coordination and Promotion Committee is working on a UCLI Business Board of Governors who will help show companies and organizations how to set diversity and inclusion standards in the law and how to encourage UCLI membership and accountability.

One bold initiative UCLI is considering is a certification program that asks Utah law firms and legal employers to certify adequate participation in UCLI's efforts to promote diversity in our profession. To assist in the certification process, UCLI is laying plans to assist firms with diversity and inclusion audits and the preparation of individualized plans for promoting diversity and inclusion programs at the firm level. This effort will require buy-in from large and small firms alike, and will ask firms to make specific promises regarding how to improve diversity and inclusion in their work place. A certification process like this will require some soul searching, accountability, and a sustained effort in our legal community. But success cannot be achieved and progress cannot be made, unless firms make the kinds of commitments that will help UCLI, and our profession, promote a vision of a diverse and inclusive Utah Bar.

UCLI is following in the footsteps of UMBA, Women Lawyers of Utah (WLU), and LGBT & Allied Lawyers of Utah (LALU) to assist in growing a more diverse and inclusive Bar. UMBA, WLU, and LALU have worked extensively to mentor diverse lawyers and develop attorneys into strong and viable candidates to the bench. UCLI looks forward to working closely with UMBA and WLU to make further inroads with respect to diversity in the law.

But UCLI needs your help. Visit www.utahcli.org for information about how you can help. Importantly, visit UCLI's website to find out how to make your donation to this 501(c)(3) organization. Plainly speaking, UCLI cannot successfully launch for free; it needs not only your moral support, but also your financial support.

Utah State Bar Finances: Where Do Your Bar Dues Go?

by Kate Conyers

As a dues paying attorney, I'd always wondered where my Bar dues go. After being entrusted as a Bar Commissioner, I began to work on one of my campaign promises: increasing the transparency of the Bar's finances. To show you that the Bar works diligently to provide a wide range of services to attorneys and the public, the Bar's finances have been summarized in chart form in this article.

In November 2015, the Utah State Bar welcomed its new Finance Director, Kellie Bartz, C.P.A. Kellie previously worked as Vice President of Finance for Industrial Supply Company, the largest privately held supply and tool distributor in the Intermountain West.

Prior to Industrial, Kellie worked as the Corporate Accounting Manager at Adobe Systems and as senior auditor at PricewaterhouseCoopers. Kellie received her Bachelor of Arts degree in Economics from the University of California Santa Cruz and has a Masters in Accounting from San Jose State University. Kellie is incredibly competent and she is happy to answer questions about the Bar's finances.

This year, Tanner LLC completed an independent audit of the Bar's financial statements. You can find the report at www.utahbar.org/currentbudget. The Bar also compiles an annual "Final Budget" that shows revenue, expenses, and net profit/loss by department and across twenty-three different areas, including conventions, special projects, public education, and legislative. That budget can be found at the same link above.

Because you may not have the time to read those reports, and we want you to have a transparent summary of the financial

information contained therein, we have put together the charts on the following pages to explain the Bar's revenue and expenses in some general categories for the fiscal year ending June 30, 2017 (detailed further in the Bar's budget). Because not all revenue is generated by Bar dues, we have included a chart identifying how your Bar dues are being spent this fiscal year. Notably, Bar dues do not subsidize the Bar's self-supporting programs, including Admissions (-\$3,000), CLE (+\$53,000),

New Lawyer Training Program (-\$2,000), Spring Convention (+\$9,000), Summer Convention (-\$25,000), and Fall Forum (-\$26,000). The numbers following these programs represent their budgeted net losses/income for this fiscal year. Although some of the programs are budgeted to lose money, the

other programs' net income will essentially subsidize those losses, so your Bar dues are not used towards these programs. The same was true for the prior two fiscal years' actual results.

If you have questions about this information, both Kellie and I are prepared to answer your questions about how your Bar dues are spent. Please feel free to contact Kellie at cfo@utahbar.org or Kate Conyers at kconyers@sllda.com.

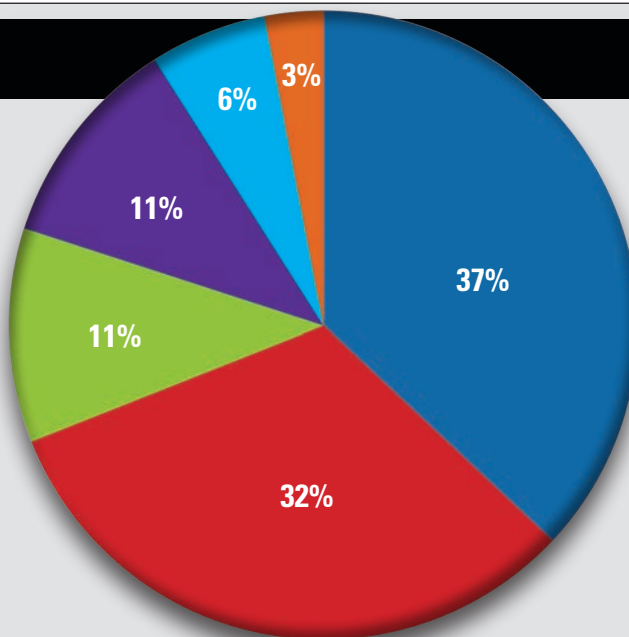
KATE CONYERS is a felony attorney at Salt Lake Legal Defenders. She has served on the Bar Commission for several years and currently serves as a Commissioner for the Third Division.



"To show you that the Bar works diligently to provide a wide range of services to attorneys and the public, the Bar's finances have been summarized in chart form in this article."

Where Do My Bar Dues Go?

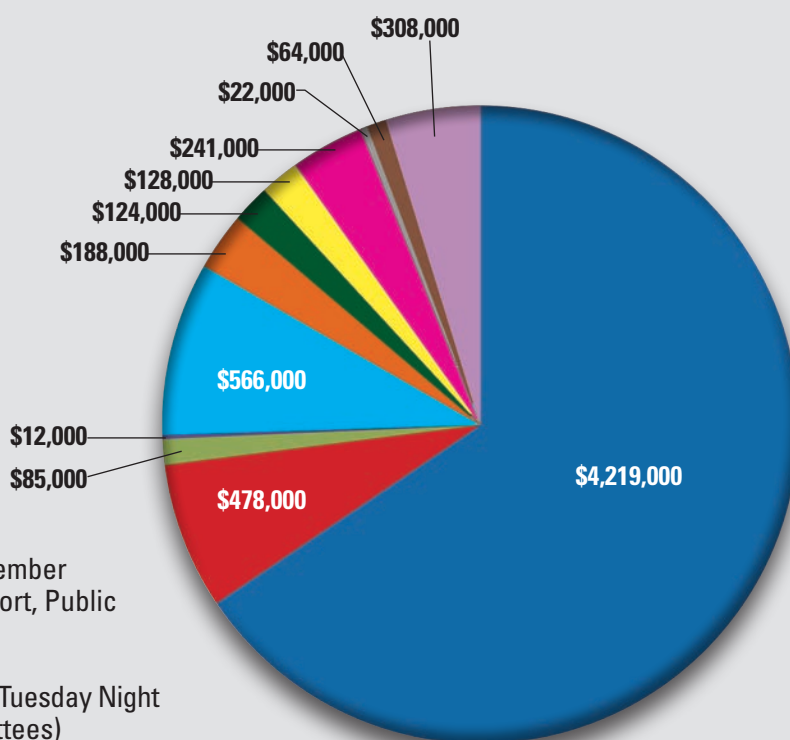
-  Bar Operations (Management, Commission, Finance, General Counsel, IT)
-  Office of Professional Conduct
-  Member Services (Bar Journal, Member Benefits, Legislative, Section Support, Public Education, YLD)
-  Public Services (Access to Justice, Tuesday Night Bar, Consumer Assistance, Committees)
-  Facilities
-  Contingency & Building Reserves



Budgeted Revenue by Department

for the Fiscal Year Ending June 30, 2017

-  Licensing
-  Admissions
-  New Lawyer Training Program
-  Office of Professional Conduct
-  Continuing Legal Education
-  Summer Convention
-  Fall Forum
-  Spring Convention
-  Member Services (Bar Journal, Member Benefits, Legislative, Section Support, Public Education, YLD)
-  Public Services (Access to Justice, Tuesday Night Bar, Consumer Assistance, Committees)
-  Bar Operations (Management, Commission, Finance, General Counsel, IT)
-  Facilities



Total Budgeted Revenue: \$6,435,000

Budgeted Expenses by Department

for the Fiscal Year Ending June 30, 2017



Total Budgeted Expenses: \$6,298,000



ROBERT F. BABCOCK



KENT B. SCOTT



BRIAN J. BABCOCK



Babcock Scott & Babcock, P.C.

ATTORNEYS & COUNSELORS AT LAW | WE BUILD SOLUTIONS

(801) 531-7000 • www.babcockscott.com Over 100 combined years of legal experience

BUILDING RESOLUTION • CONSTRUCTION & COMMERCIAL MEDIATORS

Considerations for Successfully Litigating a Traumatic Brain Injury Case

by Michael W. Young

As a complex lattice of neurons, glial cells, and synapses, the human brain is where ideas are formed, emotions are felt, and stimulation initiated. One's ability to communicate, remember, and understand is directly dependent on a well-functioning brain. Indeed, every breath one takes is done at the direction of his or her brain. And while we have learned much about the brain and its function, we remain incredibly ignorant of much of the brain's ability. Accordingly, while cases involving a brain injury intuitively seem straightforward, they are often quite difficult and complicated. Even the most careful practitioner can fail to fully understand and effectively prosecute his or her client's case. Failing to completely understand the nature of a client's injury can be catastrophic. However, among the difficult terrain, advantage awaits. By carefully assessing your case at the outset, one can make strategic decisions regarding which experts to employ, when to press for a settlement, and how to prepare for trial.

WHAT IS A TRAUMATIC BRAIN INJURY

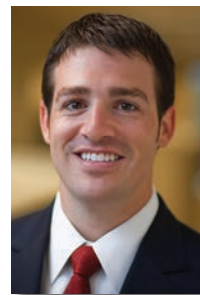
Traumatic brain injury (TBI) accounts for nearly thirty percent of all injury deaths in the United States. *See* Faul, M., Xu, L., Wald, M.M. & Coronado, V.G., *Traumatic Brain Injury in the United States: Emergency Department Visits, Hospitalizations, and Deaths*, ATLANTA (GA): CENTERS FOR DISEASE CONTROL AND PREVENTION, NATIONAL CENTER FOR INJURY PREVENTION AND CONTROL (2010). Additionally, approximately 3.6 to 5.3 million people in the United States suffer from residual consequences from a TBI. *See* Coronado, VG, et al., *Traumatic Brain Injury Epidemiology and Public Health Issues*, In *BRAIN INJURY FOR LAWYERS*, 84-100 (Zasler ND, DI Katz, & RD Zafonte eds., 2d ed. 2013). Public awareness of these injuries has grown in recent years due largely to the publicity received by the National Football League and other leagues for the effects concussions and other head injuries have on players. Yet while the issue of head trauma has come to the forefront of the public theater, a

basic understanding of what a TBI is and how it can affect an individual remains limited.

In the most basic sense, a TBI is an injury to the brain due to external trauma to the head. The injury itself may be focal, diffuse, or both. *See generally*, Hubbard, J & Hodge, S., *Traumatic Brain Injury*, in *HEAD TRAUMA AND BRAIN INJURY FOR LAWYERS*, 127–153(2016). A TBI is traditionally classified as either mild, moderate, or severe depending on a number of factors. Often the Glasgow Coma Scale is used to measure the severity of a TBI by looking at a number of neurological parameters such as eye movement, motor response, and verbal interaction. The more severe the TBI, the lower the individual will score on the Glasgow Coma Scale. The injury is often microscopic and can be difficult to observe in a CT scan. Nevertheless, a TBI's effect on a brain's neurons and glial cells can be very serious and life-altering.

The prognosis for an individual with a TBI is very broad. Some TBIs, like a mild concussion, can resolve within days, where other TBIs result in death or severe disability. As one might guess, recovery is largely dependent on the severity of the underlying injury. A severe TBI will almost always result in some form of long-lasting disability, where sixty-six percent of moderate TBI cases result in a long-lasting disability, and only ten percent of mild TBI cases experience long-lasting disability. Leon-Carrion, J, et al., *Epidemiology of Traumatic Brain*

MICHAEL W. YOUNG is an attorney and shareholder at the Salt Lake City office of Parsons Beble & Latimer.



Injury and Subarachnoid Hemorrhage, PITUITARY 8:3-4 (2005). Ultimately, there is no specific treatment to resolve a TBI and individuals suffering from a TBI are forced to simply manage symptoms.

ASSESSMENT OF YOUR CLIENT'S INJURY

As with most personal injury cases, the initial assessment of the client and his or her injuries is critical. However, merely knowing that your client likely suffers from some sort of brain injury is not enough. It is important to understand very early in a case the precise kind of brain injury from which your client suffers and the mechanism for that particular kind of injury. It is equally important to have a clear picture of your client's prognosis and future care needs. By having a firm understanding of the client's particular injury and the prognosis for that injury, meaningful decisions about how to move a client's case forward can be made.

Brain Imaging, Diagnostic Testing, and a Cadre of Experts

Establishing firm, scientific proof that a person suffers from a mild or even moderate TBI can be an extremely difficult task. For example, only recently has the scientific community come

to understand that mechanism of injury for certain brain trauma manifests itself as a metabolic process at a cellular level with destructive consequences over time. See Luce, R., *Proving a "Mild" Traumatic Brain Injury: A Complex But No Longer Impossible Task*, 38-SPG VT. B.J. 12, 15 (2012). That is, the actual injury to the brain may occur over the course of weeks, months, or even years. Accordingly, a delay in symptoms rather than speaking to the credibility of an injury, is actually reflective of the injury itself. *Id.* Compounding this issue is the fact that the symptoms associated with a mild TBI overlap with other medical conditions like post-traumatic stress disorder or depression. Centers for Disease Control, *Facts for Physicians 4*, available at http://www.cdc.gov/concussions/headsup/pdf/Facts_for_Physicians_booklet-a.pdf.

There are a number of imaging and testing options available to determine if someone has suffered from a brain injury. The options available and the reasons for using certain tests as opposed to others varies. For example, even though a magnetic resonance image (MRI) will often not detect a mild TBI, an MRI used in conjunction with a magnetoencephalography (MEG) scan can create a magnetic source image (MSI), or map, of a person's brain. Such a map can show normal and abnormal



**DURHAM
JONES &
PINEGAR**

ATTORNEYS AT LAW

111 S. Main Street
Suite 2400
Salt Lake City

801.415.3000

SALT LAKE CITY
OGDEN
LEHI
ST. GEORGE
LAS VEGAS
DJPLAW.COM

areas of brain function as well as rule out alternative explanations for diminished brain function like tumors or congenital defects. Additionally, because an MRI will often not detect a mild, and in some cases, a moderate TBI, when such is observable under an MRI, that evidence can be quite powerful. Alternatively, a Tesla MRI, which uses a more powerful magnet than that used in traditional MRIs, can often detect diffuse axonal injuries in living brain tissue.

Once imaging has been done, a practitioner should start to get some sense of the injury that he or she is dealing with. From there, it is critical to retain an expert to help interpret the results and to paint a picture of how the particular injury will affect the client. A neuropsychologist – a psychologist who specializes in neurological treatment – can identify brain dysfunction, establish a prognosis for the injury, outline cognitive deficits, and opine on issues of employability and need for supervision and aid through diagnostic testing and interviews. Even with the help of a neuropsychologist, however, it may be necessary to retain a neurologist – a medical doctor who specializes in treating the nervous system – for trial who can support and substantiate the connection between the imaging and the neuropsychologists' testing and opinions.

For those keeping track, that is up to three separate experts just to substantiate that a brain injury has occurred. One will still need to retain additional experts possibly including a biomechanical engineer (proximate causation), neuropsychiatrist (general causation and damages), psychiatrist (general damages and lost future economic damages), life care planner (future medical damages), vocational rehabilitation expert (future economic damages), and an economist (economic damages). Of course, when and if each of the above-listed experts are needed is a question of both strategy and necessity.

USING EXPERTS EFFECTIVELY IN TRAUMATIC BRAIN INJURY CASES

Given the unique nature of cases involving a TBI, one can no longer offload expert costs and investigation to a later stage of litigation. Failing to understand the kind of brain injury at issue puts a client's needs at immediate risk. In determining when to

enlist the help of an expert, it is useful to remember that the expert may perform many different functions aside from simply providing an opinion at trial. Often there is room for an expert to be enlisted initially as a consulting, rather than a testifying, expert. Additionally, Rule 26 of the Federal Rules of Civil Procedure protects draft reports from disclosure, giving experts greater freedom to explore an underlying case and share his or her opinions with the client's attorney. Perhaps most useful is the disclosure of expert reports under Rule 408 of the Federal Rules of Evidence.

