

## Utah State Bar Commission

Thursday, March 12, 2020

Dixie Convention Center

St. George, Utah

### Agenda

- 12:00 Noon**    **Lunch with Southern Utah Bar Association & Regulatory Reform Panel**
- 1.    1:15 p.m.    President's Report: Herm Olsen**
- 20 Mins.*    1.1    Report on Regulatory Reform: **Judge Willmore & Erik Christiansen**
- 10 Mins.*    1.2    Review Spring Convention Schedule: **Heather Farnsworth**
- 30 Mins.*    1.3    Report on Legislative Session and Future Policy Planning
- 02 Mins.*    1.4    Logan Commission Meeting /Lunch with Cache County Bar April 17<sup>th</sup>
- 10 Mins.*    1.5    Aug./Sept. Meetings on Labor Day Weekend: **Heather Farnsworth**
- 03 Min.*    1.6    Reminder to Make Park City Hotel Reservations (**Handouts**)
- 2.    2:45 p.m.    Action Items**
- 10 Mins.*    2.1    Revise Bar President-Elect Election Notice (**Tab 1, Page 3**)
- 10 Mins.*    2.2    Provide Staff Services to Law Related Education Program (**Tab 2, Page 5**)
- 10 Mins.*    2.3    Amend *Pro Hac Vice* Rule for Indian Children Welfare Act (**Tab 3, Page 18**)
- 3.    3:15 p.m.    Discussion Items**
- 15 Mins.*    3.1    Bar Survey Report: **Mark Morris**
- 4.    3:30 p.m.    Information Items**
- 15 Mins.*    4.1    ABA Delegates' Report: **Nate Alder, Erik Christiansen, Camila Moreno, & Margaret Plane**
- 5.    3:45 p.m.    Executive Session**
- 4:30 p.m.    Adjourn**

### Consent Agenda (Tab 4, Page 30)

1.    Approve Minutes of January 24, 2020 Commission Meeting

### Attachments (Tab 5, Page 34)

1.    2020 Judicial Performance Evaluation Commission Report
2.    Salt Lake Tribune Article on LPP Program
3.    Law 360 Article on Keller Actions

## Calendar

March 12	SUBA Luncheon	12:00 Noon	St. George, Utah
March 12	Commission Meeting	1:00 p.m.	St. George, Utah
March 13-14	Spring Convention		St. George, Utah
March 20	Election Email Message Due		
April 1	Election-Online Balloting Begins		
April 1-4	Western States Bar Conference		Scottsdale, Arizona
April 9	Executive Committee	12:00 Noon	
April 15	Election-Online Balloting Ends		
April 17	Commission Meeting	9:00 a.m.	Logan, Utah
April 21-23	ABA Day in Washington		Washington, D.C.
May 14	Admission Ceremony	12:00 Noon	State Capitol
May 28	Executive Committee	12:00 Noon	
June 5	Commission Meeting	9:00 a.m.	Utah State Bar
July 9	Executive Committee	12:00 Noon	Utah State Bar
July 16	Commission Meeting	12:00 Noon	Park City, Utah
July 16-18	Summer Convention		Park City, Utah

**TAB**

**1**

## Notice of Bar Election – President-elect

Nominations to the office of Bar President-elect are hereby solicited. Applicants for the office of President-elect must submit their notice of candidacy to the Board of Bar Commissioners by January 2, 2020. Applicants are given time at the January Board meeting to present their views. Secret balloting for nomination by the Board to run for the office of President-elect will then commence. Any candidate receiving the Commissioners' majority votes shall be nominated to run for the office of President-elect. Balloting shall continue until two nominees are selected.

**NOTICE:** Balloting will be done electronically. Ballots will be e-mailed on or about April 1, 2020 with balloting to be completed and ballots received by the Bar office by 5:00 p.m. April 15, 2020.

In order to reduce out-of-pocket costs and encourage candidates, the Bar will provide the following services at no cost:

1. space for up to a 200-word campaign message\* plus a color photograph in the March/April issue of the *Utah Bar Journal*. The space may be used for biographical information, platform or other election promotion. Campaign messages for the March/April *Bar Journal* publications are due along
2. space for up to a 500-word campaign message\* plus a photograph on the Utah Bar Website due February 1st;
3. a set of mailing labels for candidates who wish to send a personalized letter to Utah lawyers who are eligible to vote;
4. a one-time email campaign message\* to be sent by the Bar. Campaign message will be sent by the Bar within three business days of receipt from the candidate; and
5. candidates will be given speaking time at the Spring Convention; (1) five minutes to address the Southern Utah Bar Association luncheon attendees and, (2) five minutes to address Spring Convention attendees at Saturday's General Session.

Election information is available at <http://www.utahbar.org/bar-operations/leadership/>. If you have any questions concerning this procedure, please contact John C. Baldwin at (801) 531-9077 or at [director@utahbar.org](mailto:director@utahbar.org).

\*Candidates for the office of Bar President-elect may not list the names of any current voting or ex-officio members of the Commission as supporting their candidacy in any written or electronic campaign materials, including, but not limited to, any campaign materials inserted with the actual ballot; on the website; in any e-mail sent for the purposes of campaigning by the candidate or by the Bar; or in any mailings sent out by the candidate or by the Bar. Commissioners are otherwise not restricted in their rights to express opinions about President-elect candidates. This policy shall be published in the *Utah Bar Journal* and any E-bulletins announcing the election and may be referenced by the candidates.

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**STRESS**  
**FAMILY ISSUES**  
**DEPRESSION**  
**ADDICTION**

# TAB 2

## Utah Law-Related Education

February, 2020

1. Civics education in public schools about the Rule of Law and the legal system and citizens' rights and responsibilities began over fifty years ago under the direction of state bars and local bar associations. These sets of coordinated curricula and activities were given the name "Law-Related Education" to assure their focus on specific knowledge, practical skills and attitudes about the justice system and young adults' need to understand the justice system and engage in learning activities.
2. Law-Related Education began in Utah as a 501 (c) 3 non-profit in 1974 through the leadership of Past Bar President and Governor Scott and Norma Matheson and Federal Judge J. Thomas and Kay Greene.
3. The program sponsors an annual **Mock Trial Competition** in middle and high schools; classroom curricula in elementary, middle and high schools under the titles: "**We the People - the Citizens and the Constitution**" and "**We the People - Project Citizen**;" regular **Peer Courts** in Salt Lake City; **Court Tours**; an annual **Youth Summit**
3. It is supervised by a board of directors. That list is attached.
4. It has been managed by Executive Director Kathy Dryer for 25 years.
5. It has 5 part-time employees and engages hundreds of volunteers.
6. It has been a tenant in the Law & Justice Center since 1988 in space in the lower level which is contributed by the Bar.
7. The Bar has annually contributed funding, which has been as much as \$65,000 over the past several years.
8. The program receives grants from the Bar Foundation, several other foundations, charitable educational commissions, the Bar, and other sources, and has a current annual budget of \$254,000. The budget is attached.
9. In many states it is a program exclusively of the Bar.
10. Kathy Dryer is reducing her role in the program in July and will be leaving her position in 2 years and the program needs new leadership. She will be hiring a replacement to write grants and perform most of her work.

(Over)

11. We have been approached by Kathy and members of the Bar Foundation Board regarding how the Bar might be involved in assuring the stability and continuity of the program and if the Bar would be willing to have this led by Michelle Oldroyd committed to not more than 5 hours per week.
12. Michelle would only take on limited leadership responsibilities. She would be compensated for that time with a proportional allocation of the funds annually contributed by the Bar.
13. There would be some one-time expenses for the transition. Those on-time expenses would be paid for by the Bar Foundation.
14. **There would be no cost to the Bar for the transition or any on-going annual expenses.** All income would be generated by grants written by Kathy and her replacement and allocated by their board.

**UTAH LAW RELATED EDUCATION****BOARD OF DIRECTORS****2019-2020**

Bruce R. Baird, PCCC  
Attorney At Law

Patrick C. Burt  
Kipp and Christian, P.C.

