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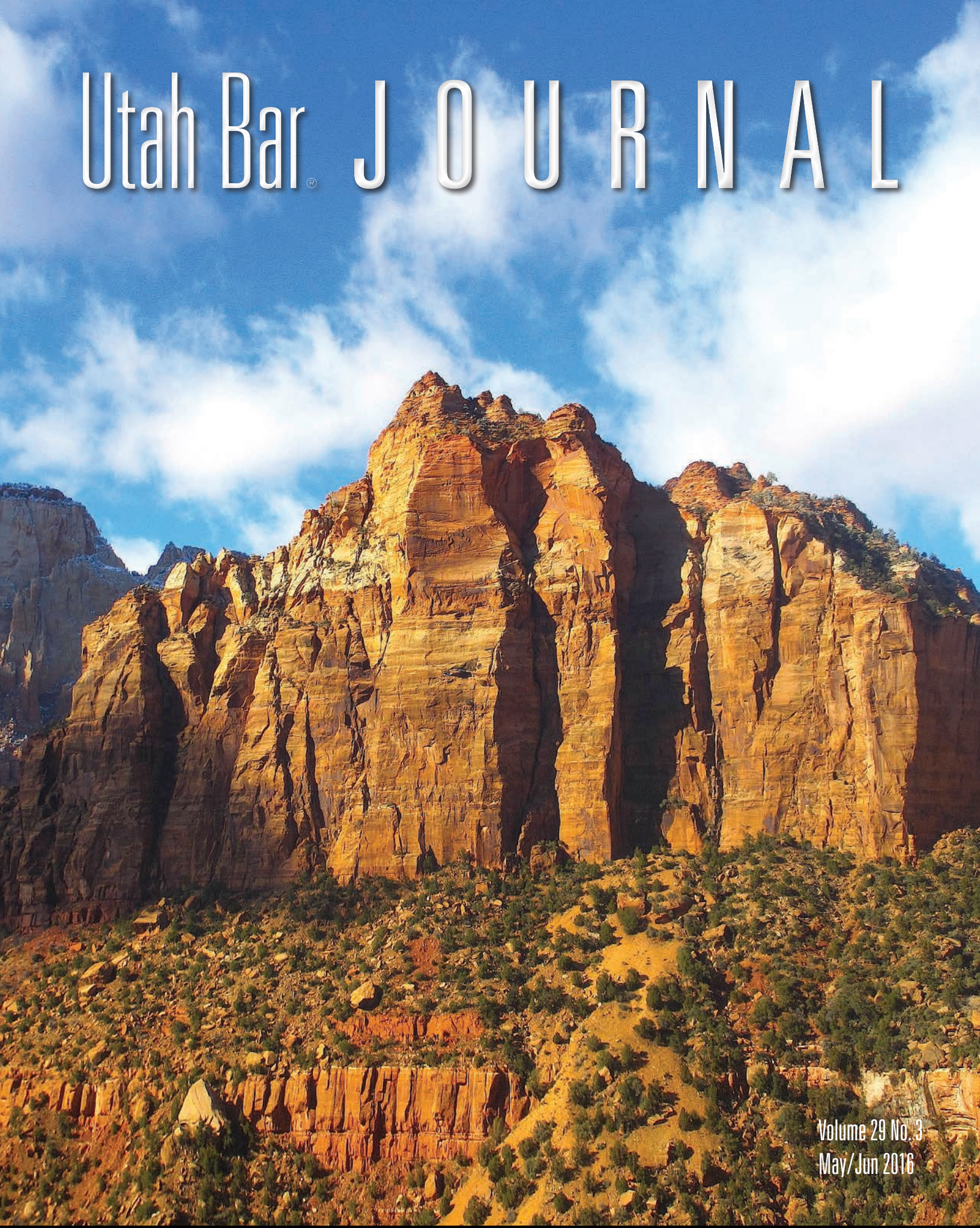

Volume 29 No. 3
May/Jun 2016

Summer Convention registration inside.

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Table of Contents

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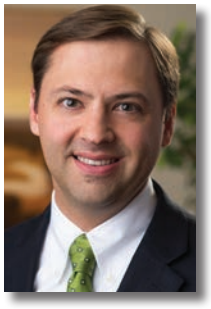
Utah Bar JOURNAL

Volume 29 No. 3
May/Jun 2016

Cover Photo

Blue Sky Over Red Rock, by Utah State Bar member James C. Bergstedt.