Under Rule 408, "conduct or [] statement[s] made during compromise negotiations about the claim" are not admissible to "prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or contradiction." Fed. R. Evid. 408. Accordingly, Rule 408 can be used as a mechanism to freely discuss the merits of a client's case with a loss-adjuster, or opposing counsel. *See, e.g., Lyondell Chem.*

Co. v. Occidental Chem. Corp., 608 F.3d 284, 295–97 (5th Cir. 2010); *R.R. Donnelley & Sons Co. v. N. Texas Steel Co.*, 752 N.E.2d 112, 133 (Ind. Ct. App. 2001); *Hulter v. C.I.R.*, 83 T.C. 663, 666 (1984). Expert testimony in the form of a preliminary or draft report early in a case can set a powerful tone for litigation or

settlement discussions.

As discussed above, engagement of certain experts is necessary in cases involving a TBI. Converting an expert's preliminary assessment into a draft/preliminary report to be used in negotiating with an adjuster or lawyer often requires little, if any, additional effort or cost. Alternatively, an expert's early assessment will also clue in a practitioner to the strengths and weakness of his or her case and provide guidance as to what other experts might be retained, what additional investigation needs to be performed, and whether early settlement discussions or mediation would be advantageous. In this respect, the complicated nature of brain injury cases provides the careful practitioner with a definitive advantage in forging a beneficial narrative in pre-suit negotiation, discovery, and trial. Recognizing this advantage, one should invest early in expert involvement in brain injury cases. Such an investment will undoubtedly pay dividends later.

"Given the unique nature of cases involving a TBI, one can no longer offload expert costs and investigation to a later stage of litigation. Failing to understand the kind of brain injury at issue puts a client's needs at immediate risk."

Professional Guardianships & Conservatorships



Lois M. Brandriet, PhD, APRN, GCNS-BC, NCG
Partner & Manager



Rebecca M. Allred, NCG
Partner & Manager



Guardian Advocate Services, LLC (GAS)



(801) 433-0461

loisb@guardianadvocateservices.com

www.guardianadvocateservices.com



Stagg Fiduciary Services, LLC (SFS)



(801) 433-0460

beckya@staggfs.com

www.staggfiduciaryservices.com

**111 E. Broadway, Suite 250
Salt Lake City, UT 84111
(801) 521-7641 (fax)**

The Times They Are A Changin'

by Learned Ham

I know, I know, the electoral college wasn't just a prank that sounded like a cool idea to James Madison after one of his all-nighters with Ben Franklin and the wild and crazy Pinckney cousins (Charles and Charles). What happens in Philadelphia stays in Philadelphia. It was a necessary inducement to the smaller states and a wise bulwark against mob rule in a future out-of-control democracy. But still.

As long as this is going to be a history lesson, let's go back to December 19, 1980. San Diego, California. Jack Murphy Stadium. Stick with me, I promise I'm not just changing the subject. You know the story. It's the Miracle Bowl. Jim McMahon and the Coogs come up with 21 points in the last two minutes and 33 seconds to beat SMU 46 to 45 on a Hail Mary to Clay Brown as the clock expires. BYU wins.

It makes a great story, which gets retold at least as often as the one about how "This is the Place," but let's do a quick recount — applying the rules of the electoral college.

Who cares who gets the most points? The final score doesn't mean anything. The game is divided into four quarters. There must be a reason for that. Those quarters are really important. If the lights on the scoreboard at the end of the game are all that matter, why not just skip the first 58 minutes and free up a couple of hours for everyone involved? No, the thought makes reason stare. The first three quarters are no less important than the last one. Just like Delaware is no less important than Virginia. And we must safeguard the integrity of the game by protecting against the possibility that a team gets unbelievably lucky in the last two minutes. Each quarter gets a point, and it takes three points to win.

SMU wins. And if you voted for Donald Trump or George W. Bush or Benjamin Harrison or Rutherford B. Hayes or John Quincy Adams, you'll see the logic behind that and join me in petitioning Kevin J. Worthen to FedEx the 1980 Holiday Bowl trophy to Dallas. No whining, it's for the good of the game.

OK, I admit it. The analogy is flawed. Football is not an election; I'm the one doing the whining; and it isn't fair to compare the BYU football team to Hillary Clinton. I doubt that either of them would appreciate it.

Because I'm all about being fair and balanced, here's the argument for the other side. There are plenty of examples in sports where the player with the most points loses, and it never occurs to anyone that there's anything wrong with that.

One example: tennis. On three occasions the Wimbledon men's singles champion actually won fewer games in the final match than his opponent. In 2009 Roger Federer won 38 games to Andy Roddick's 39. Federer was the champion. In 1948 Bob Falkenburg won 23 games; John Bromwich 24. Falkenburg won. In 1887 Ernest Renshaw took 23 games to Herbert Lawford's 21. Guess who got the first dance at the Champions Ball with Lottie Dod? Not Ernie. It's happened twice on the women's side. In 1993 Steffi Graf took 14 games from Jana Novotna. Jana won 16, but Steffi got the crown. In 1949 Louise Brough won the right to dance with Ted Schroeder, even though Margaret Osborn Dupont won 22 games to Louise's 21.

Did Margaret or Jana or Ernest or John or Andy throw a fit (and a racket) and demand that someone change the rules? Of course not. Everybody knew the rules from the start and were happy to play by them. Where's the injustice in that? Game, set,

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	FINAL SCORE
SMU	19	10	9	7	3
BYU	7	6	6	27	1

and match to Mr. Trump. And if you want to press the Holiday Bowl analogy, who pulled off the amazing come-from-behind win? Trump to Pence with no time on the clock.

The interesting part is what comes next (after the Inaugural Ball, not the Champions Ball). The peaceful transition of power. Desk drawers will be emptied and offices will be vacated. New faces will be in charge of new policies and procedures, which will thrill some folks and horrify others. A new portrait will hang in every post office.

It should feel familiar to anyone who's been through a corporate acquisition.

The company I work for was recently bought. A "liquidity event" is what the former owners called it. We had other names for it, most of them apocalyptic. You thought I was going to say "obscene" didn't you? But you were as wrong as Nate Silver. We're past that. We roll with the punches. I was commiserating with the former head of "business development" – Rajeev – who wonders about his future now that we have become a checked box on someone else's business development plan. "Rajeev" isn't remotely close to his real name, by the way, just like the company

today isn't anything like the same place it was pre-closing. The tumbleweeds in the hallways are just the beginning.

I tell Rajeev my theory, which is that this is simply what happens when you're owned by a private equity group. They exist to sell businesses, not run them. They don't manufacture goods, just EBITDA, and there are other people out there willing to buy EBITDA. And when somebody comes along and buys your EBITDA, that is the culmination of an exit strategy that precipitates a liquidity event. The banks get their loans paid back and the old owners walk away with some of the money the new owners borrowed from the same banks. Then the cycle begins again, like the first robin of spring. The new owners, who are often another private equity group, turn the place upside down looking for EBITDA. They hire consultants. They squeeze employees. They sell any asset bigger than a three-quarter inch binder clip. The result is an income statement overflowing with EBITDA (which somehow dries up before turning into net income), and a balance sheet composed mostly of goodwill created by overpaying for acquisitions. And that, my friends, is a sure sign of another liquidity event on the horizon.

Rajeev also happens to be the treasurer of the local Hindu temple, and I compare our plight to the cycle of death and



Dani N.
Cepernich



Steven W.
Beckstrom



Melinda K.
Bowen



Margaret B.
Vu

Snow Christensen & Martineau is pleased to announce the following new shareholders: **Dani N. Cepernich** and **Steven W. Beckstrom**.

We welcome **Melinda K. Bowen** back to the firm following her clerkship with Tenth Circuit Court of Appeals Judge Carolyn B. McHugh. And we welcome our newest associate **Margaret B. Vu**.

SNOW
CHRISTENSEN
& MARTINEAU
801.521.9000 | www.scmlaw.com

rebirth that will bring both of us closer to nirvana. He thinks I'm wrong, and explains it to me:

For the last ten years we've been doing this to other people – buying their companies, outsourcing their jobs, upstreaming their cash, holding board meetings in Dublin and faking those Irish accents. Now it's our turn. It's not synergies and reorgs and tax treaties and transfer pricing and efficient capital allocation and exit strategies. It's just karma. And the fact that we're so bummed out about it probably means we're farther away from nirvana, not closer.

The transition to new management can be awkward, and I think there might be a couple of lessons here for Donald Trump, although the truth is, I'm pretty sure he's already seen these a time or two.

1. Show them who's in charge.

Act decisively. No equivocation. At least I think that's a good idea. I'm not completely sure about this. . . Years ago, I was in a meeting at another company I used to work for that had just been bought. The president of the local subsidiary where I worked (we'll call him Walter, because that isn't anything close to his real name) had just finished explaining to the president of the acquiror

(we'll call him Attila) that his EBITDA target for the coming year was probably not achievable. Attila listened patiently and responded, "Don't #!*)&%\$#@#! with me, Walter, or there'll be blood all over the floor, and it won't be mine." I doubt very much that Walter had ever been addressed quite like that in the boardroom before. At least, he certainly looked surprised. Roll with the punches. Attila, on the other hand, sounded like he was reciting a well-rehearsed line, something he'd said more than once. "Tone from the top" I think they call it.

2. Don't bother with press conferences.

Complete waste of time – they never go well. A few years after Atilla's mentoring of Walter, I was in another meeting at a different company that had just been bought. It was one of those "town hall" meetings to get to know the new management, and seemed to go pretty smoothly until the Q&A, which apparently went on a little longer than the conquering CEO wanted. Finally, after one too many ill-advised questions implying less than unbridled enthusiasm for upcoming synergies, the CEO announced, "This was an acquisition, not a merger. Meeting adjourned."

3. No hesitation.

Don't drag out the transition. Get your people in, and their people out ASAP. A temporary transition services agreement with the seller for six months or so might seem necessary while you get the back-office support figured out, but you'll both come to hate it. An earnout provision where the seller gets additional consideration in the future triggered by the business hitting certain EBITDA targets – and which therefore means the seller sticks around to run your business during that period – always ends badly. You will threaten to sue each other before it's over, with a good chance someone isn't just bluffing. I would share some of the details of the distribution business we bought from those thieves in that country run by a gang of thugs, but the confidentiality and non-disparagement clauses of the settlement agreement won't let me. The lesson for Donald Trump? Thank Mr. Obama sincerely for his generous offer to be of continuing assistance, then lose the cell phone number. Offer his people a bonus for clearing out by 3:00 p.m.

And life goes on. Ownership comes and goes. Policies and procedures change. Moving vans jam the streets of Washington, D.C. Roll with it, Walter. Abandon those desires and attachments. If you do, nirvana is closer than you think. Or just celebrate. Why not? Maybe your guy won, and even if she didn't, BYU did win the Miracle Bowl, and even the losers at Wimbledon still get invited to the Champions Ball. They just have to wait for the second dance. Meeting adjourned.

Auctioneers & Appraisers

Erkelens & Olson Auctioneers has been the standing court appointed auction company for over 30 years. Our attention to detail and quality is unparalleled. We respond to all situations in a timely and efficient manner, preserving assets for creditors and trustees.

Utah's Leading Auction & Appraisal Service



**Erkelens
& Olson**
Auctioneers
& Appraisers

3 Generations Strong!

Rob, Robert & David Olson
Auctioneers, CAGA Appraisers

801-355-6655
www.salesandauction.com

Appellate Highlights

by Rodney R. Parker, Dani N. Cepernich, Scott A. Elder, Nathanael J. Mitchell, and Adam M. Pace

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

***In re E.K.S.* 2016 UT 56 (Dec. 6, 2016)**

In this privately-initiated parental termination proceeding, the mother had requested appointed counsel. The court held that Utah Code section 78A-6-1111(2), which prohibits the appointment of counsel in private proceedings, was not facially unconstitutional, but agreed that the district court erred by relying on the statute to deny the mother's request for court-appointed counsel, rather than considering the mother's due process rights as set forth in *Lassiter v. Department of Social Services*, 452 U.S. 18, 27–32 (1981).

***In re K.A.S.* 2016 UT 55 (Dec. 6, 2016)**

The court held that denial of counsel to the indigent father in this appeal from a parental-rights termination order violated the father's federal due process rights. The father did not preserve the constitutional argument for appeal, but the court found that the exceptional circumstances exception to the preservation rule applied in the narrow circumstances of this case.

***Bennett v. Bigelow* 2016 UT 54 (Nov. 25, 2016)**

The Utah Supreme Court analyzed whether a parolee could assert a Fifth Amendment challenge to the revocation of his parole based upon his participation in a sex offender treatment program that required the disclosure of past charged or uncharged sex offenses. Reversing the district court, the supreme court held that genuine issues of material fact precluded summary judgment in favor of the state on the Fifth Amendment claim. Among other things, the supreme court recognized that "a threat to revoke a defendant's parole constitutes compulsion for purposes of the Fifth Amendment." *Id.* ¶ 41.

***In re Estate of Willey* 2016 UT 53 (Nov. 22, 2016)**

In an appeal from a denial of a motion seeking relief from court order under Utah Rules of Civil Procedure 60(b), the Utah Supreme Court held that Rule 60(b) motions must be filed under their appropriate headings. Specifically, Rule 60(b)(6) is not a catch-all when the grounds for setting aside the judgment are covered under 60(b)(1)–(5). The court affirmed the denial of the motion.

***Met v. State* 2016 UT 51 (Nov. 21, 2016)**

The court affirmed the defendants' felony convictions for child kidnapping and aggravated murder. Among other things, the court abandoned the factors test described in prior case law and held that Utah Rule of Evidence 403's balancing test is the standard that a district court should employ to assess the admissibility of allegedly gruesome photographs.

***Nielsen v. State* 2016 UT 52 (Nov. 18, 2016)**

The Utah Supreme Court held that, under Utah Rule of Evidence 505, when the government invokes the confidential informant privilege, all charges for which that testimony is necessary must be dismissed. The court abandoned a common-law multi-factor test governing the admission of testimony from a confidential informant. The inquiry is limited to "whether 'an informer may be able to give testimony necessary to a fair determination of the issue of guilt or innocence in a criminal case.'" *Id.* ¶ 22 (citation omitted).

***State v. Phillip* 2016 UT App 245 (Dec. 22, 2016)**

The defendant argued that the district court erred in revoking probation, in part because Adult Probation and Parole was not supervising him at the time of the violation. The Utah Court of Appeals affirmed, holding (a) inaction of the agency charged with supervision did not terminate probation, because the authority to terminate probation rests with the judiciary, and (b) the lower court did not err in finding the violation was willful, because the defendant could not have reasonably believed that he was no longer on probation under the facts of the case.

***State v. White* 2016 UT App 241 (Dec. 15, 2016)**

Appealing convictions of aggravated burglary and aggravated assault, the defendant argued an order authorizing force in obtaining a DNA sample violated his right to be free of unreasonable searches and seizures. Affirming, the court of appeals held the district court acted within its discretion when it authorized use of force in obtaining a buccal swab under Rule 16 of the Utah Rules of Criminal Procedure,

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

where probable cause supported retrieval of the DNA.

***State v. Romero* 2016 UT App 242 (Dec. 15, 2016)**

The court reversed the defendant's conviction and remanded the case for a new trial. The court found that the trial court's admission into evidence of details of the defendant's prior conviction for unemployment fraud was an abuse of discretion that prejudiced him.

***N.Y. Ave. LLC v. Harrison* 2016 UT App 240 (Dec. 8, 2016)**

New York Ave. LLC (NYA) entered into a contract to purchase land from the Harrisons. NYA exercised an option to extend the closing date of the contract by making monthly payments, and argued that the contract allowed these extension payments to continue indefinitely. The court held that to allow NYA to postpone the closing date indefinitely would defeat the purpose of the contract, and that, in the absence of a specified date, "the law implies that it shall be done within a reasonable time." *Id.* ¶ 35 (citation omitted).

***State v. Cruz* 2016 UT App 234 (Dec. 1, 2016)**

In this child abuse conviction, the court held that it was error to allow a video recording of a Children's Justice Center interview of the victim into the jury room during deliberations, reasoning that the recording was testimonial in nature. The court determined, however, that the error was harmless as the jury did not appear to give overemphasis to the interviews.