Hon. Augustus G. Chin  
Holladay/Cottonwood Justice Court

Mary Draper  
Guadalupe School

Kathy D. Dryer, Secretary  
Utah Law Related Education

Alan Hawkins, Past Chair  
Wells Fargo Advisors

Jeffrey Hill, Treasurer  
Jeff Hill, CPA, LLC

Laurie A. Hofmann  
Community Member

Kyle Kaiser, Chair  
Utah Attorney General's Office

Kristina Kindl  
Salt Lake City School District

Thomas A. Mitchell  
Wallace Stegner Center  
S.J. Quinney College of Law

Michelle M. Oldroyd  
Utah State Bar; Director of CLE and  
Professional Education

Gregory G. Skordas  
Skordas, Caston and Hyde, LLC

**Utah Law Related Education**  
Statement of Revenue and Expenses  
Actual and Projected Operating Budgets  
Fiscal Year July 1 to June 30

	Actual	Actual &	Projected
	2018-19	Projected 2019-20	2020-21
<b>Revenue</b>			
Center for Civic Education	250	0	0
Commission on Civic Education	70,000	0	0
Dominion Energy Charitable Foundation	5,000	0	0
George and Dolores Doré Eccles Foundation	6,500	6,500	6,500
Individual Donors	1,600	1,000	1,000
Marriner S. Eccles Foundation	5,000	5,000	5,000
McCarthy Family Foundation	0	10,000	10,000
Michaels Foundation	0	1,000	0
R. Harold Burton Foundation	6,000	6,000	6,000
Salt Lake City Police Department	10,000	10,000	10,000
Salt Lake City School District	25,000	25,000	25,000
UServe Utah	0	25,000	25,000
Utah Bar Foundation	50,000	55,000	75,000
Utah State Bar	65,000	65,000	65,000
Williams Charitable Giving	250	0	0
Wells Fargo Foundation	0	1,300	0
<b>Total Grants</b>	<b>\$244,600</b>	<b>\$210,800</b>	<b>\$228,500</b>
Fees			
Mock Trials	4,000	4,000	4,000
CLE Seminars	4,000	4,500	4,500
Earned Income	1,500	1,500	1,500
<b>Total Revenue</b>	<b>\$254,100</b>	<b>\$220,800</b>	<b>\$238,500</b>

A Tax Manager at Jeff Hill, LLC., who is an accountant and member of Utah Law Related Education's Board of Directors, is the financial advisor. Due to funding limitations, an audit has not been completed.

	Actual	Actual &	Projected
Expenses	2018-19	Projected 2019-20	2020-21
<b>Administrative</b>			
Salaries and Fees	51,000	40,000	50,000
Benefits/Insurance	3,000	3,000	3,000
Web Site Consultant	3,000	3,000	3,000
Operating Expenses	2,000	2,000	2,000
Materials and Supplies/Equipment	5,000	7,500	7,500
<b>Total Administrative Expenses</b>	<b>64,000</b>	<b>55,500</b>	<b>65,500</b>
<b>Mock Trials</b>			
Salaries and Fees	17,000	20,000	20,000
Materials and Supplies/National Mock Trial Finals	23,000	22,000	22,000
<b>Total Mock Trial Expenses</b>	<b>40,000</b>	<b>42,000</b>	<b>42,000</b>
<b>Salt Lake Peer Court</b>			
Salaries and Fees	41,000	46,000	46,000
Conferences, Workshops, and Trainings	8,000	6,000	6,000
Operating Expenses	4,000	4,000	4,000
Materials and Supplies	4,500	4,000	4,000
<b>Total Salt Lake Peer Court Expenses</b>	<b>57,500</b>	<b>60,000</b>	<b>60,000</b>
<b>We the People: The Citizen and the Constitution</b>			
Salaries and fees	16,000	20,000	20,000
District Congressional Hearings	0	1,000	1,000
State Congressional Hearings	8,000	6,000	6,000
National Congressional Hearings Travel	20,000	15,000	15,000
Congressional District Coordinators/Trainings	8,000	8,000	8,000
Operating Expenses	2,000	2,000	2,000
Materials and Supplies, including classroom texts and awards	18,000	18,000	18,000
<b>Total We the People: The Citizen and the Constitution</b>	<b>72,000</b>	<b>70,000</b>	<b>70,000</b>
<b>We the People: Project Citizen</b>			
Salaries and Fees	3,000	2,000	2,000
Showcase	0	0	0
In-service Training	500	500	500
Operating Expenses	0	0	0
Materials and Supplies, including classroom texts and awards	0	0	0
<b>Total We the People: Project Citizen Expenses</b>	<b>3,500</b>	<b>2,500</b>	<b>2,500</b>
<b>Total Expenses</b>	<b>\$237,000</b>	<b>\$230,000</b>	<b>\$240,000</b>
(Deficit) for Actual and Projected Years	(0)	(\$9,200)	(\$1,500)
Surplus for Actual and Projected Years	\$17,100	\$7,900	\$6,400

## **Utah Law Related Education Director Duties**

Oversee programs, including but not limited to the Mock Trial Program, We the People—The Citizen and the Constitution Program, We the People—Project Citizen, and Salt Lake Peer Court.

Oversee the general administration of finances.

Maintain the trusting, courteous, and respectful environment that now exists in the organization.

Hire staff.

Communicate with Program Coordinators to learn of program needs and discuss goals.

Discuss ideas for expansion of programs with Program Coordinators.

Work with Board of Directors to schedule board meetings and to prepare agendas.

## **Utah Law Related Education Assistant to the Director Job Description**

Support and assist Program Coordinators with preparation of materials and agendas for events and meetings; assist Program Coordinators in organizing and implementing events and meetings.

Communicate with Program Coordinators to learn of program needs and to expand programs; assist and support Coordinators in the expansion of programs.

Maintain the trusting, courteous, and respectful environment that now exists in the organization.

Prepare grant applications and grant reports; develop and sustain relationships with grantors.

Follow Utah Law Related Education's Policies and Procedures, including but not limited to general administration of finances i.e., payroll/stipends, invoice payments, regular financial statements, reconciliation of accounts, annual budgets, IRS 990, 1099s, permits (Department of Commerce, Division of Corporations; Department of Commerce, Division of Consumer Protection, Utah State Employees Charitable Fund), Workforce Services, Entity Registration, domain renewal.

Renew insurance policies i.e., General Liability/ISC, Board of Directors Liability, WCF.



## HISTORY AND MISSION

The national Law-Related Education (LRE) movement began over fifty years ago. The mission of LRE nationally and Utah Law Related Education is two-fold:

- To provide law-related and citizenship education through interactive educational experiences and curricula which foster in youth and communities an understanding of the law, the legal system, and their rights and responsibilities as engaged citizens.
- To help our youth develop the knowledge, skills, and attitudes of effective, engaged citizens and to avoid delinquent behavior.

In 1974, former Governor Scott and Norma Matheson, together with federal Judge J. Thomas and Kay Greene, created Utah Law Related Education to provide law-related and citizenship education for Utah's youth and communities through interactive educational experiences. Utah Law Related Education has trained thousands of youth and adult community members, including educators, attorneys, court employees, juvenile justice professionals, and other legal professionals, through a host of institutes, seminars, courses, and programs, such as the Mock Trial Competition, Salt Lake Peer Court Program, *We the People--The Citizen and the Constitution* Program, *We the People--Project Citizen* Program, elementary and secondary Mentor/Dialogue on Democracy Programs, Teaching Law in the High Schools Seminar at the S.J. Quinney College of Law, Court Tour Programs, Youth Summits, *We the People Initiative for High-Needs Students*, Representative Democracy in America, Conflict Management Programs, and Juvenile Justice Programs.