JAMES C. BERGSTEDT graduated from the S.J. Quinney College of Law at the University of Utah in 2007. He is a shareholder at the law firm of Prince, Yeates & Geldzahler in Salt Lake City where he practices commercial, personal injury, and general litigation. He is a past board member of the Utah State Bar Young Lawyers Division and is currently a Bar Examiner. He captured this photo at the end of a hike in Zion National Park with his wife and two sons on a late February afternoon.

SUBMIT A COVER PHOTO

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

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Interested in writing an article 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 or would be interested in writing on a particular topic, please contact us by calling 801-297-7022 or by e-mail at barjournal@utahbar.org.

Guidelines for Submission of Articles to the Utah Bar Journal

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

ARTICLE LENGTH:

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

SUBMISSION FORMAT:

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

CITATION FORMAT:

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

NO FOOTNOTES:

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

ARTICLE CONTENT:

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

EDITING:

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

AUTHORS:

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

PUBLICATION:

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

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

In Memory of Jay Gurmankin

August 1, 1947 - March 3, 2016

It is with great sadness that we announce the passing of our dear friend and colleague, Jay Gurmankin, on Thursday, March 3, 2016.

Jay had more than 40 years of experience as an effective litigator. He provided clear strategic advice to clients in a variety of areas, including antitrust matters, securities disputes, fraud, real estate, and administrative matters.

Jay was admitted to practice in Utah in 1978, after his successful tenure as a government attorney for the Federal Trade Commission in San Francisco.

"Jay was an absolutely terrific lawyer and colleague, and a dear friend to many. He joined the Commercial Litigation practice group in our Salt Lake City office in 2011. From his first day with us to his last, Jay demonstrated a level of legal excellence and professionalism that distinguished Holland & Hart," said Tom O'Donnell, Holland & Hart Managing Partner.

In his capacity as a Board Member, Jay also devoted significant time and energy to the Utah State Chapter of the National Multiple Sclerosis Society, and recently received the chapter's Leadership Volunteer of the Year Award. He also received the Humanitarian of the Year Award from the Inclusion Center.

"Jay also brought a level of personal warmth, charm, and genuine friendship to our firm. We are a better place for the privilege of having had Jay with us, and we will miss him greatly," commented Eric Maxfield, Administrative Partner of the Salt Lake City Office.

Jay, Rest in Peace, dear friend!

Eric Maxfield
801.799.5800
egmaxfield@hollandhart.com
222 S. Main Street, Suite 2200
Salt Lake City, UT 84101

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Letter Submission Guidelines

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

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

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

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

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

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

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

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

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Article

Utah at the United States Supreme Court Without Scalia

by Andrea Garland

Salt Lake Legal Defender Association and friends at the United States Supreme Court.

Photo Credit: Brock Vandekamp

Beginning at 1 a.m. on February 22, 2016, Remington "Jiro" Johnson from Salt Lake Legal Defender Association (LDA) walked laps around the United States Supreme Court to stay warm. It was the first day of oral arguments after Justice Antonin Scalia's passing. Tyler Green of the Utah Attorney General's Office and John Bash of the Department of Justice were scheduled to argue against Joan Watt of LDA in the case of *State v. Strieff*, 2015 UT 2, 357 P.3d 532, *cert. granted*, 136 S. Ct. 27 (2015). Letting his colleagues sleep, Mr. Johnson patrolled the Supreme Court's perimeter. Around 2:30 a.m., he rounded the corner. Right in front of him, a tour bus unloaded. Thirty-one lawyers from all over China, civil and corporate mostly, plus two prosecutors, had stolen a march on the LDA, despite their having posted a scout. He texted: "A huge line just formed…Get to SCOTUS NOW."

It was a festive wait, although the temperature fell from around fifty degrees to around forty. Lawyers danced. Many from LDA sang *I Can't Feel My Face when I'm With You*, while the Chinese lawyers sang (presumably) Chinese pop tunes. Around 4 a.m., a mom and her two daughters, visiting Washington D.C. for the first time, got in line behind most of my LDA colleagues and me. The kids, about nine and ten years old, were extraordinarily stoic and good-natured. A Florida prosecutor, laden with luggage and on her way to the airport after oral arguments, lined up after them. They got in but not everyone did. More than one hundred people who weren't members of the Supreme Court Bar or guests of members waited hours to watch oral arguments on the central issue in *Strieff*, which was whether courts shall suppress evidence discovered in an arrest where the arrest warrant was discovered during an illegal stop.