***Iota LLC v. Davco Mgmt. Co. LC*
2016 UT App 231 (Nov. 25, 2016)**

This is the second appeal from the district court's order of contempt issued against the defendants based on their failure to comply with an order requiring them to deposit all rents collected with the court. In this appeal, defendants sought, among other things, to challenge the validity of the underlying district court order. The court of appeals agreed with the district court that the collateral bar doctrine precludes defendants from waiting until after they violated the order to challenge its validity. In doing so, the court made clear that the collateral bar doctrine is part of Utah jurisprudence.

***Elite Legacy Corp. v. Schvaneveldt*
2016 UT App 228 (Nov. 17, 2016)**

This appeal arose from a dispute over a real estate sales commission. The defendant who lost at trial filed several Rule 60(b) motions seeking to vacate the judgment, including an argument that the court lacked jurisdiction because the principal broker of the real estate agency (which operated under an assumed name) was not a plaintiff, and therefore the plaintiffs lacked standing to sue for the commission. The court rejected these arguments,

holding that the plaintiffs had traditional standing to sue, and that their lack of legal capacity to sue under the Assumed Name Statute did not deprive the court of jurisdiction.

Vogt v. City of Hays, Kansas

844 F.3d 1235 (10th Cir. Jan. 4, 2017)

In this appeal from an order of dismissal on the basis of qualified immunity, the Tenth Circuit held as a matter of first impression that the Fifth Amendment right against self-incrimination applies when the self-incriminating statements are used during a probable cause hearing. However, because this was not clearly established at the time the plaintiff's statements were obtained and used against him during the probable cause hearing, the court affirmed the district court's ruling that the officer defendants were entitled to qualified immunity.

United States v. Walker

844 F.3d 1253 (10th Cir. Jan. 4, 2017)

A convicted serial bank robber asked to attend in-patient drug treatment prior to sentencing after undergoing inpatient treatment. The defendant's apparent success in the treatment program led the district court to sentence him to the thirty-three days he previously served in pretrial detention. The government appealed, arguing that the sentence was subjectively unreasonable. The Tenth Circuit Court agreed, holding that the sentence was unreasonably short based on the statutory sentencing factors. The district court, in its commendation of the defendant's sobriety, gave too little value to deterrence, incapacitation, and respect for the law.

In re Nat. Gas Royalties Qui Tam Litig.

845 F.3d 142, 2017 WL 35710 (10th Cir. Jan. 4, 2017)

This appeal arose from two district court orders awarding millions of dollars of attorney fees against the man who filed a *qui tam* case that lasted over twenty years and involved more than 300 natural gas industry defendants. The Tenth Circuit affirmed the award of attorney fees against the plaintiff under the fee shifting provision of the False Claims Act, finding that the complaint was clearly frivolous and lacking in evidentiary support. However, the court reversed the district court's award of attorney fees related to an earlier appeal, explaining that the district court lacked jurisdiction to award appellate-related fees and noting that defendants failed to request the fees from the Tenth Circuit.

Bandimere v. United States Sec. & Exch. Comm'n,

844 F.3d 1168 (10th Cir. Dec. 27, 2016)

The Tenth Circuit held that the exercise of authority by the Securities and Exchange Commission administrative law judges (ALJ) was unconstitutional in violation of the Appointment Clause.

Citing the ALJ's significant discretion when presiding over enforcement hearings, the court held that ALJs are inferior officers, rather than employees, and are thus required to be appointed.

Hammond v. Stamps.com, Inc.
844 F.3d 909 (10th Cir. Dec. 20, 2016)

In this appeal of an order remanding a class action, the Tenth Circuit broadly defined the term “in controversy” for the purposes of the Class Action Fairness Act, and held that federal jurisdiction existed when the defendant explains plausibly how a class may lawfully recover in excess of the statutory minimum under the plaintiff's own allegations.

Auraria Student Hous. at the Regency, LLC v. Campus Vill. Apartments, LLC 843 F.3d 1225 (10th Cir. Dec. 15, 2016)

After reconsidering prior precedent in light of intervening Supreme Court authority, the Tenth Circuit “departed from” *Salco Corp. v. Gen. Motors Corp.*, 517 F.2d 567 (10th Cir. 1975), and held instead that to prove a conspiracy to monopolize under Section 2 of the Sherman Act, the plaintiff must identify the relevant market.

Mojsilovic v. Oklahoma ex rel. Bd. of Regents for Univ. of Oklahoma 841 F.3d 1129 (10th Cir. Nov. 17, 2016)

The court affirmed the district court's holding that the University, as an arm of the State, had sovereign immunity for the plaintiffs' claim under the Trafficking Victims Protection Reauthorization Act. It rejected the plaintiffs' argument that the Act itself waived the state's sovereign immunity, and rejected their argument that the Act was enacted pursuant to the Thirteenth Amendment, such that sovereign immunity did not apply.

United States v. Amado
841 F.3d 867 (10th Cir. Nov. 14, 2016)

Extending a prior decision, the Tenth Circuit concluded that a defendant may knowingly and voluntarily waive his or her right to seek a reduction in sentence pursuant to 18 U.S.C.A. § 3582(c)(2) by entering into a plea agreement with the United States.

United States v. Tidzump
841 F.3d 844 (10th Cir. Nov. 9, 2016)

Reversing and remanding a sentence, the Tenth Circuit held the district court committed plain error when it applied a discretionary downward variance for the purpose of making the defendant eligible for a rehabilitative drug program.

ClydeSnow

Clyde Snow Board of Directors Elects Two New Shareholders



Shannon K. Zollinger focuses her practice on white collar criminal defense and civil and business litigation, representing both individuals and commercial clients.



Diana L. Telfer focuses her practice on representing individuals and commercial clients in all aspects of family law matters, estate planning, and business and commercial law.

Exceeding Client Expectations

ClydeSnow
 ATTORNEYS AT LAW
 CLYDE SNOW & SESSIONS
 A PROFESSIONAL CORPORATION
 SALT LAKE CITY | NEWPORT BEACH | BEND

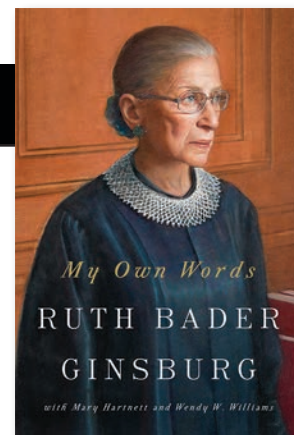
ONE UTAH CENTER
 201 SOUTH MAIN STREET
 13TH FLOOR
 SALT LAKE CITY, UTAH
 (801) 322-2516
www.clydesnow.com

BUSINESS & TRANSACTIONS • COMPLEX LITIGATION •
 EMPLOYMENT • WHITE COLLAR CRIMINAL DEFENSE &
 INVESTIGATION • SECURITIES • FAMILY LAW • TAX •
 WATER & NATURAL RESOURCES • BANKRUPTCY •
 TRUSTS & ESTATES • BANKING • HEALTH CARE LAW

My Own Words

by Ruth Bader Ginsburg with Mary Hartnett and Wendy W. Williams

Reviewed by Judge Jill M. Pohlman



Justice Ruth Bader Ginsburg – appointed to the United States Supreme Court in 1993 – has become something of a cultural icon in recent years. The 83-year-old jurist has been nicknamed “Notorious RBG” (after the rapper Notorious B.I.G.), and you can find everything from t-shirts and pajamas to tattoos and children’s coloring books displaying her moniker. While there is already a *New York Times* bestselling book (*Notorious RBG: The Life and Times of Ruth Bader Ginsburg*) that documents much of Ginsburg’s life and work, and an authorized biography begun in 2003 that is still in the works, *My Own Words* offers unique insight into this prominent and often polarizing legal figure through a sampling of her own writings and speeches spanning seventy years.

My Own Words was originally intended to follow the publication of the long-anticipated biography by Georgetown University Law Center’s Mary Hartnett and Wendy Williams. But, wanting to defer publication of the biography until Ginsburg’s years on the Court were closer to completion, the trio decided to publish *My Own Words* first – in the fall of 2016. Ginsburg authors an introduction to the book, while Williams and Hartnett introduce each chapter, offering biographical context for and commentary on the substantive pieces that follow. While the book lacks the kind of biographical detail found in a traditional memoir (and which is surely to be included in the forthcoming biography), the featured selections reveal much about Ginsburg’s personality, her sources of inspiration, and her judicial philosophy and legal mind.¹

Hartnett and Williams begin with a brief biographical sketch

introducing readers to young Joan Ruth Ginsburg who, at her mother’s suggestion, went by Ruth because there were several other Joans in her kindergarten class. Ginsburg’s early perspectives emerge in a trio of editorials, the first published in June 1946 in Ginsburg’s public school newspaper. At just thirteen, Ginsburg shared her thoughts on the Ten Commandments, the Magna Carta, the Bill of Rights, the

Declaration of Independence, and the Charter of the United Nations, and advocated that her fellow classmates live as good neighbors and aid in the promotion of peace.

These and other insights into Ginsburg’s earliest understandings of legal principles are accompanied by passages revealing her “lighter side,” including a speech

delivered in 2003 by Ginsburg’s husband, Marty, in which he describes everything from their first (blind) date to Ginsburg’s decades-long involvement with and influence on poignant legal issues. The book then delves into Ginsburg’s pursuit of gender equality in the United States, and her varied and considerable contributions to that cause, as well as the process that led to Ginsburg’s appointment to the Supreme Court in 1993. The book’s many excerpts include a speech delivered by Ginsburg at

JUDGE JILL M. POHLMAN was appointed to the Utah Court of Appeals in May 2016 by Governor Gary Herbert.



My Own Words
by Ruth Bader Ginsburg
with Mary Hartnett & Wendy W. Williams
Publisher: Simon & Schuster (2016)
Pages: 400
List Price: \$30 USD
Available in hardcover, paperback, e-book,
and audiobook formats.

Rutgers Law School, “captur[ing] the moment when [Ginsburg] entered the legal fray at the beginning of the seventies,” as well as the reproduction of the bench announcement delivered by Ginsburg in *United States v. Virginia*, 518 U.S. 515 (1996), addressing whether the Virginia Military Institute could “constitutionally deny to women . . . the training and attendant opportunities VMI uniquely affords.”

Because no story of Ginsburg’s life would be complete without a discussion of her love of opera, the book appropriately includes a chapter devoted to “Law and Lawyers in Opera.” Ginsburg has repeatedly said that if she could have chosen any profession, she would have loved to be a diva, but lacked the talent. Yet her three cameo appearances at the Washington National Opera are noted in the book, and she also shares pictures of herself and the late Justice Antonin Scalia (also an opera lover) in full costume when they appeared as supernumeraries² in the Washington National Opera’s opening night production of *Ariadne auf Naxos* in 1994.

Going beyond the history and work of Ginsburg’s life, *My Own Words* contains tributes to individuals Ginsburg sees as “pathmarkers” and “waypavers” – terms she frequently uses in her writings that are derived from the word “vägmärken,” which she came across as a young lawyer living in Sweden. Among those recognized by Ginsburg are Belva Lockwood, the first woman to gain admission to the Bar of the United States Supreme Court, retired Justice Sandra Day O’Connor, and the wives of the Supreme

Court Justices in the nineteenth and early twentieth centuries.

The book closes with a sampling of speeches, lectures, and articles on the Supreme Court and Justice Ginsburg’s view of the judiciary’s role, as well as highlights from the Supreme Court’s 2015–16 term. Ginsburg describes the “workways” of the Supreme Court, including its rules, practices, and traditions, and she describes how the Justices select cases for review, arrive at their decisions, and compose and publicly release their opinions. Ginsburg also provides statistics about the number of petitions for certiorari received during the term (6,375) and the number of opinions produced (79).

While repetitive at times, *In My Words* provides well-edited insight into the life and mind of Justice Ruth Bader Ginsburg, including her own accounting of her contributions to gender equality in the United States. Those seeking a more traditional memoir with more biographic detail will apparently have to wait until Ginsburg’s time on the bench draws nearer to a close.

1. When Judge Orme asked me to prepare this review of *My Own Words*, he promised me an easy read. While the book’s reliance on legal brief excerpts and law journal articles may deter some readers, I found that the writings were well edited for length and clarity so that the book flowed well despite its composite nature.
2. For those who, like me, are not opera connoisseurs, a supernumerary (according to Wikipedia) is “someone paid to appear on stage in crowd scenes or in the case of opera as non-singing small parts.” The term comes from the Latin *supernumerarius*, and is the equivalent of an “extra” in the motion picture industry. Established opera companies have a supernumerary core of artists and will occasionally invite distinguished guests to appear as supernumeraries. See https://en.wikipedia.org/wiki/Supernumerary_actor.



Mediation and Arbitration Services

Justice Michael D. Zimmerman (Ret.)
Experienced Neutral

Contact Miriam Strassberg at Utah ADR Services
801.943.3730 or mbstrassberg@msn.com

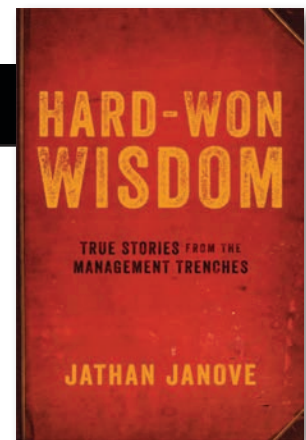


ZIMMERMAN JONES BOOHER

Hard-Won Wisdom: True Stories from the Management Trenches

by Jathan Janove

Reviewed by Judge David Nuffer



I picked up *Hard-Won Wisdom* after presiding over a 3 ½ week civil jury trial. The jury's first verdict was for millions in compensatory damages – and punitive damages were awarded in the second verdict. The trial was the story of company employees who left, formed their own business and took many other employees with them. Some of the lead players in the new company had restrictive agreements that formed the principal basis for the lawsuit by the original company, augmented by tort claims in which the jury found malice present.

Listening to testimony, I thought the jury must have wondered if the witnesses were speaking of the same company. Employees who had departed the firm portrayed it as a repressive hell-hole, while the plaintiff's witnesses told glowing stories of a wonderful place to work.

Reading this book, I wondered if the lawsuit would have even happened if the parties had enjoyed some of Janove's "hard-won wisdom." But Janove's book not only teaches practices that avoid problems but also shows how to build success in business and relationships. For example, he relates how a manager who was frustrated with an employee clarified goals and performance standards. While the manager thought he was setting the stage for a termination, the clarification resulted in the employee becoming a star performer. That kind of wisdom pays off well in the workplace.

The book title comes from Jathan Janove's decades of experience as a lawyer, litigator, mediator, and consultant on management issues. Many of the stories he relates include the costs avoided – or paid – by the employer. Janove has also been a manager

and employee, and he relates lessons learned from those experiences as well.

The book weaves the stories into six chapters dealing with practical principles of management of people. He explains Employee

Engagement, Selection, Performance Management, and Discipline and Discharge, as well as Harassment and Bullying and Conflict Resolution.

While the book is published by the prestigious American Management Association, it is a book every lawyer should read – as a manager and as someone who consults clients. It would make a great teaching tool for the client who needs to see the reason for the

sometimes burdensome practices that HR and legal recommend. But the lessons extend far beyond the formal management setting.

Themes Janove emphasizes are communication; documentation; taking rather than deferring action; sharing information, goals, decision making and responsibility; and rewarding good behavior while correcting deficient performance. The principles

JUDGE DAVID NUFFER is Chief Judge of the United States District Court for the District of Utah.



Hard-Won Wisdom: True Stories from the Management Trenches

by Jathan Janove

Publisher: American Management Association (2016)

Pages: 220

List Price: \$17.95 USD

Available in paperback, e-book, and audiobook formats.

apply to managing our own lives and to all our relationships.

While working with Janove years ago in a complicated mediation, he discussed the “instinct to avoid” – the human tendency to tolerate a situation that needs correction – and how that avoidance always exacerbates a problem. He discusses that problem with dozens of others in this book, but they come alive in the stories that he relates. And the “instinct to avoid” – and the need to eliminate it – along with many other principles applies in every setting where we work with others.

He does not tell the stories, leaving us to distill the lessons, however. He specifically includes the moral of the story (and sometimes a bonus moral) – with a pithy distillation of the practice taught. One example of a practice is the “Same Day Summary.” Encouraging the use of short confirmation letters or memos is not new to lawyers, but how often do we do that with the people who work with us? Practices like this return several times in the book, each time embedding them more deeply into our repertoire of skills.

When I used to teach Law Practice Management, I spent one two-hour class session on personnel management. How I wish I had been able to make this book required reading. The novice manager is not likely to understand the skills Janove teaches. And quite honestly, lawyer and law school don’t really emphasize the personal relationship skills Janove teaches.

One section that illustrates this is his description of the type of employment that does not engage an employee as “transactional.”