## CURRENT PROGRAMS AND ACTIVITIES

**MOCK TRIAL PROGRAM:** In February and March 2019, more than 700 junior and senior high school students across Utah tried a civil case in which Savea Tuvale, a minor who was diagnosed with Asperger's Syndrome, was pepper sprayed by the Emigration Police Department's agent, a school resource officer at Emigration High School. The Officer ordered Savea to hand over his backpack in which it was later determined to contain a 3D non-functional model of a gun. As Savea reached for his backpack, he was pepper sprayed by the Officer. The Officer handcuffed Savea and took him to the principal's office. After an hour, he was transported to the police station where he later was released in his guardian's care. Savea didn't return to Emigration High School; instead, he returned to his home in Pago Pago, on the island of Tutuila, which is part of American Samoa.

Approximately 250 judges, attorneys, and community representatives volunteered their time as judges and attorney coaches in over 90 mock trials which were held in Salt Lake valley courtrooms. The high school and junior high school championship rounds were held in the Court of Appeals Courtroom in the Scott M. Matheson Courthouse. Both state champion teams were honored at the Law Day Luncheon on May 1.

The high school championship team was West High School; however, they were unable to participate in the National Mock Trial Competition in Athens, Georgia, in May because their IB tests were administered during that time. The second-place team, Integritas, placed 7<sup>th</sup> at Nationals! In the junior high division, Integritas placed first, with Central Davis Junior High School second.

The Utah State Bar and Utah Law Related Education co-sponsored a two-hour Continuing Legal Education experience for mock trial judges and attorney coaches.

**WE THE PEOPLE--THE CITIZEN AND THE CONSTITUTION:** The primary goal of *We the People--The Citizen and the Constitution* is to promote civic competence and responsibility among the nation's elementary and secondary students. What makes this program so successful is the design of its instructional program, including its innovative culminating activity.

The foundation of the program is the classroom curriculum. It complements the regular school curriculum by providing upper elementary, middle, and high school students with an innovative course of instruction on the history and principles of constitutional democracy in the United States. The textbooks are designed for a wide range of student abilities and may be used as a supplemental text or for a full semester of study. Critical-thinking exercises, problem-solving activities, and cooperative-learning techniques help develop intellectual and participatory skills while increasing students' understanding of the institutions of American constitutional democracy. After studying the textbook, students prepare for the simulated congressional hearing which is the culminating activity for the program. The entire class, working in cooperative teams, prepares and presents statements before a panel of community representatives who act as congressional committee members.

On February 14, 2019, five high schools in Utah participated in the state mock congressional hearings at the University of Utah, with an awards luncheon following the competition. Judge Augustus Chin spoke to the students. Sky View/Green Canyon High School's class won the competition, with Mountain Crest High School placing second and Alta High School third. More than 1,200 high school students and their teachers, including Sky View/Green Canyon and Alta, participated in the *We the People* national finals in Washington, D. C., at the end of April. SkyView/Green Canyon placed first for their Unit 2 presentations!

Five junior high school classes participated in the state mock congressional hearings on February 7, 2019, at the Utah State Bar Law and Justice Center. Judge Lynn Davis spoke to the junior high school students. West Jordan Middle School was the winner, with Oak Canyon Junior High School placing second and Central Davis Junior High School third.

**WE THE PEOPLE--PROJECT CITIZEN:** A curricular program for high school, middle-grade students, and youth groups, *We the People--Project Citizen* promotes competent and responsible participation in local and state government. The program helps young people learn

how to monitor and influence public policy. In the process, they develop support for democratic values and principles, tolerance, and feelings of political efficacy.

Entire classes of students or members of youth organizations work cooperatively to identify a public policy problem in their community. They then research the problem, evaluate alternative solutions, develop their own solution in the form of a public policy, and create a political action plan to enlist local or state authorities to adopt their proposed policy. Participants develop a portfolio of their work and present their project before a panel of community members. One exemplary portfolio is selected to send to the annual *Project Citizen* National Showcase. State legislators from across the nation serve as evaluators, determining the level of achievement attained by each portfolio.

**SALT LAKE PEER COURT:** Salt Lake Peer Court provides an alternative approach to juvenile justice in which youth referred for minor offenses are sentenced by a jury of their peers. Using a restorative justice-based approach, Salt Lake Peer Court provides early intervention for a variety of offenses, such as fighting, tobacco/E-cigarettes, alcohol, bullying/cyber bullying, theft, assault, marijuana possession/paraphernalia, vandalism, and disorderly conduct; holds the referred youth accountable for their actions; provides educational experiences to assist them in building the skills necessary to change their problem behaviors; and helps them strengthen their ties to school, community, and positive peer role models. Approximately 80% of the referred youth come from low-income families who might not otherwise have access to support services, including a variety of community agency programs.

For the 2018 to 2019 school year, 70 Peer Court youth volunteers, approximately 50% of whom were minority youth, were selected from Salt Lake area high schools. The 40 advisors were from the community-at-large, including University of Utah law students and Bennion Center students. Peer Court adjudicated approximately 200 new and carry-over cases from Salt Lake School District resource officers, administrators, and counselors; elementary through high school. Peer Court also receives referrals from Utah Transit Authority police officers and from Murray School District.

Students conduct court hearings in six juvenile court courtrooms Monday evenings from 5:45 p.m. to 8:00, in the Scott M. Matheson Courthouse. Referred youth are required to attend with a parent or guardian. Salt Lake School District translators are used for families who do not speak English. Many of the Peer Court members and advisors are bilingual (Spanish/English), as are the Peer Court Director and Program Coordinator, so court sessions may be conducted in Spanish when the need arises.

The student volunteers, who adjudicate and mentor the referred youth, receive initial and ongoing training, including conflict resolution, mediation, bias awareness, communication skills, restorative-justice concepts, peer mentoring, team building, and courtroom procedures. The approximately 40 adult volunteers receive similar training and are assigned to student volunteers with whom they attend the court hearings to provide support and guidance when needed. Volunteers contribute over 10,000 hours of community service each year.

In a typical court hearing, a panel of seven student volunteers questions the referred youth and parent(s) to gain an understanding of the youth and the offense. The panel members deliberate

and assign a disposition which may include community service for the youth, educational opportunities, vocational training, social activities, individual/family counseling, and/or other conditions as the panel sees fit.

During deliberation, one of the Peer Court panel members elects to be the personal mentor for each referred youth. The student mentor follows up with a weekly contact, thereby supporting compliance with the requirements, encouraging responsibility, validating positive behavior, and strengthening referred youth's ties to positive peer role models. An adult advisor is assigned to the case and follows up with the parent/guardian to check on progress and answer questions. Peer Court members and advisors participate in other activities, such as the annual swearing-in ceremony, ongoing training, Youth Summits, presentations to civic groups, and youth conferences.

**COURT TOUR PROGRAM:** Utah LRE promotes the court tour program at the Scott M. Matheson Courthouse. ULRE's Court Tour manual, *Your Day in Court*, is distributed to all teachers who schedule a tour at the Matheson Courthouse.

**YOUTH SUMMIT:** In August 2019, Salt Lake Peer Court conducted the annual Youth Training Summit. Youth and adult volunteers receive approximately 40 hours of initial training. Additional training sessions are conducted throughout the year.

**TEACHING MATERIALS/PUBLICATIONS:** Utah LRE produces publications to enable those who teach our youth and communities to integrate law-related education into their curriculum. In the last year, Utah LRE produced and helped distribute the *2019 Mock Trial Competition Handbook* and *Your Day in Court*. Many of our teaching materials are available for downloading from our website, [www.lawrelatededucation.org](http://www.lawrelatededucation.org), along with information about our programs and activities.

## **COMMUNITY NEED, INDIVIDUALS TO BE SERVED IN 2019-2020, AND GEOGRAPHIC REGION SERVED**

One measure of community need is the requests from schools and communities for teacher training, workshops, and programs. Through law-related education, students and community members learn about the foundations of our constitutional republic, its laws, its legal system, and their rights and responsibilities as engaged citizens. This understanding promotes social responsibility and a commitment to good citizenship.