ANDREA GARLAND is a trial attorney at Salt Lake Legal Defender Association.

Strieff arose from an anonymous tip. Having heard of narcotics activity at a South Salt Lake City house, Officer Doug Fackrell conducted surveillance for about three hours over the course of a week. He noticed short-stay traffic, consistent with narcotics activity. He hadn't seen Edward Strieff enter the house but saw him leave and decided to stop him and ask what went on in the house. He ordered Mr. Strieff, on foot, to stop. Mr. Strieff stopped. He asked Mr. Strieff for his identification. Mr. Strieff provided identification. Officer Fackrell called in a warrants check, found an outstanding traffic warrant, and arrested Mr. Strieff for the warrant. He searched him, finding a baggie of methamphetamine and drug paraphernalia in Mr. Strieff's pockets.

Mr. Strieff, charged with felony possession of methamphetamine and misdemeanor paraphernalia, asked the trial court to suppress the search that stemmed from the illegal stop. The trial court denied the motion, reasoning the officer had reasonable suspicion of drug activity going on at the house, and even if he lacked reasonable suspicion sufficient to stop Mr. Strieff, he made a good faith mistake concerning the necessary quantum of evidence. The Utah Court of Appeals agreed with the State of Utah. The Utah Supreme Court did not.

Reasoning from the exclusionary rule's purpose to deter unreasonable searches and seizures, the Utah Supreme Court considered whether attenuation of the search from the illegal stop could purge the search of its unconstitutional taint. Considering the "temporal proximity" of the illegal stop to the evidence discovery, the "presence of intervening circumstances," and the "purpose and flagrancy" of police misconduct, the Utah Supreme Court held that attenuation requires an "independent act of free will," by the defendant rather than discovery of an existing warrant. The State petitioned for and obtained certiorari by the United States Supreme Court.

The parties phrased the issues differently in their briefs. Utah and the amicus United States focused on the search having taken place pursuant to arrest on the warrant. The State's question was: "Should evidence seized, incident to a lawful arrest on an outstanding warrant be suppressed because the warrant was discovered during an investigatory stop later found to be unlawful?" The United States Solicitor General asked "[w]hether evidence seized incident to a lawful arrest on a valid warrant is admissible notwithstanding that an officer learned of the outstanding warrant during an unlawful investigatory stop."

Joan Watt and Patrick Anderson for Mr. Strieff instead asked "[w]hether the evidence seized from respondent incident to his arrest on a minor traffic warrant discovered during a patently unconstitutional detention is inadmissible under the 'attenuation' exception to the exclusionary rule."

In the United States Supreme Court, Justices Sotomayor, Kagan, and Ginsberg appeared to side with Mr. Strieff. Before Mr. Green could finish his introduction, in which he argued the illegal stop wasn't flagrantly illegal but resulted from an "objectively reasonable miscalculation," Justice Sotomayor said, "Tell me what was objectively reasonable about it." She posed the following question to Mr. Green, who argued the stop's illegality was "a close call":

> What's going to stop police officers – if we announce your rule, and your rule seems to be, once we have your name, if there's a warrant out on you, that's an attenuating circumstance under every circumstance. What stops us from becoming a police state and just having the police stand on every corner down here and stop every person, ask them for identification, put it through, and if a warrant comes up, searching them?

Transcript of Oral Argument at 5, *State v. Strieff*, (No. 14-1373), *available at* http://www.supremecourt.gov/oral_arguments/argument_transcripts/14-1373_3d46.pdf.

To Mr. Green's response that officers can't count on everyone having a warrant, she cited Ferguson, Missouri, where 80% of residents have warrants: "Don't you think it's enough of a deterrence to say to a police officer in this situation, you should have reasonable suspicion?" *Id*. at 8. Justice Kagan agreed, saying that allowing illegal stops creates incentives for illegal stops, especially in areas where high percentages of the population have warrants. Justice Ginsberg said, "The police could stop anyone…reasonable suspicion or not." *Id*. at 10.