Most workplace relationships are transactional. From the employee’s perspective, it’s, “I put in my time and do my job in exchange for the money and benefits I get.” From the manager’s perspective, it’s, “I give them the instructions, and assuming my employees follow them, they keep their jobs and continue to get their pay.”

The transactional model is the legal framework, which we learned in school, but far from the engaged relationship model that Janove teaches.

The practicality of *Hard-Won Wisdom* is in contrast to several management books I have been reading over the last year as part of a national court education assignment. Those books tend to be more broad, and while often using stories, don’t have the same punch that comes from Janove’s tales of litigation gone bad – or avoided by good practices. And these are not serial war stories, but are selected to illustrate and support the principles he thinks make the most sense for personnel management.

Janove is a good teacher, in the way he carefully selects the stories and the words that tell them, and in the grouping of stories into principles and distilled practices. And in the last chapter, he directs application for the reader:

Having read this book, what concepts or principles strike you as worthy of using?

What specific steps will you commit to take, and by when?

What results do you expect to see?

These questions come at the end of just over 200 pages of distilled wisdom. It is not hard to select some practices that can make a difference for anyone who employs, is employed, advises employers or simply wants to improve relationship skills in any cooperative setting. The book reminded me of the things I wished mediation parties had known before they arrived at a workplace mediation. The lack of those skills created their problems and, in the mediation, made the problem difficult to solve.

Anyone newly entering into a management responsibility will benefit from this book, and gain its wisdom the easier way. Not only will expensive mistakes be avoided, but positive growth and energy will result from Janove’s teachings.



LEGAL SECTOR ADVISORY GROUP

WE KNOW REAL ESTATE.

AND WE KNOW THE LEGAL SECTOR.

WHAT SETS US APART IS THAT WE GET TO KNOW

YOUR FIRM.

cushmanwakefield.com/action

801.322.2000 comre.com



IDEAS INTO ACTION

CUSHMAN & WAKEFIELD
Commerce

Five Steves, Five Practices, One City

by Trent Christiansen

Steve Christiansen arrived at the federal courthouse, walked in the courtroom and set down his briefcase.

Steve Christensen followed closely behind him, walked in the courtroom and set down his briefcase.

Judge Jenkins asked counsel to enter their appearances.

“Steve Christensen for the Plaintiff.”

“Steve Christiansen for the Defendant.”

Judge Jenkins did no more than raise an eyebrow before moving forward with the business of the day.

This scenario was bound to happen sooner or later with five different lawyers named Steve Christensen (or Christiansen) practicing law in Salt Lake City. Each of the five Steves can share “Who’s On First” stories about mix-ups and overlaps and confusion.

When they’re not getting each other’s emails, phone calls, pleadings and correspondence, each is busy with a very different practice. Before hearing from them, here is a little biography of each Steve – to try for some semblance of clarity. (Nicknames have been assigned to the various Steves to avoid confusion throughout the article, but these are not necessarily nicknames they use in everyday life.)



Steven A. Christensen
“Estate Steve”

Christensen, Young and Associates
9980 S. 300 W., Ste. 200
Sandy, UT 84070
(801) 676-6447
stevenchristen@gmail.com

Estate Steve is a native of Spanish Fork, Utah, and worked on his grandfather’s farm until he graduated from high school. He served an LDS mission to France.

He married his wife Nellie during his first year of law school in Denver. He later became Editor-in Chief of the *Denver Journal of International Law and Policy*.

Estate Steve became interested in law because it was an outlet to help people, his passion. He enjoys the challenge of solving clients’ problems. He knew an attorney growing up who seemed to always have free time to do different things during the day and took a lot of vacations. He now realizes that he was misled.

His areas of practice include estate planning, probate, trusts, personal injury, and business.

He enjoys photography, travel, sports, and spending time with his family. He was a ski instructor in college, teaching at Sundance and Snowbird. While working at Sundance, Robert Redford had him teach several of his Hollywood friends how to ski.

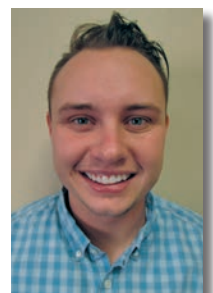


Steven J. Christiansen
“Environmental Steve”

Parr Brown Gee & Loveless
101 S. 200 E., Ste. 700
Salt Lake City, UT 84111
(801) 257-7909
schristiansen@parrbrown.com

Environmental Steve grew up in Provo. His blood runs blue, as both his father and father-in-law were professors at BYU.

*TRENT CHRISTIANSEN is a paralegal at
SKC Law Firm in Salt Lake City*



Christiansen was the first lawyer in his family and extended family. During his college years, he became interested in the law because his mentors were attorneys. He chose BYU because it had recently constructed a nice, new law school.

Christiansen enjoys the outdoors. He enjoys skiing, road biking, fly-fishing, and viewing the night sky through any of his four telescopes. Christiansen has practiced law in a number of locations across the United States.



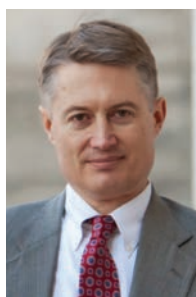
Stephen K. Christiansen
“Real Estate Steve”

Nelson Christensen Hollingworth & Williams
68 S. Main St., 6th Floor
Salt Lake City, UT 84101
(801) 531-8400
stevec@nchwlaw.com

Real Estate Steve is from Salt Lake City. He attended the University of Utah and studied finance, with the plan of working in business. Many of his professors were successful business attorneys, which inspired him to go the law school route to become a businessman. He ended up sticking with being an attorney.

Real Estate Steve enjoys spending time with his wife and nine children. He moved his family to a farm years ago to teach them the value of work, so his hobbies include milking cows, feeding the animals, and teaching his six children to work on a farm.

He also enjoys going to his children’s soccer games.



Steve S. Christensen
“Family Steve”

Christensen Law, Counselors & Practitioners
340 E. 400 S.
Salt Lake City, UT 84111
(801) 322-8879
ssc@ccplawyers.com

Family Steve is from Salt Lake City and attended Highland High School. He didn’t have any family members who were attorneys growing up, but he grew up around attorneys. That’s what initially got him interested in the profession. He thought the law looked interesting and liked a good challenge, so he decided to go to law school.

Family Steve focuses his work on family law, trial and appellate work, and civil litigation.

Family Steve plays tennis, spends a lot of time with his family, enjoys the outdoors, and works with the local Boy Scouts in his free time. He has nine children ranging from ages twelve to twenty-seven, and most of them have worked in his office as runners at one point, although none of them have gone on to become attorneys.



Stephen K. Christiansen
“Litigation Steve”

Christiansen Law, PLLC
311 S. State, Ste. 250
Salt Lake City, UT 84111
(801) 716-7016
steve@skclawfirm.com

Litigation Steve is originally from Tempe, Arizona. He attended BYU, studied journalism and then continued his education at BYU for law school. He and his wife, Christy, met at BYU and have been married for twenty-eight years. They have five children, ranging from the ages fourteen to twenty-six.

CRAIG COBURN

Mediation–Arbitration Services

KNOWLEDGE

Construction
Commercial
Complex Civil
Public Policy

EXPERIENCE

Litigator since 1980
ADR Neutral since 1985

COMMON SENSE

Cuts to the Chase
Resolves Disputes



Richards Brandt
801.531.2000
www.rbm.com
Lenora-Spencer@rbmn.com

Utah Dispute Resolution
801.532.4841
www.utahdisputeresolution.org
mbstrassberg@msn.com

Litigation Steve is not sure how he became an attorney, but it's too late now. He clerked for Judges Dee Benson and Steve Anderson in the federal courts before working at Van Cott for nearly twenty years. He opened his own practice in 2014. Steve's practice consists primarily of trial and appellate litigation.

Litigation Steve enjoys attending his children's sporting events, where he has established himself as the permanent coach. He notices that his children receive more playing time that way. Steve also enjoys traveling, reading, having lunch with friends, and tackling the daily New York Times crossword puzzle.

The Battlefield

Naturally, five men with the same profession in the same city can lead to confusion. Fortunately, all five men are reasonable professionals, and no turf wars have broken out over the rightful ownership of the name.

Family Steve noted that Salt Lake is a strange place because the name Steve Christensen is so common, while other places usually don't have this problem.

"My first six years of practice were in Los Angeles, but I didn't have that same problem there," he said. "Although, out of state, people don't know how to spell it."

But, believe it or not, this isn't the first time that Estate Steve has run into the similar-name problem in his professional career.

"I can't get away from other Steven Christensen attorneys, even in other states," Estate Steve said. As a practicing attorney in both Colorado and Wyoming, he would still receive calls and emails intended for other Steve Christensens.

Estate Steve is currently representing a large class-action lawsuit against Wells Fargo, and the suit has gained national notoriety. As a result, the other Steves have received requests for interviews from Fox Business News, NPR, NBC, and other news outlets to talk about the case. Although it has been tempting, they have declined – and sent the requests to the right Steve.

Real Estate Steve has learned plenty about the other Steves through mistaken phone calls.

"Over the years I've learned that all of the other Steve Christensens have much more interesting practices than I have," Real Estate Steve said. "One of the other Steve Christensens was once handling a pro bono case of sexual assault at the state prison. I

heard a lot more from his client than I wanted to before I could convince him that I wasn't his attorney."

Environmental Steve has been mistaken so many times that he keeps his Utah Attorney Directory bookmarked to Steve Christensen and directs people over the phone exactly who to call.

"Even relatives or friends (of different Steve Christensens) who are in town will call me, and they are looking for their friend Steve Christensen, who is an attorney in town," Environmental Steve said. "I'll have to explain to them that they have the wrong Steve."

Litigation Steve has been mistaken for Environmental Steve innumerable times. They are the only two Steves who are "Christiansen" rather than "Christensen." "If you can believe this, I've even received emails and phone calls from members from his firm, mistaking me for him," Litigation Steve explained. "I have to occasionally correct his own co-workers." "Plus, Real Estate Steve had an important ecclesiastical assignment," Litigation Steve said. "I tried to correct misdialing callers before they discussed anything too sensitive."

But it seems that the most commonly confused Steve is Family Steve. He deals with family issues and divorces, so people are usually eager to have a listening ear for their latest familial problems.

Environmental Steve shared his most vivid memory of a mistaken client, a client confusing him with Family Steve.

"I can remember one situation where I had a woman call me and said,

'Steve?'

'Yes?'

And then she just launched into me about some terrible thing her soon-to-be ex-husband did, and she got about a minute into this, talking about some rather personal details and all of a sudden I said, 'Hold it, time out. I'm not your lawyer, I'm not representing you.'"

Real Estate Steve has run into the same problem.

"The most entertaining calls have been from people going through divorces who are so upset at their spouse that they won't stop talking long enough for me to tell them I'm the wrong Steve Christensen," Real Estate Steve said. "I don't do divorces."

The same thing has happened to Estate Steve. People have called him and told him that they won't take no for an answer for representing them in their divorce. He unfortunately still has to tell them no.

"I guess they're mostly my clients causing the problems," Family Steve chuckled.

Three of the Steves own their own practices. One of the benefits of a self-run business is the opportunity for your own children to work for you. In the case of Litigation Steve and Family Steve, each has had his children work temporary jobs for him, as runners or assistants.

But Estate Steve's children were actually drawn to the profession. Of his five children, three are attorneys and work at his practice, and one is about to graduate from law school. He never intended for it to be that way.

"I counseled all of them to go into medicine," Estate Steve explained.

Typically, if a father and a son or brothers are both partners at a small law firm, they will both put their names in the title of the company. Law firms exist such as Smith and Smith, Pope and

Pope, and Burke and Burke.

But if the five Steves were to come together and start a law firm, it might be called Christensen, Christiansen, Christensen, Christiansen, and Christensen (in some order). Their law firm would be able to cater to many different clients with all different kinds of needs. They would never have to refer a client out, and a top-notch attorney named Steve Christensen (or some variation thereof) would handle every case.

But that super law firm is just a pipe dream.

"It would be too much of a hassle explaining to clients that we aren't all brothers with crazy parents who love the name Steve," Litigation Steve said, "although it would be an honor working with those fine attorneys who each have a great name."

Real Estate Steve is proud that he shares the name.

"I appreciate that the other Steve Christensens are honorable men who have great reputations," Real Estate Steve explained. "I assume that being mistaken for them improves my reputation."

K L M R

KRUSE LANDA MAYCOCK & RICKS



Betsy T. Voter
bvoter@klmrlaw.com

Kruse Landa Maycock & Ricks is pleased to announce that Betsy Voter has become a member of the firm.

Betsy concentrates her practice in the areas of financial regulatory compliance, securities law, and corporate representation. Before joining KLMR, she was legal counsel for a securities brokerage and clearing firm. Coming from the financial services industry, Betsy understands how to balance clients' practical and operational needs within a regulatory environment, especially as they relate to compliance for broker-dealers and investment advisers, regulatory examinations, internal investigations, business transactions, general business advice, and corporate governance. Her extensive compliance experience includes anti-money laundering (AML), clearing firm functions, equity liquidations, and written supervisory procedures (WSPs).

In addition to Utah, Betsy is also admitted to the state bars in Pennsylvania and New Jersey and formerly held FINRA Series 7 and 63 licenses.

COMMERCIAL TRANSACTIONS • SECURITIES • FAMILY LAW • CORPORATE • TAX AND ESTATE PLANNING • COMMERCIAL LITIGATION
LIMITED LIABILITY COMPANY AND PARTNERSHIP LAW • BANKRUPTCY, CREDITOR REPRESENTATION AND DEBTOR REORGANIZATION
INTERNATIONAL BUSINESS LAW • REAL PROPERTY • GOVERNMENT RELATIONS/ADMINISTRATIVE LAW • MEDIATION/ARBITRATION

136 EAST SOUTH TEMPLE, SUITE 2100
SALT LAKE CITY, UTAH 84111-1124
(801) 531-7090
www.klmrlaw.com

James R. Kruse
Steven G. Loosle
Jennifer L. Falk
Carol Clawson, of Counsel

Ellen Maycock
Richard C. Taggart
Betsy T. Voter
Terrell W. Smith, of Counsel

Lyndon L. Ricks
Kevin C. Timken
Paula W. Faerber
Howard S. Landa (1948-2013)

What to Do When a Third Party Pays Your Fees

by Keith A. Call

My dad used to say, “Paying legal fees is like paying for a dead horse.” Of course, one of the best ways to get out of paying for a dead horse is to get someone else to pay for it.

Chances are you have had a client whose fees are being paid by someone else, such as a parent or other family member, a friend, a co-client, the other party to a transaction, or an insurance company. When someone other than a client pays your fees, there are several things you must do to keep your nose clean.

INFORMED CONSENT

You must obtain your client’s consent before accepting fees from a third-party payer. Utah Rule of Professional Conduct 1.8(f) spells this out: “A lawyer shall not accept compensation for representing a client from one other than the client unless...the client gives informed consent.” Utah R. Prof’l Conduct R.1.8(f). Provided there is no particular conflict of interest (keep reading if there is), it may be sufficient for the lawyer to simply disclose the fact that a third party is paying and the identity of the third party payer. *See* Utah R. Prof’l Conduct 1.8 cmt. 12; *In re Reneer*, 2014 UT 18, ¶ 12, 325 P.3d 104. The informed consent can be oral and still comply with the rules. *In re Reneer*, ¶ 14.

Following certain “best practices” will help avoid misunderstandings and help keep you out of ethical and liability pickles. You would be wise to make full disclosure yourself (do not delegate this to a paralegal or to the person paying the bill), fully disclose any conditions of payment, explain all associated risks, and have the client confirm his or her consent in writing.

DEALING WITH CONFLICTS

Third party payer situations can be fraught with conflicts of interest. Indeed, one of the primary reasons for the consent requirement is because “third-party payers frequently have

interests that differ from those of the client, including interests in minimizing the amount spent on the representation and in learning how the representation is progressing.” Utah R. Prof’l Conduct R. 1.8 cmt. 11.

All of the standard conflict of interest rules apply. Regardless of whether the client consents, the lawyer cannot proceed with the representation if the arrangement would preclude him or her from providing competent and diligent representation. In all other cases, informed client consent – in writing – must be obtained. *Id.* R. 1.7(a)–(b).

Do not gloss over the “informed” part of “informed consent.” Informed consent requires the lawyer to communicate adequate information about the risks of having a third party pay the bill, as well as the availability and risks of other alternatives. *Id.* R. 1.0(f). It is a good idea to look in Pandora’s box, try to think of the worst possible outcomes, and explain those fully to your client.