Data collected nationwide from law-related education programs continues to show that properly implemented law-related education programs can improve knowledge of the law; increase awareness of the law and positive attitudes toward law and authority; and reduce delinquent behavior.

Through its law-related education programs, Utah LRE serves approximately 20,000 youth and community members each year. Elementary and secondary school students from Tooele County to Uintah County and from Cache and Box Elder Counties to Washington and San Juan Counties have participated in Utah LRE's programs.

## PERSONNEL PROVIDING SERVICES

Kathy D. Dryer, an attorney and the director of Utah Law Related Education, oversees all ULRE programs.

Jenny Sanchez, program director of Salt Lake Peer Court, oversees all Peer Court activities. Beatriz Herrera, Salt Lake Peer Court's program coordinator, provides overall program assistance.

Victoria Dyatt is the mock trial coordinator, and Dawn Harvey is the state coordinator for the *We the People--the Citizen and the Constitution* program. William Spence, Megan Bunker, and Laurie Wirz are the congressional district coordinators for the *We the People* program. Albert McFerson is the state coordinator for the *We the People--Project Citizen* Program.

## VOLUNTEERS

Over 600 committed and dedicated attorneys, community members, and youth volunteer with Utah LRE each year. In our *mock trial competition*, they volunteer as judges for the over 90 junior high and high school mock trials and as attorney coaches for mock trial teams. For our *We the People--The Citizen and the Constitution* program, they volunteer their time to be judges, facilitators, and timers at our junior high and high school district and state mock congressional hearings. Our *Salt Lake Peer Court* student volunteers adjudicate and mentor the referred youth, and our adult Peer Court volunteers are assigned to student volunteers with whom they attend the court hearings to provide support and guidance when needed.

## IN-KIND CONTRIBUTIONS

- Over 6,000 hours are donated by 600 attorneys and other community volunteers yearly.
- The Utah State Bar provides: 1) Office space free-of-charge for Utah Law Related Education, and 2) Rooms free-of-charge for meetings and trainings at the Law and Justice Center.
- Access to over 130 courtrooms is provided each year by the Administrative Office of the Courts for our Mock Trial and Salt Lake Peer Court programs.
- A tax manager, who is an accountant, is Utah Law Related Education's financial advisor.
- Internet services are provided by XMission.

Attachments: List of Board of Directors  
Financial Statement

# TAB

# 3

# Utah State Bar®

## M E M O R A N D U M

TO: Utah State Bar Board of Bar Commissioners

FROM: Elizabeth A. Wright

DATE: February 24, 2020

RE: Changes to the Pro Hac Vice Rule to Include Exemption for Indian Child Welfare Act

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Attached for Commission approval are proposed changes to Rule 14-806 which governs pro hac vice admission. In December 2019, I received the attached letter from the Utah Supreme Court Advisory Committee on the Rules of Juvenile Procedure (“Advisory Committee”). The Advisory Committee recommends excepting lawyers appearing on behalf of Indian tribes pursuant to the Indian Child Welfare Act from Utah pro hac vice requirements. The request came after the Advisory Committee met with the Chairman of the Confederated Tribes of the Goshute Reservation. The Tribe is concerned that the expense of pro hac vice admission is a barrier to participation by lawyers representing Indian tribes in juvenile custody proceedings. As you can see in the letter from the Advisory Committee, eight other jurisdictions allow similar exceptions for Indian Child Welfare Act proceedings. The Advisory Committee raised the issue with the Utah Supreme Court who was supportive of the request but asked the Advisory Committee to refer the matter to the Bar for input.

I have no concerns about making this exception and recommend the Commission approve the Advisory Committee’s request. The changes appear on lines 163-165 of the attached redlined rule.

### **Additional “Cleanup” Changes to the Rule**

Other proposed changes to the rule include removing the requirement that applicant provide original documents to the Bar. These changes are on lines 78 and 103. Allowing applicants to email copies of required documents will speed up the application process. Acceptance of emailed copies of documents is also consistent with procedures used by the Admissions Department. Applicants to the Bar upload all documents and are not required to provide original copies.

Changes on line 122 remind applicants that they are not allowed to put their name on any pleading or document in the case until the court or tribunal approves pro hac vice admission.

Changes on lines 136 and 137 remove the requirement that local counsel also submit a document as part of the renewal process. Certification from the non-member attorney is sufficient and saves administrative time in having to track down a certification from both local counsel and the pro hac attorney.

Finally, changes on line 159 remove a reference to OPC rules being in Article 5. The OPC Oversight Committee is moving all OPC rules out of Article 5 and into Chapter 11 of the Rules of Court Administration. The revised language reflects the change.

**Rule 14-806. Admission pro hac vice.**

(a) An attorney who is not a member of the Bar but who is admitted law in another state or in any court of the United States or Territory or insular possession of the United States shall apply to be admitted pro hac vice in accordance with this rule prior to appearing as counsel before any state or local court or administrative or governmental body in the State of Utah.

(b) Application of rule. This rule applies to:

(b)(1) All actions or proceedings pending before a court of this state:

(b)(2) All actions or proceedings pending before an administrative or governmental body in this state, unless the rules of that body provide otherwise;

(b)(3) All arbitration or alternative dispute resolution procedures in this state that are court annexed, court ordered, or mandated by statute or administrative rule; and

(b)(4) All services incident to any of the proceedings in Subsections (b)(1) through (b)(3), including, but not limited to, discovery and settlement negotiations.

(b)(5) This rule does not apply to arbitration or alternative dispute resolution procedures in which the parties engage voluntarily or by private agreement.

(c) Nonresident counsel may be permitted to appear in a particular case or proceeding if the court or administrative or governmental body in which the matter is pending determines that admission pro hac vice will serve the interests of the parties and the efficient and just administration of the case. Resident counsel may be permitted only if he or she has received a Practice Pending Admission Certificate.

(d) Admission pro hac vice under this rule is discretionary with the court or administrative or governmental body in which the application for admission is made. Admission pro hac vice may be revoked by the court or administrative or governmental body upon its own motion or the motion of a party if, after notice and a hearing, the court or

administrative or governmental body determines that admission pro hac vice is inappropriate. Admission pro hac vice shall be denied or, if granted, shall be revoked if the court or administrative or governmental body determines that the process is being used to circumvent the normal requirements for the attorneys to the practice of law in Utah.

(e) *Eligibility.* Nonresident counsel who has been retained to represent a client in an action or proceedings described in section (b) of this rule may file a written application to appear as counsel in that action or proceedings if the following conditions are met:

(e)(1) The lawyer is not a member of the Utah State Bar;

(e)(2) The lawyer is not a resident of Utah;

(e)(3) The lawyer is not regularly employed in Utah;

(e)(4) The lawyer is an active member licensed and in good standing in another state, territory or insular possession of the United States;

(e)(5) The lawyer associates with an active member lawyer in good standing of the Utah State Bar who is a resident of the State of Utah and whose law office is in the State of Utah, hereinafter called "local counsel."

(f) In determining whether to enter or revoke the order of admission pro hac vice, the court or administrative or governmental body may consider any relevant information, including whether nonresident counsel:

(f)(1) is familiar with Utah rules of evidence and procedure, including applicable local rules;

(f)(2) is available to opposing parties;

(f)(3) Has particular familiarity with the legal affairs of the party relevant to the case;

(f)(4) complies with the rulings and orders of the court or administrative or governmental body;

(f)(5) has caused delay or been disruptive; and

(f)(6) has been disciplined in any other jurisdiction within the prior 5 years.

(g) *Application Procedure.* The non-member attorney seeking admission pro hac vice must complete under oath and submit to the Bar an application form available from the Utah State Bar. The applicant must complete a separate application for each matter in which the applicant wants to appear. The application must include the following:

(g)(1) identify the court of administrative or governmental body for which the applicant wishes to appear, and the case number or other identifying information for the matter in which the applicant wishes to appear;

(g)(2) the name of the party of whose behalf the applicant wishes to appear;

(g)(3) the name, number, court or administrative or governmental body of the other cases pending or closed within the prior five years for which the applicant appeared pro hac vice;

(g)(4) a statement whether the applicant is currently suspended or disbarred from the practice of law in any state, or whether the applicant has been disciplined within the prior five years, or is the subject of any pending disciplinary proceedings in any state;

(g)(5) a statement that the applicant submits to the disciplinary authority and procedures of the Utah State Bar, is familiar with the rules or procedure and evidence, including applicable local rules, will be available for depositions, hearings, and conferences, and will comply with the rulings and orders of the court;

(g)(6) the name, address, Bar identification number, telephone number and e-mail address of the member of the Utah State Bar to serve as local counsel;

(g)(7) an ~~original~~ certificate of good standing from the jurisdiction or jurisdictions in which the applicant is admitted dated no more than 60 days prior to the date of application; and

(g)(8) an application fee equal to the current dues paid by active members of the Utah State Bar for the licensing year in which the application is filed. The fee must be paid to the Utah State Bar.

(h) *Limited Exception to Original and Annual Fee.* The application fee and annual fee will be waived for:

(h)(1) non-member attorneys providing legal services without compensation or an expectation of compensation through a charitable, religious, civic, community, governmental, or educational organization in a matter designed primarily to address the needs of people of limited means. A non-member seeking a fee waiver to provide a pro bono representation shall include in the application a verification that all clients represented in the action are of limited means and that no attorney fee shall be paid by the client.

(h)(2) attorneys who are employees of and representing the United States of America or any of its departments or agencies.

(i) *Acknowledgment of Supporting Documentation and Receipt of Filing Fee.* Upon Receipt of a complete application and fee, the Bar shall issue an Acknowledgement of Supporting Documentation and Receipt of Filing Fee (hereinafter "Acknowledgement"). In making the Acknowledgement, the bar may attach copies or comment on any submitted material that may be appropriate for a tribunal to consider with an application for pro hac vice admission.

(j) *Filing with the Tribunal.* Once the Bar issues an Acknowledgement, local counsel must file the original Acknowledgement along with the following documents: (1) an original motion for admission pro hac vice; (2) a copy of the application and all supporting documents; (3) a copy of the certificate of good standing; (4) an original proposed order; and (5) any submissions from the Bar together with proof of service on all parties in accordance with the Utah Rules of Civil Procedure or, to the extent they differ from the civil rules, the governing rules of the administrative or governmental body.

(k) *Names and Appearances.* The name, bar number, and address of local counsel must appear on all notices, orders, pleadings and other documents filed in the case or proceeding in which the non-member attorney is appearing pursuant to this rule. Local counsel is required to personally appear and participate in pre-trial conferences, hearings and other proceedings before the court or the administrative or governmental body if the court of administrative or governmental body, or agency deems such appearances or participation appropriate. Local counsel shall accept joint responsibility with the non-member attorney to the client, opposing counsel and parties and to the court administrative or governmental body. Local counsel must continue as the local counsel of record in the case unless another member of the Utah State Bar is substituted as local counsel.

(l) *Appearances by non-member attorneys.* An applicant shall not appear in a proceeding subject to this rule or have his or her name placed on any pleadings or proceeding documents until the court or administrative or governmental body where the action is pending enters an order granting the motion for pro hac vice.

(m) *Continuing Duty to Advise the Changes in Status.* Out-of-state counsel admitted pro hac vice has a continuing duty during the period of such admission to promptly advise the Bar or a disposition made of pending charges or the institution of any new disciplinary proceedings or investigations. The Bar shall then advise any court of administrative or governmental body where the attorney has been admitted pro hac of any such information. Out-of-state counsel shall promptly advise the Bar if permission to appear pro hac vice pursuant to the rule is revoked by any court or administrative or governmental body.

(n) *Annual Renewal.* On or before the anniversary date of the filing of the initial application with the Bar, ~~the local counsel must certify to the Bar that the non-resident member~~ attorney must certify that he or she continues to act as counsel in the cause or that the

cause has been finally adjudicated. In the event that non-member attorney shall remit to the Bar an annual fee equal to the current dues paid by active members of the Utah State Bar for the licensing year in the which the renewal is filed within 30 days of the anniversary date.

(o) *Failure to Renew.* Any non-member attorney, who continues to appear pro hac vice in a cause and fails to pay the renewal fee set forth in (n) of this rule, shall be suspended from appearing in any proceeding subject to the rule after 30 days of the anniversary date. The Executive Director of the Utah State Bar shall notify the non-member attorney and local counsel of the suspension and shall file a certified copy of the notice with the court or administrative or governmental body, or agency that approved the pro hac vice application. The non-member may be reinstated upon payment of the fees set forth in paragraph (n) of this rule and a \$50 late penalty. Upon payment of all accrued fees and late penalty, the Executive Director shall reinstate the non-member attorney and shall certify reinstatement to the appropriate court or administrative or governmental body.

(p) *Appellate Matter and Other Forms of Review.* Out-of-state counsel admitted in a lower tribunal on a case or matter that is appealed must file a notice of appearance in the appellate court or reviewing tribunal. A new application the Bar is not required.

(q) An attorney admitted pro hac vice shall comply with and is subject to Utah statutes, rules and Supreme Court, including the Rules of Professional Conduct ~~and Article 5,~~ the Rules of Lawyer Discipline and Disability, the rules of the court or tribunal in which the attorney appears, and the rules of Code of Judicial Administration.

(q)(r) Non-Utah licensed attorneys appearing in Utah State courts to represent an Indian tribe in a child custody proceeding governed by the Indian Child Welfare Act are exempt from the requirements of this rule.

167    Effective May 1, 2019



## UTAH SUPREME COURT ADVISORY COMMITTEE

### RULES OF JUVENILE PROCEDURE

DAVID W. FUREIGH

CHAIR

December 6, 2019

Elizabeth Wright  
Utah State Bar  
645 South 200 East  
Salt Lake City, UT 84111

Re: Proposal from the Supreme Court Advisory Committee on the Rules of Juvenile Procedure

Dear Ms. Wright:

The Supreme Court Advisory Committee on the Rules of Juvenile Procedure (Committee) has been discussing the participation of tribal attorneys in state child-custody proceedings subject to the Indian Child Welfare Act (ICWA). I serve as Chair of the Committee and its members requested that I forward you their recommendations. The Committee proposes a revision to Rule 14-806 that it believes will remove barriers to tribal participation in ICWA proceedings. The Committee recommends that Rule 14-806 be amended to waive *pro hac vice* fees and the requirement that out-of-state attorneys associate with local counsel for attorneys who represent a tribe in state child-custody proceedings subject to ICWA.

Eight states have passed similar laws that either waive *pro hac vice* fees or the requirement to associate with local counsel, or both. These include California,<sup>i</sup> Kansas,<sup>ii</sup> Michigan,<sup>iii</sup> Minnesota,<sup>iv</sup> Nebraska,<sup>v</sup> Oregon,<sup>vi</sup> Washington,<sup>vii</sup> and Wisconsin.<sup>viii</sup>

ICWA is a federal law establishing minimum standards when Indian children are involved in state child-custody proceedings. The Utah Supreme Court has recognized the tribe's interest in its children, stating "The protection of [the] tribal interest is at the core of the ICWA, which recognizes that the tribe has an interest in the child which is distinct from but on a parity with the interest of the parents." *Matter of Adoption of Halloway*, 732 P.2d 962, 969 (Utah 1986).

Under ICWA, the Indian tribe has the right to intervene and participate in any state child-custody proceeding involving a tribe's Indian child. State rules requiring out-of-state tribal attorneys to pay *pro hac vice* fees and associate with local counsel may limit the tribe's right to intervene in state child-custody proceedings and may prevent them from participating at all.