CLIENT IDENTITY

A third party payer might have a false sense of authority or entitlement to direct the case. They may even start to feel like a client. Be very wary of this. The lawyer’s duty is to the actual client, not to a third party payer. For example, it is the client (not a third party payer) who is entitled to make decisions about the objectives of the representation, the means by which they are to be pursued, and whether to settle. *Id.* R. 1.2(a). Do not allow yourself to get confused about who you represent. Don’t let the payer get confused either. You can reduce the risk

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



of future claims by letting the payer know in writing that you are not his attorney.

CLIENT CONFIDENCES

There are many situations where sharing confidential information with a third party payer may seem natural and appropriate. For example, a caring parent or friend may want to participate in attorney-client conferences, both for emotional support and for strategic reasons. An insurer may demand information about the representation. In all such situations, a lawyer must take care to preserve client confidences. This includes preserving the attorney-client privilege under applicable rules of evidences, as well as the much broader obligation to preserve “information relating to the representation of a client” under Utah Rule of Professional Conduct 1.6.

In order to preserve client confidences, you may have to exclude third party payers from your client meetings and other communications. It would be wise to educate your client on the importance of helping you preserve such confidences.

Insurance company representation presents special problems, since insurers typically demand information about the case, require invoices for payment, and sometimes send invoices to be scrutinized by outside auditors. You should avoid sharing sensitive client confidences with the insurer, especially any information that might undermine coverage. Avoid putting sensitive information in your bills. And it is always a good idea to let your insured client review written reports before they are delivered.

The Utah Ethics Advisory Opinion Committee has opined that a lawyer must have the client’s informed consent before submitting billing statements to an insurer’s outside audit service. Even if the client’s consent is included as part of the insurance contract, the lawyer should consult with the client to make sure the client understands and renews his consent. Utah State Bar Ethics Advisory Opinion Committee, Op. 98-03 (Apr. 17, 1998).

INDEPENDENT PROFESSIONAL JUDGMENT

Finally, represent your client zealously and loyally, notwithstanding any loyalty or pull you may feel from a third party payer. Rule 5.4(c) of the Utah Rules of Professional Conduct addresses this specifically: “A lawyer shall not permit a person who recommends, employs or pays the lawyer to render legal services for another to direct or regulate the lawyer’s professional judgment in

rendering such legal services.” Utah R. Prof’l Conduct 5.4(c).

How you represent your client must be governed by your client’s legal objectives and the best means of accomplishing those objectives. If you sense yourself pulling any punches to please or assuage the payer, quickly step backward and recalibrate your compass to do what is best for your client.

CONCLUSION

Third party payer situations can present ethical problems that are not always obvious. What might seem natural in such situations might actually be unethical. It is important to use the logical, critical thinking skills they taught you in law school and apply them to the numerous ethical rules that come into play. By doing this, you stand a better chance of not having to ask your friend or your insurer to pay your legal fees.

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



Michael Best and Michael Best Strategies are pleased to announce we are expanding our team in Salt Lake City, UT.



Ross I. Romero • Senior Advisor

385.695.6479

Local, State and Federal Policy,
Government Relations, and Lobbying

Austin, TX
Chicago, IL
Denver, CO
Madison, WI

Manitowoc, WI
Midvale, UT
Milwaukee, WI
Missoula, MT

Raleigh, NC
Salt Lake City, UT
Washington, D.C.
Waukesha, WI

michaelbeststrategies.com
michaelbest.com
Michael Best & Friedrich LLP

Commission Highlights

The Utah State Bar Board of Commissioners received the following reports and took the actions indicated during the January 20, 2017 Commission Meeting held at the Utah State Bar Law & Justice Center, Salt Lake City.

1. The Bar Commissioners recognized **Barbara Townsend** for her ten years of service in Office of Professional Conduct.
2. Bar Commissioners heard a presentation from **Representative Bruce Cutler** and others from the state's technical groups on a one-stop sign-in portal to enable business owners to consolidate access to state licensure and tax information.
3. The Bar Commission nominated H. Dickson Burton as the Bar President-Elect Candidate. **H. Dickson Burton** was the only person to express interest in being nominated for President-elect.
4. The Bar Commission selected **Judge Michele Christiansen** to receive the Dorathy Merrill Brothers Award and **Judge Vernice Trease** to receive the Raymond S. Uno Award.
5. The Bar Commission selected **Camille Neider** to be the Bar's representative on Utah Sentencing Commission.
6. The Bar Commission reviewed a proposal from **EKR** to redesign the Bar's website. The Commission put off a decision for future discussion at the Tuesday, January 24 legislative conference call.
7. The Bar Commission reviewed a bid from **Euclid** regarding the development of a new practice portal. The Commission decided to put off further consideration and a decision until the Tuesday, January 24 legislative conference call.
8. The Bar Commission approved a Committee Chair Succession Planning Policy.
9. The Bar Commission reduced the Fall Forum to a one-day event following CLE seminars presented the preceding day (Thursday) to be put on by the Bar's Sections. The UMBA

Banquet would continue to be incorporated on Thursday night.

10. The Bar Commission heard a report from **Sean Toomey** regarding the marketing of LicensedLawyer.
11. The Bar Commission reviewed **Elizabeth Wright's** memorandum on Rule 5.4 of the Rules of Professional Conduct which limits the ownership of law firms. The Commission voted to form a committee to review the issue. **H. Dickson Burton, Liisa Hancock, Michelle Mumford, Heather Farnsworth, and Steve Burt** agreed to serve on the committee.

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

MCLE Reminder – Odd Year Reporting Cycle

July 1, 2015–June 30, 2017

Active Status Lawyers complying in 2017 are required to complete a minimum of 24 hours of Utah approved CLE, which shall include a minimum of three hours of accredited ethics. **One of the ethics hours shall be in the area of professionalism and civility.** A minimum of twelve hours must be live in-person CLE. Please remember that your MCLE hours must be completed by June 30 and your report must be filed by July 31. For more information and to obtain a Certificate of Compliance, please visit our website at www.utahbar.org/mcle.

If you have any questions, please contact Sydnie Kuhre, MCLE Director at sydnie.kuhre@utahbar.org or (801) 297-7035, Laura Eldredge, MCLE Assistant at laura.eldredge@utahbar.org or (801) 297-7034, or Lindsay Keys, MCLE Assistant at lindsay.keys@utahbar.org or (801) 597-7231.

Message to Bar Members

Dear Ladies and Gentlemen:

We want to thank all members of the Utah State Bar and their personnel who participated in the 27th Annual Food and Clothing Drive. We estimate that the donations received in food and clothing greatly exceeded last year's donations, and that does not take into account the specific donations that were made for the twenty-five Veterans that we sponsored from our newest partner, First Step House.

For the Veterans we sponsored, we were able to purchase the following new items: fleece gloves, ski hats, ski socks, regular socks, underwear, neck gators, a pair of pants for each Veteran, T-shirts (long and short sleeve), and fleece jackets (the last two were donated in kind) for each Veteran, and we also collected a number of very nice slightly used winter and spring coats, dozens of dress and semi-dress and casual shirts and T-shirts and other coats and shoes and boots for these Veterans from those who participated in our annual food and clothing drive. The purchase price of these items was primarily provided by a Military Trust that participated in our drive, and included \$50 gift cards for each Veteran.

Donations came in steadily through the day and late in to the evening and in the end you were able to completely fill a large truck full of food, clothing and toiletries were donated and delivered for immediate distribution to Eagle Ranch Ministries, Women & Children in Jeopardy, and The Rescue Mission.

We would like to thank all of the volunteers and office organizers that we met this year and look forward to working with you next year; we also appreciated all of the email correspondence and comments that we received from many Bar members and others about this year's Drive. We believe we were very successful in our efforts for the Veterans at First Step House and our other charities that we annually support, all through your incredible generosity and efforts.

Thank you again!

Our best,
Leonard and Lincoln



JANELLE BAUER



DEBORAH CHANDLER



LESLEY MANLEY

JONES WALDO WELCOMES THREE NEW ATTORNEYS TO ITS WOMEN LAWYERS GROUP.

In 2003, Jones Waldo established Utah's first Women Lawyers Group to support women in business and law, and assist female professionals in need of legal aid.

The Women Lawyers Group covers a wide range of legal specialties, from business and corporate law to women's legal advocacy.

JONESWALDO.COM + 801-521-3200
SALT LAKE CITY
PARK CITY
PROVO
ST. GEORGE
CHICAGO



PASSION.
PERSPECTIVE.
PEOPLE.

Utah State Bar

LAW DAY 2017

THE 14TH AMENDMENT
TRANSFORMING
**AMERICAN
DEMOCRACY**

LAW DAY Luncheon

May 1, 12:00 noon

SUPPORT LAW DAY

Be a part of the special Law Day edition of the *Deseret News* and *The Salt Lake Tribune* on May 1st as we celebrate the 14th Amendment's citizenship rights, equal protection, and due process; a response to issues related to former slaves following the Civil War.

By advertising in the special edition you can showcase your expertise in a targeted editorial environment read by thousands of potential clients. If you would like to advertise, or if you have suggestions for editorial content, please contact Sean Toomey at: sean.toomey@utahbar.org or 801-297-7059.

Salt Lake Marriott
Downtown at City Creek
75 South West Temple | Salt Lake City

AWARDS WILL BE GIVEN HONORING:

- Art & the Law Project (Salt Lake County Bar Association)
- Liberty Bell Award (Young Lawyers Division)
- Pro Bono Publico Awards
- Scott M. Matheson Award (Law-Related Education Project)
- Utah's Junior & Senior High School Student Mock Trial Competition
- Young Lawyer of the Year (Young Lawyers Division)

For further information, to RSVP for the luncheon and/or to sponsor a table please contact:

Richard Dibblee
(801) 297-7029 | richard.dibblee@utahbar.org

For other Law Day related activities visit the Bar's website:
lawday.utahbar.org

Law Day Chair: Anthony Loubet
(801) 429-1091 | anthonyl@utcourts.gov

Sponsored by the Young Lawyers Division.

THE 14TH AMENDMENT AT A GLANCE...

Ratified on July 9, 1868, the Fourteenth Amendment is one of three Reconstruction Amendments. The Fourteenth Amendment greatly expanded the protection of civil rights to all Americans and is cited in more litigation than any other amendment. The 14th Amendment covers a number of important topics in its different clauses, including:

EQUAL PROTECTION

Applying the equal protection clause of the Fourteenth Amendment, courts give laws that classify by race, national origin, and religion the highest level of scrutiny. Laws that impact fundamental rights such as interstate migration, voting, and access to courts also receive strict scrutiny.

DUE PROCESS

Due process ensures that individuals are not deprived of their rights without the benefit of certain fundamental procedural protections. It also protects against state infringement of individual rights listed in the Bill of Rights as well as fundamental rights not specifically enumerated elsewhere in the U.S. Constitution.

LAW DAY 2017★

THE 14TH AMENDMENT TRANSFORMING AMERICAN DEMOCRACY

INCORPORATION

With the incorporation doctrine, most provisions of the Bill of Rights have been found to apply not only to the federal government, but also to state and local government. Among these rights are freedom of speech and religion, the right to bear arms, freedom from unreasonable searches and seizure, the right to a jury trial, the right against cruel and unusual punishments, and more.

CITIZENSHIP

Section 1 of the Fourteenth Amendment provides that "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state where they reside."



DURHAM JONES & PINEGAR Welcomes Four Intellectual Property Attorneys to its Salt Lake City Office



Randall B. Bateman
Shareholder
Registered Patent Attorney

Intellectual Property
Patents
Trademarks
Copyrights
Litigation

rbateman@djplaw.com



Christopher L. Wight
Of Counsel
Registered Patent Attorney

Intellectual Property
Patents
Trademarks
Copyrights
Business & Finance

cwight@djplaw.com



Sarah W. Matthews
Of Counsel
Registered Patent Attorney

Intellectual Property
Patents
Trademarks
Copyrights
Litigation

smatthews@djplaw.com



Tenley H. Schofield
Associate
Registered Patent Attorney

Intellectual Property
Patents
Trademarks
Copyrights
Litigation

tschofield@djplaw.com

111 S. Main Street, Suite 2400, Salt Lake City, UT

D J P L A W . C O M 8 0 1 . 4 1 5 . 3 0 0 0
S A L T L A K E C I T Y | L E H I | O G D E N | S T . G E O R G E | L A S V E G A S

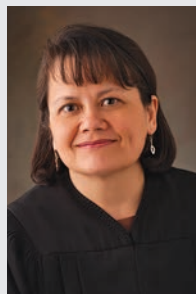
Utah State Bar 2017 Spring Convention Award Recipients

The Utah State Bar presented the following awards at the 2017 'Spring Convention in St. George':



JUDGE MICHELE M. CHRISTIANSEN

Dorothy Merrill Brothers Award
Advancement of Women
in the Legal Profession



JUDGE VERNICE TREASE

Raymond S. Uno Award
Advancement of Minorities
in the Legal Profession



The Utah State Bar gratefully acknowledges the continued support of our 2017 Spring Convention Sponsors & Exhibitors

SPONSORS

Babcock Scott & Babcock	Fabian VanCott	Parr Brown Gee & Loveless
Ballard Spahr LLP	Hillyard, Anderson & Olsen	Parsons Behle & Latimer
Bingham Snow & Caldwell, LLP	Hughes Thompson Randall & Mellen, PC	Ray, Quinney & Nebeker
Bradley C. Harr, PC	JensenBayles, LLP	Richards Brandt Miller & Nelson
Christensen & Jensen	Jones, Waldo, Holbrook & McDonough	Snell & Wilmer
Clyde Snow & Sessions	Kaufman Nichols & Kaufman	Snow Christensen & Martineau
Cohne Kinghorn	Randy S. Kester	Snow Jensen & Reece
DeBry & Associates	Kipp & Christian	Strong & Hanni
Durham, Jones & Pinegar	Kirton McConkie	TraskBritt

EXHIBITORS

AEI Corporation	Cicayda	MERCER
ALPS	Decipher Forensics	Sage Forensic Accounting
Attorneys Title Guaranty Fund, Inc.	FindLaw, part of Thomson Reuters	S.J. Quinney College of Law
Blomquist Hale Consulting – Lawyers Assistance Program	GreenFiling	Tybera Development Group, Inc.
BYU Law School	Lawyers Helping Lawyers	Utah Bar Foundation
	LexisNexis	

Tax Notice

Pursuant to Internal Revenue Code 6033(e)(1), no income tax deduction shall be allowed for that portion of the annual license fees allocable to lobbying or legislative-related expenditures. For the tax year 2016, that amount is 0.36% of the mandatory license fee.

Notice of Utah Bar Foundation Annual Meeting and Open Board of Director Position



The Utah Bar Foundation is a non-profit organization that administers the Utah Supreme Court IOLTA (Interest on Lawyers Trust Accounts) Program. Funds from this program are collected and donated to nonprofit organizations in our State that provide law related education and legal services for the poor and disabled.

The Utah Bar Foundation is governed by a seven-member Board of Directors, all of whom are active members of the Utah State Bar. The Utah Bar Foundation is a separate organization from the Utah State Bar.

In accordance with the by-laws, any active licensed attorney, in good standing with the Utah State Bar may be nominated to serve a three-year term on the board of the Foundation. If you are interested in nominating yourself or someone else, you must fill out a nomination form and obtain the signature of twenty-five licensed attorneys in good standing with the Utah State Bar. To obtain a nomination form, call the Foundation office at (801) 297-7046. If there are more nominations made than openings available, a ballot will be sent to each member of the Utah State Bar for a vote.

Nomination forms must be received in the Foundation office no later than 5pm on Monday, May 15, 2017 to be placed on the ballot.

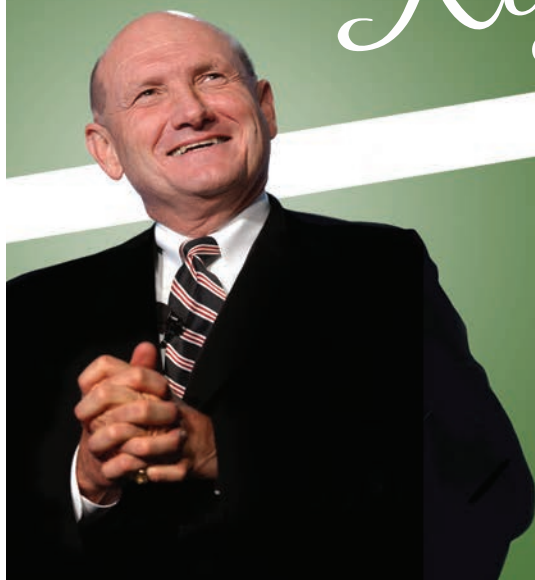
The Utah Bar Foundation will be holding the Annual Meeting of the Foundation on Saturday, July 29th at 9:00am in Sun Valley, Idaho. This meeting will be held in conjunction with the Utah State Bar's Annual Meeting.