In Utah, approximately thirty percent of the ICWA cases involve tribes outside of the state. Because Indian children do not always reside in the same state as their tribe, requiring out-of-state tribal attorneys to pay *pro hac vice* fees and associate with local counsel may be cost prohibitive and a barrier to the tribe's participation in state child-custody proceedings. The Committee invited the Chairman of the Confederated Tribes of the Goshute Reservation, several council members, and the tribe's attorney to address the Committee on this topic. They explained that while tribes may receive a small amount of federal grants for child and family services, these funds cannot be used for the tribe's legal representation or legal fees for litigation. *See* 25 U.S.C. §§ 1931, 1932. During the presentation Chairman Steele asked the Committee to consider that cost is often a barrier because tribes have such limited resources to participate in legal proceedings.

For these reasons, the Committee respectfully requests that the Utah State Bar consider its recommendation to amend Rule 14-806 to facilitate participation by tribal attorneys who are not licensed in the State of Utah in state child-custody proceedings subject to ICWA. I have addressed this request with the Justices of the Utah Supreme Court at the Court Conference on November 18, 2019. Although they support the request, they expressed that should you have concerns they will entertain further discussion on those concerns. Please feel free to contact me with questions or for any additional information I may provide on behalf of the Committee. My email address is [dfureigh@agutah.gov](mailto:dfureigh@agutah.gov). You may also contact Committee staff, Katie Gregory whose email address is [katieg@utcourts.gov](mailto:katieg@utcourts.gov).

Sincerely,



David W. Fureigh  
Chair, Supreme Court Advisory Committee  
on the Rules of Juvenile Procedure

cc: Larissa Lee, Appellate Court Administrator  
Katie Gregory, Assistant Juvenile Court Administrator

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<sup>i</sup> Cal. R. Ct. 9.40(g).

<sup>ii</sup> Kan. Sup. Ct. R. 116(i).

<sup>iii</sup> Mich. Ct. R. 8.126.

<sup>iv</sup> Minn. R. Juv. P 3.06.

<sup>v</sup> Neb. Sup. Ct. R. § 3-122(F); Neb. Rev. Stat. § 43-1504(3).

<sup>vi</sup> Or. Unif. Trial Ct. R. 3.170(9)

<sup>vii</sup> Wash. Admis. & Practice R. 8(b)(6).

<sup>viii</sup> Wis. Sup. Ct. R 10.03(4).

# TAB 4

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

**JANUARY 24, 2020**

**LAW AND JUSTICE CENTER**

- In Attendance:** President Herm Olsen and President-elect Heather Farnsworth.  
Commissioners: John Bradley, Steven Burt, Mary Kay Griffin, Chrystal Mancusco-Smith, Marty Moore, Mark Morris, Mark Pugsley, Michelle Quist, Tom Seiler, Cara Tangaro, Heather Thuet and Katie Woods.
- Ex-Officio Members:** Nate Alder, H. Dickson Burton, Erik Christiansen, Kate Conyers, Torie Finlinson, Candace Gleed, Jiro Johnson, Margaret Plane, and Dean Elizabeth Kronk Warner.
- Not in Attendance:** Ex-Officio Members: Amy Fowler, Robert Rice, Camila Moreno, and Dean Gordon Smith.
- Also in Attendance:** Executive Director John C. Baldwin, Assistant Executive Director Richard Dibblee, General Counsel Elizabeth A. Wright, and Supreme Court Liaison Larissa Lee.

**Minutes: 9:08 a.m. start**

**1. President's Report: Herm Olsen**

Herm Olsen informed the Commission that Dickson Burton will be serving an 18-month ecclesiastical mission in Mexico City and therefore not finishing his last few months on the Commission as an Ex-officio member. Mr. Olsen and the Commission thanked Mr. Burton for his 10 years of service on the Commission.

- 1.1 Review Legislative Phone Conference Calendar.** Commissioners were reminded of the legislative session conference call that takes place every Tuesday at 4:00 p.m. during the legislative session.
- 1.2 Spring Convention Report: Heather Farnsworth.** Heather Farnsworth gave an overview and highlights of the Spring Convention that will take place March 12-14 in St. George, Utah.
- 1.3 St. George and Park City Room Reservations Reminder.** Commissioners were reminded to make room reservations for the Spring and Summer Conventions.
- 1.4 3<sup>rd</sup> Division Bar Elections Reminder & Ballot Language.** Cara Tangaro, whose term ends July 2020, announced that she will not seek another term. Heather Farnsworth's

Commission seat is open because she will become Bar President. Mark Morris will seek another term. This means that this Spring there will be an election for two vacant Commission seats and Mr. Morris' seat.

The Commission discussed the fact that a vote for one candidate means the other two individuals on the ballot are deprived of a vote and whether lawyers were aware of this fact. **Mark Marris moved to add language to the 2020 ballot that informs lawyers that a vote for fewer than three individuals adds more weight to the vote or votes cast. Marty Moore seconded the motion which passed unopposed.**

## 2. Action Items.

- 2.1 Nominate Bar President-elect Candidates.** Commissioner Heather Thuet sent notice expressing her interest in being nominated to run for the office of Bar President-elect. Bar member Andrew Morse sent a letter to the Commission indicating his interest in being considered to run for Bar President-elect. Andrew Morse was not able to attend the meeting in person or by phone and therefore at Herm Olsen's suggestion submitted a video presentation expressing his interest and qualifications. His law partner, Heather White, appeared to answer questions on Mr. Morse's behalf. The Commission asked questions of Ms. White, discussed the nomination process, the qualifications for the position, and the fact that open Commission seats in the 3<sup>rd</sup> District provide an opportunity for those interested in serving on the Commission. After discussion, the Commission voted by ballot not to exercise their discretion to nominate Andrew Morse to run for President-elect. **Michelle Quist then moved to nominate Heather Thuet to run for Bar President-elect. Tom Seiler seconded the motion which passed unopposed.**

## OUT OF ORDER

**3.1 Regulatory Reform Committee Report: Erik Christiansen.** Co-Chair of the Bar's Regulatory Reform Committee Judge Willmore joined the Commission for a discussion on the status of Regulatory Reform. Herm Olsen reported that in response to a request from the Bar for an extended comment period, the Utah Supreme Court agreed to extend the comment period for regulatory reform rules from 45 days to 90 days. The Commission discussed the need of keeping members informed of the proposed regulatory reform changes and different strategies to keep lawyers informed and engaged.

- 2.2 Select Dorathy Merrill Brothers Award Recipients.** After discussing the nominees and the recommendation of the Awards Committee, **Marty Moore moved to award Jenifer Tomchak the Dorathy Merrill Brothers Award for the Advancement of Women in the Legal Profession. Cara Tangaro seconded the motion which passed unopposed.**
- 2.3 Select Raymond Uno Award Recipient.** After discussing the nominees and the recommendation of the Awards Committee, **Marty Moore moved to award Melinda Bowen the Raymond Uno Award for the Advancement of Minorities in the Legal**

**Profession. Chrystal Mancusco-Smith seconded the motion which passed unopposed.**

- 2.4 Approve YLD Membership to be “10 years after Admission.”** Young Lawyers Division Representative Torie Finlinson asked the Commission to approve changes to the membership requires for the YLD. The changes proposed by the YLD Board mirror recent ABA changes for its YLD membership eligibility and better reflect current new lawyer demographics. **Heather Thuet moved to change YLD membership requirements to lawyers under 36 years of age or 10 years or less from first bar admission. Michelle Quist seconded the motion which passed unopposed.**

### **3. Information Items.**

- 3.1 Regulatory Reform Committee Report: Erik Christiansen.** See above.
- 3.2 Bar Member Survey Committee Report: Mark Morris.** Mr. Morris reported that the survey is complete and will go to 100 random lawyers as a test. If there are no kinks, the survey will go out to all members in early March. Lawyers will be offered a chance to win a \$50 Amazon gift cards as an incentive to complete the survey. The goal is to present preliminary results at the Spring Convention in March.
- 3.3 Review New Access to Justice Commission Website.** John Baldwin introduced new Bar employees Scotti Hill, Rob Jepson, Mackensie Hirai and Jeff Daybell. Rob Jepson then demonstrated the new Utah Legal Help website. The Access to Justice Commission developed the website for consumers looking for free legal help all over the state.

### **4. Executive Session.**

**The meeting adjourned for the day at 1:10 p.m.**

#### **Consent Agenda**

1. Approved Minutes from the December 20, 2019 Commission Meeting.

#### **Handouts:**

1. Spring Convention Brochure.

# TAB 5



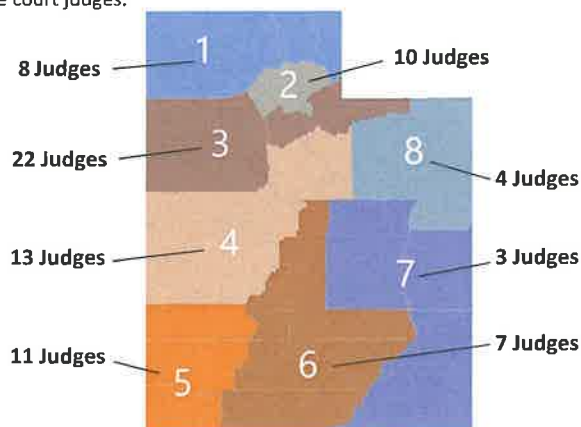
## JPEC 2020 Report to the Community

### What are Justice Court Judges?

Justice court judges are municipal or county judges in Utah. Historically, they were known as justices of the peace. Some, but not all of them, are lawyers. Justice court judges preside over limited jurisdiction courts, which hear the following cases:

- traffic cases, infractions, and violations of ordinances;
- Class B and C misdemeanor cases; and
- small claims cases.

Justice court judges are appointed through a merit selection process conducted by the municipality or county. Appointees must complete training and be certified by the Utah Judicial Council. Justice court judges serve six-year terms of office and stand for retention elections in a process similar to state court judges.



Justice Court Judges by Utah Judicial District

### Did you know?

Information about the Utah Justice Courts may be found on the Utah State Courts website, <https://www.utcourts.gov/courts/just/>.

### JPEC Evaluates Justice Courts

For evaluation purposes, the Judicial Performance Evaluation Commission (JPEC) divides justice court judges into three groups based on the number of attorneys who appear in their courts and their approximate caseload size.

- *Full evaluation judges* have at least 50 attorneys appearing with at least one trial appearance or three total appearances. Full evaluation judges receive the same evaluation as state court judges.
- *Mid-level evaluation judges* have fewer than 50 attorneys appearing in their courts and a medium-sized caseload. Usually these judges work part time.
- *Basic evaluation judges* do not qualify for a full evaluation and have the smallest caseloads in the state.

More information about justice court evaluations may be found at: <https://judges.utah.gov/process/>

Evaluation Level	Full	Midlevel	Basic
Attorney Surveys	✓		
Court Staff Surveys	✓		
Juror Surveys	✓		
Courtroom Observation	✓		
Judicial Council Certification	✓	✓	✓
Public Comment	✓	✓	✓
Judicial Discipline	✓	✓	✓
Court User Interviews		✓	



## Pilot Project: Basic Evaluation Judges

JPEC is conducting a pilot project to provide an evaluation of judges presiding over courts with the lowest caseloads, having previously launched full evaluations in 2011 and midlevel evaluations in 2016.

- Basic evaluation challenges
  - Low numbers of attorney appearances make surveying unreliable.
  - Low caseloads make on-site visits unreliable.
  - Distances can make on-site visits prohibitively expensive.
- The project tests video and audio courtroom observation techniques, comparing them to the in-person evaluation currently conducted for full evaluation judges.
- The project requires the installation of video recording devices in pilot courtrooms.

District	Counties	Full	Midlevel	Basic
1 <sup>st</sup> District	Box Elder, Cache, Rich	1	2	5
2 <sup>nd</sup> District	Davis, Morgan, Weber	4	5	1
3 <sup>rd</sup> District	Salt Lake, Summit, Tooele	17	3	2
4 <sup>th</sup> District	Juab, Millard, Utah, Wasatch	6	6	1
5 <sup>th</sup> District	Beaver, Iron, Washington	2	6	3
6 <sup>th</sup> District	Garfield, Kane, Piute, Sanpete, Sevier, Wayne	0	2	5
7 <sup>th</sup> District	Carbon, Emery, Grand, San Juan	0	3	0
8 <sup>th</sup> District	Daggett, Duchesne, Uintah	0	3	1
<b>Totals</b>	State of Utah	30	30	18

### Did you know?

Many justice court judges, who receive a basic evaluation from JPEC, have other full-time occupations. JPEC research shows they welcome feedback and additional training to help them be better judges.



## What is JPEC?

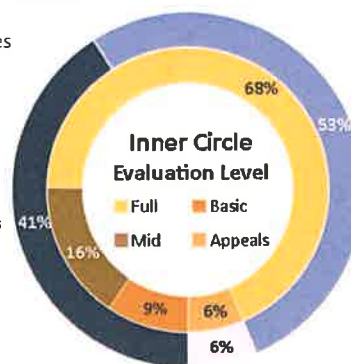
The Judicial Performance Evaluation Commission was established by state statute in 2008. Its goals are:

- ✓ To provide voters with valid information about each judge's performance so they may make informed decisions in judicial retention elections;
- ✓ To provide judges with useful feedback about their performance so they may become better judges and thereby improve the quality of the judiciary; and
- ✓ To promote public accountability of the judiciary while ensuring that it continues to operate as an independent branch of government.

JPEC evaluates all judges in Utah, including:

### Outer Circle Court Level

- Supreme, Appeals
- District, Juvenile
- Justice



### Who are the JPEC commissioners?

- ✓ JPEC's 13 volunteer commissioners are social workers, accountants, retired educators, lawyers, and community leaders who donate their time to a careful evaluation of the data collected on each judge.
- ✓ Commissioners are appointed by Governor Gary R. Herbert, the Utah Legislature, and the Utah Supreme Court.
- ✓ By law, half of the appointments may be attorneys. Partisan balance is required.

Judicial Performance Evaluation Commission  
P.O. Box 142330  
Salt Lake City, Utah 84114  
[judges.utah.gov](http://judges.utah.gov)

# How a new program connects Utahns to lower-cost legal advice

Utah becomes 2nd state to create more affordable alternative to attorneys

By [Annie Knox@anniebknox](mailto:AnnieKnox@anniebknox) Feb 17, 2020, 4:30pm MST

SALT LAKE CITY — As if heartache isn't difficult enough on its own.

When April, a secretary in Davis County and a mother of four, first sought an annulment last year, she downloaded legal forms only to find they may as well have been written in another language.

She couldn't afford an attorney and had planned on navigating the process herself, making her own case to prove her husband had misled her. But she quickly realized she would need help deciphering the court terms and navigating the complicated legal steps.

"It's very overwhelming, because I wasn't familiar enough with the jargon and what was going to be expected" in court, April, who asked to be identified only by her first name, recalled. "I was like, 'Do I just stick it out and deal with it? What should I do?'"

She had another option under a new effort to connect Utahns to legal services they can afford: a nonlawyer who is licensed to counsel clients.

The program is starting small, with a first wave of four licensed legal practitioners at work since October. They work mainly in three types of cases: divorce and family law cases like April's, debt collections up to \$11,000, and landlord-tenant issues like evictions.

At the direction of the state's high court and the agency that trains lawyers, the legal practitioners can now file paperwork and give a person legal advice, participate in mediations and help negotiate settlements. Previously, only attorneys could do all that.

It's a move to make Utah courts more fair as most entangled in civil cases in the state are forgoing an attorney and choosing to represent themselves.

“They can’t go up to the bench, argue a case. They can’t even sit at the defense table in court, but they can do really important things in terms of counseling the client,” said Scotti Hill, the program’s administrator. “And if that client does need to go into court, they can arm them with all the information they need to get up to the podium and speak to the judge themselves.”