For additional information on the Utah Bar Foundation, please visit our website at www.utahbarfoundation.org.



MAY 18, 2017

Register Today!
The premier educational forum for professionals and business owners
uvu.edu/beforum



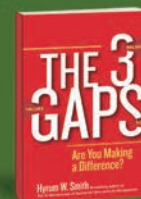
UVU welcomes keynote speaker
Hyrum W. Smith Best-selling author of *The 3Gaps*

Register Now!

Before May 1st: **\$100**
After May 1st: **\$125**
Special alumni rate: **\$100**
(Lunch only: \$40/person or \$400/table of 10)

801-863-5426
vicky.hopper@uvu.edu

All-day participants will receive a free copy of *The 3Gaps*



Sponsored by



HAWKINS

Pro Bono in Your Own Time

The Access to Justice Department of the Utah State Bar is pleased to offer pro bono opportunities in your own time, whether you have one, two, or more hours to contribute. New programs – *Lawyer of the Day* and *Free Legal Answers* – allow you to quickly help people from your home or office via telephone and the web.

What do these three cases have in common? (1) A family receives an extra thirty days to move out of their apartment instead of a three-day eviction. (2) A young man dismisses a debt case over a bogus gym contract and saves thousands of dollars. (3) A woman gets temporary orders to maintain custody of her children. In each case, a pro bono attorney spent no more than two or three hours to help that person achieve the result.

These three cases are just a few examples of what is called limited scope, limited representation, or unbundled services. Some people do need a full representation pro bono attorney – but one of the most successful innovations in pro bono has been the expansion of limited scope services. These services include free legal advice clinics such as Tuesday Night Bar, the Lawyer of the Day program for brief advice over the phone, or the pro se calendars from where the examples above are derived.

Limited scope pro bono accomplishes two things: it provides attorneys with an opportunity that doesn't require a significant time commitment, and it helps the many pro se individuals in our court system get legal advice and representation. In various surveys around the nation, attorneys have consistently ranked "time" as the number one reason they do not do more pro bono work. Between billable hours, family, and other commitments, it can be hard to find time to fit a serious pro bono matter into one's schedule. We've created a simple chart at the bottom of this article that lists the type of pro bono opportunities available by the time commitment required.

As for the need, there are many people who cannot afford an attorney, or do not think they need an attorney and file pro se.



The numbers are always striking. And they are striking in a particular manner – the way that many defendants may be deprived of due process through an asymmetrical system where one side is nearly always represented. Let's look at the court filings for fiscal year 2016. In 99% of the 59,496 debt collection cases filed in Utah, only one party (the creditor) had an attorney. In 96% of eviction cases, the tenant was unrepresented. In 80% of divorce cases the respondent is unrepresented (and in 53% of cases so is the petitioner). There is a huge need, particularly in cases where the other side is represented, for attorneys to step in to protect pro se individuals in our complex court system.

If you have a very brief amount of time, cannot go to court to do pro bono work, or prefer to answer questions from your office or home, we have two new options: Lawyer of the Day and Free Legal Answers. Lawyer of the Day allows volunteer attorneys to give brief legal advice over the phone to individuals pre-screened by the Utah Courts' Self-Help Center. Utah.freelegalanswers.org is a new website where qualifying individuals (based on income and area of law) post questions which attorneys can answer at their convenience. For both of these programs, there is no responsibility of being attorney-of-record, no document preparation, no court appearances, etc. Free CLE web modules in family law are available to participating attorneys who need a refresher in this area.

Attorneys do more volunteering than most professionals, and if these new ways to serve will make it possible for you to help those in need, please write to probono@utahbar.org.

Choose your pro bono opportunity to match your available time.

	Statewide	Salt Lake County	Northern Utah	Weber & Davis Counties	Provo	St. George	Park City
1 Hr.	Free Legal Answers						
2 Hrs.	Lawyer of the Day (on-call phone line)	Tuesday Night Bar	Thursday Night at the Bar (Logan)	Domestic Violence Pro Bono Lawyers (Farmington)	Timpanogos Legal Center	Senior Legal Clinic Program	Tuesday Night Bar
		Pro Bono Initiatives Clinics (Street Law, Family Law, Rainbow Law, etc.)	Tuesday Night Bar (Brigham City)	Community Legal Clinic (Ogden)	Tuesday Night Bar	Talk to a Lawyer Clinic	
		Matheson Debt Collection Pro Se Calendar		Weber County Bar Night (Ogden)		Utah Veterans Legal Clinic	
		West Jordan Landlord Tenant Pro Se Calendar					
		Senior Center Legal Clinics					
		Homeless Youth Legal Clinic					
		Utah Veterans Legal Clinic					
3 Hrs.		Family Law Pro Se Calendar			Family Law Pro Se Calendar		
		Utah Crime Victims Legal Clinic					
4 Hrs.	Guardianship Signature Program						
	Timpanogos Legal Center Virtual Document Clinic						



Kipp and Christian, P.C. is proud to welcome the following new Associates to our team



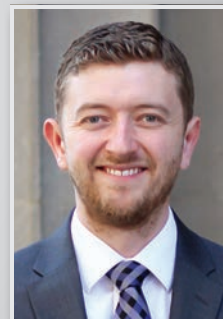
SHANE PETERSON



CHELSEY PHIPPEN



SMITH MONSON



DAVID GARNER

10 Exchange Place, Fourth Floor | Salt Lake City, Utah 84111 | 801.521.3773 | kippandchristian.com

Mandatory Online Licensing

The annual Bar licensing renewal process will begin June 1, 2017, and will be done only online. An email outlining renewal instructions will be sent the last week of May to your email address of record. We are increasing the use of technology to improve communications and save time and resources. Utah Supreme Court Rule 14-507 requires lawyers to provide their current e-mail address to the Bar. If you need to update your email address of record, please contact onlineservices@utahbar.org.

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

No separate licensing form will be sent in the mail. You will be asked to certify that you are the licensee identified in this renewal system. Therefore, this process should only be completed by the individual licensee, not by a secretary, office manager, or other representative. Upon completion of the renewal process, you will receive a licensing confirmation email. If you do not receive the confirmation email in a timely manner, please contact licensing@utahbar.org.

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

Call for Nominations for the 2016 Pro Bono Publico Awards

The deadline for nominations is March 31, 2017.

The following Pro Bono Publico awards will be presented at the Law Day Celebration on May 1, 2017:

- **Young Lawyer of the Year**
- **Law Firm of the Year**
- **Law Student or Law School Group of the Year**

To download a nomination form and for additional information please go to: <http://lawday.utahbar.org/lawdayevents.html>

If you have questions please contact the Access to Justice Director, Tyler Needham at: probono@utahbar.org or 801-297-7027.

2017 Summer Convention Awards

The Board of Bar Commissioners is seeking nominations for the 2016 Summer Convention Awards. These awards have a long history of honoring publicly those whose professionalism, public service and personal dedication have significantly enhanced the administration of justice, the delivery of legal services and the building up of the profession. Your award nominations must be submitted in writing to Christy Abad, Executive Secretary, 645 South 200 East, Suite 310, Salt Lake City, UT 84111 or adminasst@utahbar.org, no later than Friday, May 5, 2017. The award categories include:

1. Judge of the Year
2. Distinguished Lawyer of the Year
3. Distinguished Section/Committee of the Year

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

DNA-People's Legal Services Executive Director

DNA is a non-profit legal services provider celebrating fifty years of service with approximately twenty-five attorneys delivering legal services to an underserved population in Arizona, New Mexico, and Utah. DNA is seeking an innovative growth-oriented individual capable of revitalizing the organization and setting direction for the next fifty years. Principal location Window Rock, Navajo Nation, Arizona. Visit www.dnalegalservices.org for more information. Email dnaexec.dir.apps@sackstierney.com to obtain a job description, qualifications, and procedure to apply.

DNA is an equal opportunity/affirmative action employer. Preference given to qualified Navajo and other Native American applicants.





“and Justice for all”

35th Annual Law Day 5K Run & Walk – May 6, 2017

S. J. Quinney College of Law at the University of Utah

383 South University Street • Salt Lake City



Registration Info: Register online at <http://andjusticeforall.org/law-day-5k-run-walk/>. Registration fee: before April 27: \$30 (+ \$10 for Baby Stroller Division extra t-shirt, if applicable), after April 27: \$35. Day of race registration from 7:00–7:45 a.m. Questions? Call 801-924-3182.

Help Provide Civil Legal Aid to the Disadvantaged: All event proceeds benefit “and Justice for all,” a collaboration of Utah’s primary providers of free civil legal aid programs for individuals and families struggling with poverty, discrimination, disability and violence in the home.

Date: Saturday, May 6, 2017 at 8:00 a.m. Check-in and day-of race registration in front of the Law School from 7:00–7:45 a.m.

Location: Race begins and ends in front of the S. J. Quinney College of Law at the University of Utah, 383 South University Street, Salt Lake City.

Parking: Available at Rice Eccles Stadium (451 S. 1400 E.). Or take TRAX!

Chip Timing: Timing will be provided by Sports-Am electronic race monitoring. Each runner will be given an electronic chip to measure their exact start and finish time. Results will be posted after the race at www.sports-am.com/raceresults/ following the race.

Race Awards: Prizes will be awarded to the top male and female winners of the race, the top male and female attorney winners of the race, and the top two winning speed teams. Medals will be awarded to the top three winners in every division, and the runner with the winning time in each division will receive two tickets to the **Utah Arts Festival**.

- Speed Team Competition
- Speed Individual Attorney Competition
- Baby Stroller Division
- Wheelchair Division
- “In Absentia” Runner Division
- Chaise Lounge Division

For more information visit www.andjusticeforall.org.

Recruiter Competition: The organization who recruits the most participants for the Run will be awarded possession of the Recruiter Trophy for one year and a grand prize. However, all participating recruiters are awarded a prize because the success of the Law Day Run depends upon our recruiters! To become the 2017 “Team Recruiter Champion,” recruit the most registrants under your organization’s name. Be sure the Recruiting Organization is filled in on the registration form to get competition credit.



Register today at – <http://andjusticeforall.org/law-day-5k-run-walk/>

THANK YOU TO OUR MAJOR SPONSORS



Pro Bono Honor Roll

Adoption Cases

Lisa Lokken
Tamara Rasch

Adult Guardianship Case

Michael J. Thomas

Bankruptcy Case

Troy Jensen
Will Morrison

Community Legal Clinic: Salt Lake

Jonny Benson
Emily McKenzie
Margaret Pascual
Brian Rothschild
Ian Wang
Mark Williams
Russell Yaune

Community Legal Clinic: Sugarhouse

John Adams
Skyler Anderson
Brent Chipman
Sue Crismon
Brian Rothschild

Debt Collection Pro Se Calendar

Paul Amann
Courtland Astill
David P. Billings
Frank Brunson
Brent Chipman
Mark Emmett
David Hodgson
Brian Rothschild
Charles A. Stormont
Reed Stringham

Debtor's Legal Clinic

Tyler Needham
Michael Rasmussen
Brian Rothschild
Paul Simmons
Brent Wamsley
Ian Wang

Expungement Case

Larry Meyers
Tyler Needham

Expungement Law Clinic

Kate Conyers
Josh Egan
Tyler Needham
Holle Petersen
Melissa Stirba

Family Law Case

Joe Chambers
Mary Corporon
Daniel Dygert
James Elegante
Lorie Fowlke
Dave Gibbons
Chase Kimball
Jennifer Neeley
Blake Porter
Robert Winsor

Family Law Clinic

Justin Ashworth
Steve Baeder
Zal Dez
Carolyn Morrow
Kayla Quam
Stewart Ralphs
Linda F. Smith
Simon So
Sheri Throop

Guardianship Case

Christopher Beins

Guardianship Signature Project

Michael Garrett
Laura Gray
Jonathan Miller
Mark K. Nelson
Mark R. Nelson
Jeff Skoubye
Matthew Wiese

Homeless Youth Legal Clinic

Traci Brinkerhoff
Frank Brunson
Janell Bryan
Kate Conyers
Kristen Fadel
Jason Greene
Nick Jackson
Todd Livingston

Molly McDonald
Nate Mitchell
Sophia Moore
Rachel Otto
Nubia Pena
Jessica Rancie
Laja Thompson
Heather White

Lawyer of the Day

Jared Allebest
Jared L. Anderson
Laina B. Arras
Ron Ball
Justin Bond
Brent Richard Chipman
J. Scott Cottingham
Roland Douglas Holt
Christopher Evans
Amy Fiene
Crystal Flynn
Mark Hales
Ben Lawrence
Allison Librett
Suzanne Marychild
Shaunda McNeill
Lori Nelson
Lorena Riffo-Jenson
Jeremy Shimada
Joshua Slade
Linda Faye Smith
Samuel J. Sorensen
Laja Thompson
Cristina S. Wood
Kevin R. Worthy

Medical Legal Clinic

Stephanie Miya

POA Case

Thomas King

Post Conviction Case

Tammy Kapaloski
Cory Talbot

Probate Case

Jacob Smith

QDRO Case

Jonathan Felt
Graham Norris

Rainbow Law Clinic

Jess Couser
Del Dickson
Russell Evans
Kevin McLean
Kyler O'Brien
Stewart Ralphs
Chris Wharton

Senior Center Legal Clinics

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

Street Law Clinic

Devin Bybee
Dara Cohen
Kate Conyers
Nick Daskalas
Jeffrey Gittins
Matt Harrison
Brett Hastings

John Macfarlane
Elliot Scruggs
Jeff Simcox
Zac Sparrow
Jim Stewart
Jonathan Thorne

Third District ORS Calendar

Katherine Benson
Whitney Hulet Krogue
Katherine Priest
James Sorenson
Liesel Stevens

Tuesday Night Bar

James Ahlstrom
Steve Alder
Parker Allred
Paul Amann
Rob Andersen
Jeff Balls
Alain Balmanno
Melinda Birrell
Mike Black
Jon Bletzacker
Lyndon Bradshaw
Allison Brown
Neils Bybee
Kate Conyers
Dave Geary
Carlyle Harris
John Hurst

Emily Iwasaki
Katie James
Anette Jan
Jaelynn R. Jenkins
Craig Jensen
Mason Kjar
Lucia Maloy
Alexa Mareschal
April Medley
Ben Onofrio
LaShel Shaw
George Sutton
Jeff Tuttle
Bruce Wycoff

West Jordan Pro Se Calendar

Steven Bergman
Brad Blanchard
D. Scott DeGraffenried
James Dunn
Bryan Gillespie
Kimberly Hammond
Pilar Hays
Jonathan Kirk
Todd Livingston
Zachary C. Myers
Keri Nielsen
Trent Raleigh
Chad Rasmussen
Greg Smith
Scott Swallow

The Utah State Bar and Utah Legal Services wish to thank these volunteers for accepting a pro bono case or helping at a clinic in December of 2016 and January of 2017. To volunteer call Tyler Needham at (801) 297-7027 or go to <https://www.surveymonkey.com/s/UtahBarProBonoVolunteer> to fill out a volunteer survey.

Notice of Legislative Rebate

Bar policies provide that lawyers may receive a rebate of the proportion of their annual Bar license fee which has been expended during the fiscal year for lobbying and any legislative-related expenses by notifying Executive Director John C. Baldwin, 645 South 200 East, Salt Lake City, Utah 84111 or at jbaldwin@utahbar.org.

The amount which was expended on lobbying and legislative-related expenses in the preceding fiscal year was 0.36% of the mandatory license fees. Your rebate would total: Active Status – \$1.51; Active – Admitted Under 3 Years Status – \$0.89; Inactive with Services Status – \$0.53; and Inactive with No Services Status – \$0.37.

Utah State Bar Ethics Advisory Opinion Committee Opinion Number 16-04, Issued December 28, 2016

Issue

What are the procedures for seeking consent to a concurrent conflict when a new matter from a prospective client or existing client (jointly referred to as Prospective Client) presents a conflict with a matter for an already existing client?

Opinion

If the attorney “reasonably believes that the lawyer will be able to provide competent and diligent representation to each,” (Rule 1.7(b)(1)), the attorney should first inform the Prospective Client of the existence of a conflict and seek permission to give information about the prospective client and matter to the existing client. Such permission is necessary in light of Rules 1.18 and 1.6.

If the Prospective Client grants permission, the attorney may then consult with the existing client, giving the information that the prospective client agreed could be shared. Then the attorney should seek permission to share information about the existing client and existing matter with the Prospective Client in light of Rule 1.6. If the existing client consents, then both the prospective and existing clients are given sufficient information about the situation and the implications of multiple representation to permit each to make informed decisions about whether to consent to such multiple representations.