Utah is the second state to grant a legal license to someone other than an attorney, following Washington, where technicians are permitted to practice only family law.

Hill said the requirements are rigorous and the process modeled on that of attorneys. A law degree isn’t needed, but a person must earn at least an associate degree in paralegal studies or a bachelor’s degree in any subject; obtain 1,500 hours of law experience; and pass a three-month online course at Utah Valley University. They must also pass a character review at the Utah State Bar.

Angie Allen, a paralegal practitioner in Layton, has helped April navigate a pile of paperwork and craft her strategy to legally void her marriage. The case is pending.

“Without her help, there’s no way I could convince the judge,” April said. “It’s just too overwhelming to do it alone.”

She now realizes the arguments she once thought were strongest are actually not useful, and others she hadn’t thought of are better.

A mother of four who spent more than a decade as a stay-at-home mom, April is exactly the sort of person Allen seeks to help.

Allen, a paralegal of nearly 20 years, is focused on assisting women, especially those who don’t work outside the home, who need legal advice related to divorce or other family issues but can’t fork over thousands of dollars in return.

“It’s been amazing to answer questions for people and use my knowledge to say, ‘I’ve got this, I can do this now,’ she said. “This is a step to move into the 21st century with legal representation.”

The paralegal practitioner program is one of several moves in play to make the state’s courts more fair as an increasing number of Utahns forgo an

attorney. They are born out of a task force focused on helping more Utahns get justice in the courts.

It's not just the poor who are going it alone, said Utah Supreme Court Justice Deno Himonas, a co-chairman of the group. In 2018, at least one party was unrepresented in 93% of civil and family law cases in Utah's 3rd District Court.

"At a rate of \$500, \$600-plus an hour, I couldn't afford to hire me in a case," Himonas said. "Only the most well-heeled, moneyed interests have the ability to do that. For one of our three branches of government, that's a big problem."

It's a problem that eats up court time, exasperates those involved and delays any possible resolution. For example, if a judge repeatedly rejects documents in a divorce case because they're not right, a couple may drop their legal case out of frustration but run into other complex legal issues if one person has a baby with someone else.

Lawyers have typically helped try to fix the problem by volunteering their time, but the gap continues to grow.

"It's not for lack of effort, it just hasn't worked. It's not been enough," Himonas said.

And the legal profession simply has failed to modernize.

"If you threw a lawyer from the early 1900s in a courtroom, she would probably do just fine. But if you threw a surgeon from the 1900s in a modern OR, they would flounder. We've not kept the pace, right? So we have to update our court processes."

The updates are taking several forms.

They include a fully online small-claims court and an invitation to startups to pitch high-tech legal resources, such as a computer program that could provide legal advice based on data about a person's case.

Himonas and Hill note that it's not cheap to become a lawyer, either. Tuition at the University of Utah's law school for those already in Utah is about \$28,000.

Getting certified as a legal practitioner can cost roughly \$600 for paralegals who already are working; or \$10,000 for a person who has yet to complete an associate's degree or higher.

Amber Alleman, a longtime paralegal, was one of the first four to be certified in Utah.

She now charges clients \$75 an hour, what she estimates to be one-fourth of the fee for a lawyer. An employee of the Salt Lake City law firm Clyde Snow, she can refer a person to an attorney if she runs into a tricky legal issue that requires more expertise.

In the past, she often fielded calls from people who sought answers to basic questions.

"They just wanted some brief legal knowledge to know what their rights were in their case before they decided to go forward," Alleman said.

Now, she added, "I let them know their rights and go from there."



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## Libertarians Urge High Court To Nix Mandatory Bar Dues

By Emma Cueto

Law360 (January 31, 2020, 3:36 PM EST) -- Several libertarian public interest groups have urged the U.S. Supreme Court to take up a challenge to mandatory state bar membership, arguing that the current required membership in the Wisconsin State Bar is similar to the mandatory union membership the court struck down in *Janus v. AFSCME*.

The libertarian or libertarian-leaning groups Public Legal Foundation, Cato Institute, Reason Foundation and others filed a joint amicus brief Thursday arguing that an "integrated" state bar, in which attorneys are required to join the bar association in order to practice law in the state, violates attorneys' First Amendment Rights by essentially forcing them to subsidize the bar's political stances.

The situation was analogous to the one struck down in *Janus v. American Federation of State, County, and Municipal Employees*, the brief said, arguing that *Janus* effectively did away with past Supreme Court precedent backing integrated bar associations.

"To harmonize First Amendment jurisprudence across analogous union and bar compelled dues contexts, and to protect individual rights of free speech and association, the petition for writ of certiorari should be granted," the brief said.

Another group, the California-based Lawyers United Inc., which was founded in 2019, filed its own amicus brief Thursday making a similar argument.

"The Wisconsin State Bar's compelled association and use of mandatory dues for political and ideological activity are an even plainer affront to the First Amendment than the compelled payments to public-employee labor unions struck down by *Janus v. AFSCME*," Lawyers United argued, urging the high court to take the case.

Joe Giannini, an attorney for Lawyers United, described the group as looking "to tear down walls" that prevent attorneys from practicing in other states or before the federal courts, and looking to protect attorneys' First Amendment rights.

The two Wisconsin attorneys behind the challenge to the state bar, Adam Jarchow and Michael D. Dean, **petitioned the high court** for certiorari in December and also relied heavily on *Janus* in their petition.

On Dec. 12 a Wisconsin federal judge **threw out** Jarchow and Dean's lawsuit against the State Bar of Wisconsin, saying the applicability of *Janus* to the case is a determination that should be left for a higher court.

In late December, the Seventh Circuit summarily affirmed the district court's decision.

Similar cases made their way to other federal appeals courts in 2019.

The Eighth Circuit **held in August** that the dues collected by North Dakota's bar association do not violate the First Amendment, as the group clearly spells out its payment fees and options for a relatively sophisticated audience of lawyers.

Attorneys opposed to paying fees in Oregon **told the Ninth Circuit** in September that the District of Oregon made a mistake in May when it dismissed their claims, as it failed to fall in line with *Janus*, which the lawyers argued effectively bars the notion that their right to practice law should be predicated on paying dues to an organization that takes on political or ideological issues.

The majority of states, approximately 30, have mandatory or integrated bar associations.

Giannini noted that although there have been several cases challenging state bar dues, he was hopeful that this would be the case that would entice the Supreme Court to take up the issue.

"Jarchow is very clean, and presents the issue in a very clear way," he said.

Trevor Burrus, an attorney with Cato, told Law360 in a statement, "Overturning compelled-dues bar associations is a natural extension of the principles articulated in *Janus*. Bar associations all across the country use compelled-dues to advocate for controversial positions on contentious political issues. Forcing anyone to fund such speech is clearly contrary to the First Amendment."

Deborah La Fetra, an attorney for Pacific Legal, told Law360 in an email that the organization did not object to bar associations' regulatory functions, but said that when they engaged in political lobbying or pursued political goals, that became troubling.

"Bar associations justify their political and ideological activities under general feel-good language about pursuing justice," La Fetra said. "But this pursuit frequently entails political and ideological goals and no lawyer should be forced to associate with these goals against his or her own beliefs."

Counsel for Jarchow and Dean and counsel for the Wisconsin State Bar did not respond Friday to a request for comment.

Jarchow and Dean are represented by David B. Rivkin Jr., Andrew M. Grossman and Richard B. Raile of BakerHostetler and Richard M. Esenberg of the Wisconsin Institute for Law & Liberty.

The Wisconsin Bar Association is represented by Roberta F. Howell of Foley & Lardner LLP.

The case is *Jarchow et al. v. State Bar of Wisconsin et al.*, case number 19-831, in the U.S. Supreme Court.

--Additional reporting by Kevin Penton and Aebra Coe. Editing by Alyssa Miller.

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