Obtaining informed consent requires the lawyer to communicate to both the existing client and the Prospective Client “adequate

information and explanation about the material risks of and reasonably available alternatives,” Rule 1.0(f) includes the “reasonably foreseeable ways that the conflict could have adverse effects on the interests of that client.” Comment 18, Rule 1.7.

Background

At the time a lawyer performs a search for potential conflicts of interest prior to the engagement of a Prospective Client, the existence of a potential conflict of interest may not be known, particularly in large law firms with hundreds of lawyers and multiple offices. The same may be true in a small law firm with only a few attorneys working together in a single office.

If the conflicts search reveals a potential conflict of interest, the lawyer may be tempted to explore with the existing client whether that client would be willing to waive the conflict of interest without first obtaining the consent of the prospective client to both seek the waiver and reveal adequate information to obtain informed consent.

The Rules of Professional Conduct do not expressly describe the sequence for obtaining a waiver of conflict of interest, i.e., whether, upon discovery of a potential conflict of interest, the lawyer must first ask the prospective client for consent to seek a waiver of conflict of interest from an existing client and to disclose adequate information regarding the same. This opinion offers an approach and process to provide confidentiality.

FREE, Confidential Help is Just a Phone Call Away

STRESS

FAMILY ISSUES

DEPRESSION

ADDICTION




BLOMQUIST HALE
LAWYER ASSISTANCE PROGRAM (LAP)

Salt Lake City: 801-262-9619
Ogden: 801-392-6833
Orem: 801-225-9222
Brigham City: 435-723-1610
Logan: 435-752-3241
Other Locations: 800-926-9619
blomquist hale.com



**LAWYERS
HELPING
LAWYERS**

Lawyers Assistance Program

801-579-0404

lawyershelpinglawyers.org

Utah State Bar Request for 2017–2018 Committee Assignment

The Utah Bar Commission is soliciting new volunteers to commit time and talent to one or more of twelve different committees which participate in regulating admissions and discipline and in fostering competency, public service, and high standards of professional conduct. Please consider sharing your time in the service of your profession and the public through meaningful involvement in any area of interest.

Name _____ Bar No. _____

Office Address _____ Telephone _____

Email Address _____ Fax No. _____

Committee Request:

1st Choice _____ 2nd Choice _____

Please list current or prior service on Utah State Bar committees, boards or panels or other organizations:

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

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

Please list the fields in which you practice law:

Please include a brief statement indicating why you wish to serve on this Utah State Bar committee and what you can contribute. You may also attach a resume or biography.

Instructions to Applicants: Service on Bar committees includes the expectation that members will regularly attend scheduled meetings. Meeting frequency varies by committee, but generally may average one meeting per month. Meeting times also vary, but are usually scheduled at noon or at the end of the workday.

Date _____ Signature _____

Utah State Bar Committees

1. **Admissions.** Recommends standards and procedures for admission to the Bar and the administration of the Bar Examination.
2. **Bar Examiner.** Drafts, reviews, and grades questions and model answers for the Bar Examination.
3. **Character & Fitness.** Reviews applicants for the Bar Exam and makes recommendations on their character and fitness for admission.
4. **CLE Advisory.** Reviews the educational programs provided by the Bar for new lawyers to assure variety, quality, and conformance.
5. **Disaster Legal Response.** The Utah State Bar Disaster Legal Response Committee is responsible for organizing pro bono legal assistance to victims of disaster in Utah.
6. **Ethics Advisory Opinion.** Prepares formal written opinions concerning the ethical issues that face Utah lawyers.
7. **Fall Forum.** Selects and coordinates CLE topics, panelists and speakers, and organizes appropriate social and sporting events.
8. **Fee Dispute Resolution.** Holds mediation and arbitration hearings to voluntarily resolve fee disputes between members of the Bar and clients regarding fees.
9. **Fund for Client Protection.** Considers claims made against the Client Security Fund and recommends payouts by the Bar Commission.
10. **Spring Convention.** Selects and coordinates CLE topics, panelists and speakers, and organizes appropriate social and sporting events.
11. **Summer Convention.** Selects and coordinates CLE topics, panelists and speakers, and organizes appropriate social and sporting events.
12. **Unauthorized Practice of Law.** Reviews and investigates complaints made regarding unauthorized practice of law and takes informal actions as well as recommends formal civil actions.

Detach & Mail by June 3, 2017 to:
John Lund, President-Elect
645 South 200 East
Salt Lake City, UT 84111-3834

Attorney Discipline

UTAH STATE BAR ETHICS HOTLINE

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

More information about the Bar's Ethics Hotline may be found at:

www.utahbar.org/opc/office-of-professional-conduct-ethics-hotline/

Information about the formal Ethics Advisory Opinion process can be found at:

www.utahbar.org/opc/bar-committee-ethics-advisory-opinions/eaoc-rules-of-governance/



801-531-9110

ADMONITION

On November 28, 2016, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rules 1.3 (Diligence) and 1.4(a) (Communication) of the Rules of Professional Conduct.

In summary:

The attorney was hired to pursue post-conviction relief on behalf of a client and assist with the client's legal return to the United States. The attorney failed to move the case forward promptly and did not take action on behalf of the client for more than a year. The attorney did not adequately communicate with the client or the client's representative.

ADMONITION

On December 20, 2016, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rules 1.3 (Diligence), 1.4(a) (Communication), and 1.15(c) (Safekeeping Property) of the Rules of Professional Conduct.

In summary:

The attorney was hired for representation in a divorce case. The attorney deposited the client's payment into an operating account before the attorney had earned the funds. The attorney failed to diligently pursue the client's case, which resulted in the court scheduling an order to show cause hearing. The attorney did not reasonably communicate with the client regarding the

SCOTT DANIELS

Former Judge • Past-President, Utah State Bar

Announces his availability to defend lawyers accused of violating the Rules of Professional Conduct, and for formal opinions and informal guidance regarding the Rules of Professional Conduct.

Post Office Box 521328, Salt Lake City, UT 84152-1328

801.583.0801

setdaniels@aol.com

status of the matter and the means by which the attorney was to accomplish the client's objectives.

Mitigating circumstances:

Absence of a prior record of discipline; absence of a dishonest or selfish motive; personal and emotional problems; full and free disclosure to the disciplinary authority; and genuine display of remorse.

ADMONITION

On December 20, 2016, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rules 1.3 (Diligence), 1.4(a) (3) (Communication), 1.4(a) (4) (Communication), and 1.15(c) (Safekeeping Property) of the Rules of Professional Conduct.

In summary:

The attorney was hired for representation in a divorce case and to prepare the Qualified Domestic Relations Orders (QDRO) necessary for the client. The attorney deposited the client's payment into an operating account before the attorney had performed the work to earn the funds. The attorney took an abnormal amount of time to complete a QDRO. The attorney did not reasonably communicate with the client and to keep the client informed on the status of the QDRO.

ADMONITION

On December 20, 2016, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rule 1.6(a) (Confidentiality of Information) of the Rules of Professional Conduct.

In summary:

The attorney represented a client in a divorce case. The client posted an online review of the attorney expressing dissatisfaction with the attorney's representation, and the attorney sued the client in connection with the review. As part of the attorney's action against the client, the attorney filed a motion with supporting exhibits which under normal circumstances were subject to the attorney-client privilege and/or the confidentiality obligations of Rule 1.6 of the Rules of Professional Conduct. The attorney failed to take steps to protect the confidentiality of those exhibits and failed to disclose the confidential information in a manner that would limit access to the information.

ADMONITION

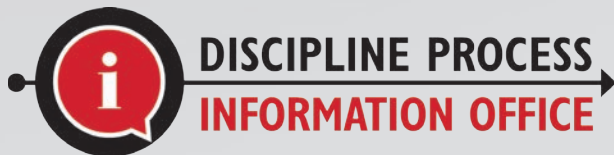
On December 20, 2016, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rules 1.15(a) (Safekeeping Property) and 1.15(c) (Safekeeping Property) of the Rules of Professional Conduct.

In summary:

The attorney was hired for representation in divorce modification proceedings. The fee was considered a non-refundable flat fee by the attorney. The attorney's fee agreement with the client did not contain any language indicating that any portion of the attorney's retainer could be refunded to the client if the attorney did not perform services on behalf of the client that were reasonably worth the amount of fees paid to the attorney. This conduct was not consistent with the attorney's ethical responsibilities.

Discipline Process Information Office Update

The Discipline Process Information Office opened 69 files during 2016 and provided helpful information to the attorneys named as subjects of Bar complaints. It is important to know most complaints filed with the Office of Professional Conduct are without merit. If you find yourself the subject of a Bar complaint, contact Jeannine P. Timothy with your questions about the discipline process. Jeannine is happy to answer your questions and clarify the process.



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

Get it in Writing

by Thomas R. McCosh

My first year of practice has been heavily focused on family law. Family lawyers frequently resort to mediation to resolve their cases. Generally, the objective of mediation is a prompt resolution where both sides are heard. If mediation of any case does not lead to binding resolution, it becomes yet another distraction and expense for the parties. If counsel do not take great care to reduce the agreements made in mediation to a written document, the result can be disastrous for both parties.

An ambiguous mediated outcome can readily become a fresh battleground. For example, in one case, after the parties and their attorneys had a chance to review the contents of a mediation agreement with fresh eyes, they found it to be completely befuddling. Both parties retained new counsel. It took four attorneys, their support staff, one judge, and two separate court commissioners about eighteen months to wrestle post-mediation events into submission. Central to the dispute was the question of whether the mediation agreement was enforceable.

This article is an attempt to explain the state of Utah's mediation laws and how they work to encourage parties to create robust, clear, and lasting agreements. The first section discusses the current state of Utah's laws. The second section presents a few hypothetical situations to illustrate problems in unsettled areas of the law. The third section concludes with a practice pointer: always get your mediation agreements reduced to a memorandum of understanding.

The Meaning of *Reese v. Tingey*

Reese v. Tingey Construction, 2008 UT 7, 177 P.3d 605, is fundamental in understanding Utah mediation law. The case interpreted a key provision in the Utah Alternative Dispute Resolution Act, which states that "any settlement agreement between the parties as a result of mediation may be executed in writing, filed with the clerk of the court, and enforceable as a judgment of the court." Utah Code Ann. §78B-6-207(3)(a).

A unanimous Utah Supreme Court interpreted the provision to

mean that although any mediation agreement *may* be executed in writing, an agreement *must* be executed in writing before it can be enforced as a judgment. *Reese* 2008 UT 7, ¶ 12. This is the rule notwithstanding the possibility that the parties may have genuinely come to an oral agreement during mediation, which would be enforceable following ordinary principles of contract law. Consequently, the Utah Supreme Court held, "Utah law requires agreements reached in mediation *to be reduced to a writing and signed by all the parties to the agreement* in order to be enforceable by a court." *Id.* ¶ 15 (emphasis added).

The court then went a step further. In a footnote to the final paragraph, the court stated, "[A] writing via various electronic media, such as an email exchange between the parties in which they agree to particular provisions or a recording in which the parties affirmatively state what constitutes their agreement, would satisfy [the writing] requirement." *Id.* ¶ 15 n.6. It is clear from the body of the opinion that a "writing" is required. However, the *Reese* footnote seriously complicates what would have otherwise been a straightforward opinion. The court may have been trying to provide guidance, but the footnote works contrary to that goal, calling particular attention to ambiguity in the court's own holding; what exactly is a "writing"? What, precisely, will the court enforce?

The Utah Supreme Court has not yet resolved these questions. However, the Tenth Circuit briefly discussed *Reese's* footnote in *Nature's Sunshine Products v. Sunrider Corp.*, 511 F.App'x 710 (10th Cir. 2013). Unfortunately, the Tenth Circuit did not

THOMAS R. MCCOSH works for Xact Data Discovery on high document volume litigation and business projects. He also works as a freelance attorney providing legal research, writing, and litigation services to small firms in Salt Lake County and surrounding areas.



answer any questions squarely. The court stated that under the *Reese* footnote, emails *could* satisfy a writing requirement, but it distinguished *Reese* on a factual basis. *Nature's Sunshine* involved emails sent over the course of a month after a mediation. The court ruled that there were no confidentiality concerns and ordinary contract law principles could be applied. Accordingly, there was no need to analyze whether an agreement constituted a writing under *Reese*. See *Nature's Sunshine*, 511 F.App'x at 716–17.

If one reads the *Reese* holding through the lens of the *Reese* footnote, the question becomes, “Does an audio recording in which the parties affirmatively state what constitutes their agreement, or an email exchange between the parties in which they agree to particular provisions, or any other form of various electronic media, actually constitute a written agreement?” A literal reading of the footnote would suggest it does.

But the answer is not clear by examining the case as a whole.

The *Reese* court held that only a signed and written mediation agreement is enforceable, and it only made such a holding after being presented with an *unsigned written memorandum*, prepared by a mediator after the parties purportedly came to an oral agreement. There were no facts requiring the court to consider “various

electronic media” in any form. Further, even if the evidence had come to the court in some other form (for example, a transcript of an audio recording), there is nothing to suggest it would have impacted the court’s analysis. The problem in *Reese* was that two out of the three parties stated that they had come to an oral agreement and they produced a record of the agreement, but the third party did not consent to the terms of the agreement after he saw them written down.

Because of this lack of clarity, I suggest a policy-based reading of the *Reese* holding. The *Reese* court clearly identified the policies that motivated it, which makes a policy-based reading of *Reese* possible. The court noted four good reasons for requiring a writing:

First, surrounding mediation in a cloak of confidentiality encourages parties to explore a variety of settlement options without fear that

proposals will be used against them. Mediation encourages parties to share potentially damaging information in exchange for complete confidentiality. This candid exchange of information . . . serves the important public policy of promoting broad discussion of potential resolutions to the matters being mediated. See *Reese v. Tingey Const.*, 2008 UT 7, ¶ 8, 177 P.3d 605.

Second, creating an exception for oral agreements could prevent settlement-inducing dialogue. “A rule permitting courts to enforce only written mediation agreements operates in tandem with the rules providing mediation confidentiality.” *Id.* ¶ 12, and an exception for oral agreements “has the potential to swallow the rule of privilege.” *Id.* (citation and internal quotation marks omitted). “[A] practice of permitting courts to undertake the kind of after the fact sorting exercise” that would be required to determine whether information exchanged in mediation is evidence of an agreement “could jeopardize mediation participants’ willingness to freely engage in settlement-inducing dialogue.” *Id.* ¶ 10.

“The practice of actually writing out an agreement can, by itself, help parties to ‘ferret out’ ambiguous language in their agreement. . . . [T]hey may discover that they don’t actually have a meeting of the minds....”

Third, actually executing a written instrument allows parties to identify and eliminate ambiguities. The practice of actually writing out an agreement can, by itself, help parties to “ferret out” ambiguous language in their agreement. Through the writing process, they may discover that they don’t actually have a meeting of the minds

with respect to one or more material provisions. *Id.* ¶ 13.

Fourth, a blanket rule of privilege promotes and empowers party autonomy. Mediation is “founded on the belief that the parties in conflict are best suited to resolve their dispute in a way that fits their needs and interests” and so it seeks to preserve the autonomy of both parties. *Id.* ¶ 14. In standard contract law cases, when parties agree to disagree, they defer to the authority of the courts. However, when rules of confidentiality make evidence inadmissible, it becomes less practical for a court to exert its authority and decide matters on the parties’ behalf. By momentarily turning the parties into their own highest authority, both parties are encouraged to take responsibility for, and control over, the outcome of their dispute. In this way, a “writing requirement both honors autonomy and provides an added means of producing a workable and durable agreement.” *Id.*

The policy of promoting clarity should be given substantial weight. Courts are often called upon to read and interpret language. But if (1) language is especially unclear, (2) parties present competing interpretations, and (3) all the evidence is inadmissible, then the court could have understandable reservations about ruling in favor of either party. Such a ruling, regardless of who wins, would dispel the notion that the parties are best suited to resolve their own disputes.

Taking these policies together, a record produced at mediation becomes a “writing” – per the *Reese* footnote – only if it is so clear that a court can interpret it without having to resort to extrinsic evidence. This interpretation of “writing” does not distinguish between various electronic media and traditional records. But, notably, this interpretation of “writing” means that some handwritten or typed records, particularly agreements with vague or confusing provisions, would not satisfy the Utah Supreme Court’s requirement for a “writing,” even if they were in ink.

In summary, a literal interpretation of the *Reese* footnote puts any record, whether in writing or in “various electronic media,” within the court’s authority to enforce. Under this framework, a trial court could be called upon to interpret an impossibly vague agreement without the aid of any extrinsic evidence. To the extent any records evidence the “content, process, conversations, and agreements of the mediation,” *Reese v. Tingey Constr.*, 2008 UT 7, ¶ 10, 177 P.3d 605, the court would then be tasked with a sorting exercise to determine whether the parties intended them to be a non-confidential part of the mediated agreement. On the other hand, a policy-driven interpretation of *Reese* puts impossibly vague agreements outside the purview of the courts no matter what form the agreement takes. This tracks with the Utah Supreme Court’s goal of preserving confidentiality in mediations and helps to prevent the kind of sorting exercise that *Reese* attempted to prevent.

Applying *Reese* in Practice

For all of the discussion of *Reese*, attorneys might be wondering, “So what?”

Consider, for a moment, what it would be like to produce the kinds of documents mentioned in the *Reese* footnote. Assume that two parties attended a mediation and that throughout the course of the mediation the parties work well together, make some concessions, and come to an agreement. But for some reason, the parties are unable to reduce their agreement to writing – either because of a technology glitch or a time constraint – so the mediator suggests

that the parties state their agreement into a Dictaphone.

Now let us assume that the mediator introduces himself on the Dictaphone, describes where he is and what just transpired, states the reason for producing the recording, and engages in a thirty-minute endeavor to outline, in detail, the parties’ agreement. When the mediator begins to speak, neither he nor any of the parties are certain what his precise language will be. It is well within the realm of probability that the mediator incorrectly describes the parties’ assets or the parties’ agreement and that he needs to be corrected while the recording is running. He may contradict himself, with or without interjections from the parties. He may confuse the roles of the parties. He may string thoughts together in a way that makes them seem linked, when in fact they are not. He may emphasize certain words, use intonation, inflection, or other verbal cues to completely change the meaning of a sentence. He may pause and resume the recording in a way that makes it unclear whether the audio recording is a complete recitation of all the terms. A mediator might fail to make significant legal distinctions, simply because he or she has so much to think about. It is also entirely possible that, in the process of creating the recording, the mediator discovers an issue that the parties failed to discuss and proposes a solution. The parties may feel pressure

SPRING *into* SAVINGS

Find everything you need for spring with the Utah State Bar Group Benefits website. Access exclusive discounts on popular products and services such as flowers, gifts, dining out, home decor, entertainment and much more! To access the site, simply log in with your username and password via www.utahbar.org/members.

Nutrisystem®

Bricks & Boulders

Tickets.com

1.800.flowers.com

RESTAURANT.COM
BEST DEAL EVERY MEAL

FragranceNet.com

teleflora

Sams Club

redenvelope



to acquiesce without considering all the factors, solely on the basis that they are nearly done producing a recording. Even if it is a reasonable proposal, it is a part of the negotiation process that would normally be confidential. In order to evaluate its confidentiality, a judge would need to determine whether the proposal itself is a part of the parties' agreement, perhaps playing the same role that a recital would in an ordinary written contract.

At the end of the recording, the parties may be asked if they are familiar with the contents of the recording, if they affirmatively state that it constitutes their agreement, and if they intend to be bound by its terms and conditions. They may rack their brain, trying to remember everything that was discussed over the past thirty minutes and how it was said. An attorney would need superhuman diligence to catch every possible problem with an audio recording on a first pass. It seems unlikely, however, that a party would actually rewind the entire recording, listen to it from the beginning, and request changes line-by-line. This practice could easily take three times as long as the recording itself. At best, it is a waste of time, and at worst it would compromise the deal. And yet, if the agreement were reduced to a written memorandum, the parties could quickly and easily review its terms and make adjustments.

Consider emails sent back and forth as well.

Attorneys and mediators may sometimes find it useful to exchange documents, memoranda, or position statements during mediation. It seems unlikely that a situation would arise where an attorney would send emails during mediation specifically agreeing or disagreeing to certain provisions. Sending emails to opposing counsel like this would usurp the value of an intermediary, and if there are provisions being discussed at all, it seems likely that the parties would be sending back and forth drafts of a more complete agreement. However, in the event that it happens, there is a serious risk of producing a partial agreement by mistake. Consider, for instance, a payment provision premised on a refusal to admit fault. If an email existed negotiating the language of a payment provision, but the mediation failed before negotiations were complete, then a court could see the email and consider it but would be unable to consider confidential, unrecorded information.

More often, however, an attorney may be inclined to work out the gist of an agreement in mediation and then email back and forth to iron out particular details over a course of weeks or months. An interpretation of *Reese* that allows for emails and other recordings to be introduced as explicit terms of agreement

could chill communication efforts, both in and following a mediation. Parties could reasonably fear that any record they create could subsequently be used against them as evidence of an agreement. Keep in mind the federal court's holding in *Nature's Sunshine*, where the federal court said that Utah law did not operate to provide confidentiality to emails sent directly pertaining to discussions in mediation but sent after mediation was over. When considering the *Reese* footnote and combining it with *Nature's Sunshine*, genuine doubt arises regarding the degree of confidentiality emails receive. Some might argue that the *Reese* footnote specifically allows for their disclosure wherever the parties agree to a particular term, while others would argue that the spirit of *Reese* encourages the parties to communicate freely and openly, including through email, and that allowing for disclosure is antithetical to *Reese*'s spirit.

From a standpoint of pragmatism, attorneys should stop and consider the possible ramifications of continuing settlement negotiations outside of mediation. Sending emails back and forth can result in a binding agreement, even where the agreement is unsigned. Even during mediation, attorneys should avoid creating a written record that relates only to particular language in a provision. Even though this advice runs contrary to the goal of promoting communication in *Reese*, the law in this area is unsettled and interpreting the *Reese* footnote can become an expensive and time-consuming problem.

Conclusion

Mediation is an indispensable tool in any litigator's toolbox, and a well-run mediation can be an excellent value proposition for the client. Parties gain numerous advantages from the confidentiality granted in mediation. However, there is room for Utah to improve its mediation laws by clearly defining what kinds of records constitute a confidential communication, as compared to a writing intended for disclosure and enforcement. Clarifying what communications are confidential in mediation or immediately afterwards could further facilitate settlement.

But perhaps the most important takeaway is this: With Utah law being in its current state, there is no reason to mess around with audio recordings or emails. If you do, chances are good that the parties will end up in court. Every mediation ending in an agreement should produce a memorandum of understanding. It is commonly accepted that a clear, robust, signed, and workable memorandum can satisfy the *Reese* writing requirement. Compared to other kinds of records, the advantages of a signed and written memorandum are immense and the risks are low.

Paralegal Division Membership Benefits

by Candace Gleed

Having been a member of the Division for several years, it wasn't until recently that I learned of all the benefits membership to the Paralegal Division of the Utah State Bar provides. It is clear while talking with peers, that the benefits of membership is not well known to paralegals in our communities. Division membership benefits not only paralegals, but the attorneys and law firms where paralegals work as well.

An obvious benefit to membership of the Paralegal Division is networking with paralegal peers. The Division membership includes paralegals practicing in a wide variety of areas who have years of experience to draw expertise from. A unique opportunity exists for members to meet through the educational opportunities offered through the Division and make lasting friendships and contacts. In addition to the educational events offered through the Division, several social media outlets and other resources exist to assist members in connecting with peers.

Annual membership dues are \$75 and are typically renewed in June. This is a relatively small cost for all the benefits membership provides. Those fees are used to directly support the Division. In fact, one of the main goals of the board of directors of the Paralegal Division each year is to stretch those fees as far as possible to provide direct benefits to the members.

Additional benefits of Paralegal Division membership are:

Casemaker: Casemaker is a legal research program that is available to members free of charge. Casemaker libraries include all Federal Supreme, Circuit, District and Bankruptcy decisions, and more. This service also includes CaseCheck+, CasemakerDigest, and CiteCheck in the subscription.

E-mail Notifications: Stay in the loop about continuing legal education and issues that affect the profession in general by receiving announcements, newsletters and other critical information distributed by the Utah State Bar and the Division.

Blomquist Hale Employee Assistance: Blomquist Hale Employee Assistance Program is a voluntary, work-based program that

offers free and confidential assessments, counseling, referrals, and follow-up services for members of the Bar and their families who may have personal and/or work-related problems. Without cost to the member, appointments can be made with therapists to address issues relating to stress, alcohol/substance abuse, depression, relationship or family problems, financial, grief, etc. The counseling services are provided by licensed therapists and offices are located in Salt Lake City, Ogden, Logan, and Orem. They also staff an urgent 24/7 crises line.

Insurance: Group discounts for insurance are available as a member of the Utah State Bar. Plans are offered for health insurance, automotive and home insurance, long-term care, long-term disability, pet insurance, supplemental life insurance, and non-insurance discount plans for dental and vision.

Automotive: Discounts and group rates for financing and re-financing automobiles, discounted auto parts and accessories, automobile purchase programs, roadside assistance programs, car rentals, and car sharing.

Education: Free and discounted educational programs for Pre-K through 12, test preparation, student loan refinancing, tuition savings, brain games, and training.

Electronics: Discounted prices on computers, software, accessories, and audio & visual.

Entertainment: Discounted prices and packages for amusement parks, live events, movie tickets, ski tickets, and other tourist attractions around the country.

CANDACE A. GLEED works as a litigation paralegal at the law firm of Eisenberg, Gilchrist & Cutt, primarily on plaintiff's personal injury and medical malpractice cases. Candace serves on the board of directors of the Paralegal Division and is a member of NALA.

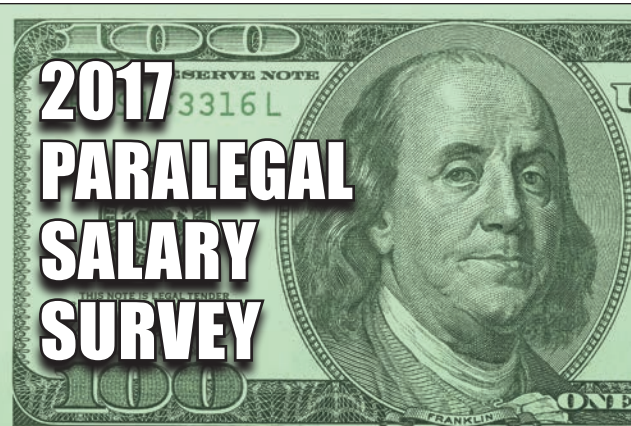


Distinguished Paralegal of the Year Award

The Distinguished Paralegal of the Year Award is presented by the Paralegal Division of the Utah State Bar and the Utah Paralegal Association to a paralegal who has met a standard of excellence through his or her work and service in this profession.

We invite you to submit nominations of those individuals who have met this standard. Please consider taking the time to recognize an outstanding paralegal. Nominating a paralegal is the perfect way to ensure that his or her hard work is recognized, not only by a professional organization, but by the legal community. This will be an opportunity to shine! Nomination forms and additional information are available by contacting Jodie M. Scartezina, ACP at jodie@accuplan.net.

The deadline for nominations is April 28, 2017. The award will be presented at the Paralegal Day Celebration held on May 18, 2017.



Every couple of years the Paralegal Division of the Utah State Bar collects feedback from the paralegals in our state. This data is gathered to assist the board of directors to help set our goals for the division. Our goal is that through our great CLE programs and educating attorneys on proper utilization we can help show the value of a paralegal in the legal field. The survey results are only as good as the amount of people that reply.

We would like to invite ALL paralegals (not just division members) to participate in the 2017 Paralegal Salary Survey! We will be posting the link on our Facebook page and website.

Annual Paralegal Day Luncheon

For all Paralegals & their Supervising Attorneys

Keynote Speaker: Judge Dale Kimball

May 18, 2017 • Noon to 1:00 pm

Location: To Be Announced

1 Hour Ethics/Civility Credit

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

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



March 9–11, 2017

2017 Spring Convention in St. George, Utah. Save these dates! Co-Chairs: Hon. Michael F. Leavitt and Melinda Bowen. Accommodation information can be found on pages 48 and 49 of this issue of the *Utah Bar Journal*. Watch for the agenda and registration information in the Jan/Feb 2017 issue of the *Journal*.

March 15, 2017

5 hrs. Ethics + 1 hr. Prof./Civ.

OPC Ethics School: What They Didn't Teach You in Law School. \$245 on or before March 4, \$270 after March 4.

March 20, 2017 | 12:00–1:30 pm

1 hr. CLE

Legislative Update: \$30.

March 24, 2017 | 12:00–1:15 pm

1 hr. Ethics

Standards of Ethics, Professionalism & Civility in Utah Arbitrations. \$40.

April 5, 2017 | 4:00–6:00 pm

2 hrs. Ethics

Litigation 101: Ethics. \$25 for YLD members, \$50 for others.

May 18, 2017 | 12:00–2:30 pm

2 hrs. CLE

Annual Health Law Forum. \$55 for section members, \$65 for non-section members.

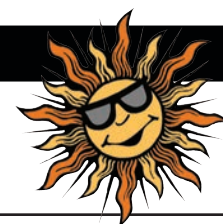
June 2, 2017 | 8:30 am–4:45 pm

6 hrs. CLE + 1 hr. Ethics

Annual Family Law Seminar. University of Utah S.J. Quinney College of Law, South, 383 University St E., Salt Lake City.

July 26–29, 2017

2017 Summer Convention in Sun Valley, Idaho. Save these dates and plan to attend! Co-Chairs: Hon. Robert J. Shelby and Amy Sorenson.



Classified Ads

RATES & DEADLINES

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

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

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

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

OFFICE SPACE

PRACTICE DOWNTOWN ON MAIN STREET: Nice fifth floor Executive office in a well-established firm, now available for \$775 per month. Enjoy great associations with experienced lawyers. Contact Richard at (801) 534-0909 or richard@tjblawyers.com.

Office Space, prime Holladay location. 4625 S 2300 E #206. One office in three-office suite. \$575/month, parking, conference room, copier. Call Steve 801-424-1520.

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

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

A well-established boutique real estate law firm located on Main Street in Park City has a large office available for lease (207 sq. ft.). The lease is an ideal opportunity for an accomplished litigator and an attorney who specializes in areas not directly related to real estate laws such as trusts and estates. The firm would like to refer these types of matters to a trusted attorney in the rented office in a manner that effectively meets the needs of the clients. Contact Tassie Williams, tassiew@teschlaw.com.

Executive Office space available in professional building.

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

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

Office space for lease. Total building space 5260 sf. Main floor 1829 sf, \$16/sf. Upper floor 3230 sf (may be divided), \$10/sf. Owner would consider offer to purchase. Walking distance to city and courts. Easy access to TRAX. Lots of parking. 345 South 400 East. Call Larry Long 801-328-8888.

SERVICES

GUY FRIDAY – Semi-retired, seeking hourly work. 39 years as counsel, Super Lawyer, National Board of Trial Advocacy, Utah's Legal Elite: civil litigation, P.I., broken contracts, insurance disputes, fraud and deceit, etc. 2nd chair at trial, summary judgment and discovery motions, motions in limine, voir dire and jury instructions, trial and appellate briefs, depositions, arbitrations and mediations. Call John Fay – 435-649-6224.

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

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

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

The Only Professional Liability Coverage Endorsed by the Utah State Bar

Prior Acts Coverage

Broad definition of a claim

Complimentary risk management resources



PROLIABILITY LAWYERS PROGRAM

Administered by Mercer Consumer, a service of Mercer Health & Benefits Administration LLC* ("Mercer Consumer"), with more the 40 years' experience in providing law firms with the protection they need and deserve.

PROGRAM HIGHLIGHTS:

50 State Solutions

Exceptional Customer Service

Dedicated Account Managers and Agent

GET YOUR QUOTE TODAY!

To obtain your Professional Liability Insurance quote:



www.proliability.com/lawyers



(800) 328-4671



Endorsed by
the Utah State Bar

*Mercer Consumer is a registered trade name of Mercer Health & Benefits Administration LLC
Program Administered by Mercer Health & Benefits Administration LLC

AR Insurance License #100102691 | CA Insurance License #0G39709
In CA d/b/a Mercer Health & Benefits Insurance Services LLC

78751, 78120, 78121, 78122, 78123, 78124 (3/17) Copyright 2017 Mercer LLC. All rights reserved.



MERCER

MAKE TOMORROW TODAY

Getting justice for the victims of Medical Malpractice for nearly 30 years.

- Surgical Mistakes
- Misdiagnosis
- Birth Injuries
- Brain Injuries
- Wrongful Death



We're ready to partner with you.

Norman J. Younker, Esq. | Ashton J. Hyde, Esq. | John M. Macfarlane, Esq.

www.patientinjury.com

YOUNKER | HYDE | MACFARLANE

P A T I E N T I N J U R Y

257 East 200 South, Suite 1080 | Salt Lake City, UT 84111
801.335.6479 | yhtmlaw.com