Mr. Green argued that although the stop was illegal, the officer's discovery of Mr. Strieff's warrant was an intervening circumstance which, in context of the lack of flagrancy in the stop's illegality, attenuated the taint of the illegal stop. He argued that where the purpose of the exclusionary rule is to deter illegal police conduct and the stop itself wasn't flagrantly illegal, suppressing the stop wasn't necessary for the purpose of deterring illegal stops. Mr. Green cited *Brown v. Illinois*, 422 U.S. 590, 605 (1975), characterizing the impropriety of the stop in that case as obvious and contrasting it with Officer Fackrell's relatively innocent mistake. He said there was no evidence that officers make random stops for the purpose of finding warrants and conducting searches, and in any case, a flagrancy inquiry would eliminate any incentive to conduct such stops. Transcript of Oral Argument, at 12–13.

John Bash, for the United States as amicus, said excluding evidence on every illegal stop would result in excluding evidence of "serious guilt and serious offenses, nationwide." *Id*. at 18. He argued that allowing evidence from illegal stops, such as in *Strieff*, wouldn't affect illegal stop jurisprudence in all cases, just those where a neutral magistrate has previously found probable cause to issue a warrant. In response to Justice Alito's question of what percentage of people in the United States have warrants, he said he didn't know and acknowledged Justice Sotomayor's concern that the percentage is high in some communities. Nonetheless, he thought suppressing illegal stop evidence wouldn't alleviate problems in communities like Ferguson because the situation there involved police colluding with municipal courts to issue warrants to raise revenue. When Justice Kagan noted most *Terry* stops happen in neighborhoods where folks have warrants, Mr. Bash answered that outside Ferguson, empirical evidence didn't indicate high enough chances of finding a warrant to create an incentive for illegal stops. *See id*. at 20–22.

Justice Kennedy appeared to agree that flagrancy should be a consideration. "[I]t may be particularly necessary…because…it would seem odd for this Court to say the higher crime – the more it's a high-crime area, the less basis you have to stop. That's very odd." *Id*. at 13. To address concerns voiced by Justices Sotomayor, Kagan, Ginsberg, Alito, and Kennedy, Mr. Bash proposed a flagrancy test: "Does the stop appear objectively designed to exploit the ability to search, incident to arrest on a warrant." He suggested such a rule could preserve evidence in cases where officers act in good faith while still protecting the public. *See id*. at 25.

Joan Watt argued that Mr. Green's and Mr. Bash's proposed tests "would open the door to abuse."

> It would create a powerful incentive for police… officers to detain citizens without concern for the Fourth Amendment, knowing that finding a warrant would wipe the slate clean and render the constitutional violation irrelevant….It would create a new form of investigation….It's already

the practice in many communities, and if Utah's rule is adopted, it will become the norm.

Transcript of Oral Argument at 29, *State v. Strieff*, (No. 14-1373), *available at* http://www.supremecourt.gov/oral_arguments/argument_transcripts/14-1373_3d46.pdf.

Absent suppression, said Ms. Watt, nothing stops police from walking up to any innocent citizen on the street and detaining that person. Even where the stop yields nothing and the person is sent on his or her way, adopting the State's argument could encourage officers to engage in "catch and release" with ordinary law-abiding Americans.

Justice Alito doubted that would be the case if the odds of finding a warrant were low. "If the officer makes an illegal stop, the officer exposes himself or herself to all sorts of consequences." *Id*. at 30. Chief Justice Roberts similarly reasoned that if only one in one or two hundred people have warrants, a warrants check is more fairly attributed to officer safety. *See id*. at 32.

Here, Justice Sotomayor pointed out *Rodriguez v. United States*, 135 S. Ct. 1609, 1615 (2015), where the Court assumed warrant checks for officer safety are inherent in stops and reiterated that the question in *Strieff* was, "Can you have an investigatory stop for no suspicion?" Transcript of Oral Argument at 34. She added that nothing about Mr. Strieff gave Officer Fackrell concern for violence. Justice Roberts worried an officer walking up to a stopped car could get shot, absent prior name and warrant knowledge. Ms. Watt called that a "completely different scenario" from *Strieff*, and Justice Sotomayor restated for Ms. Watt that all Mr. Strieff did was walk from a house to a convenience store. Justice Sotomayor posed the question: "This is not coming up to a parked automobile and getting shot, correct?" *Id*. at 44.

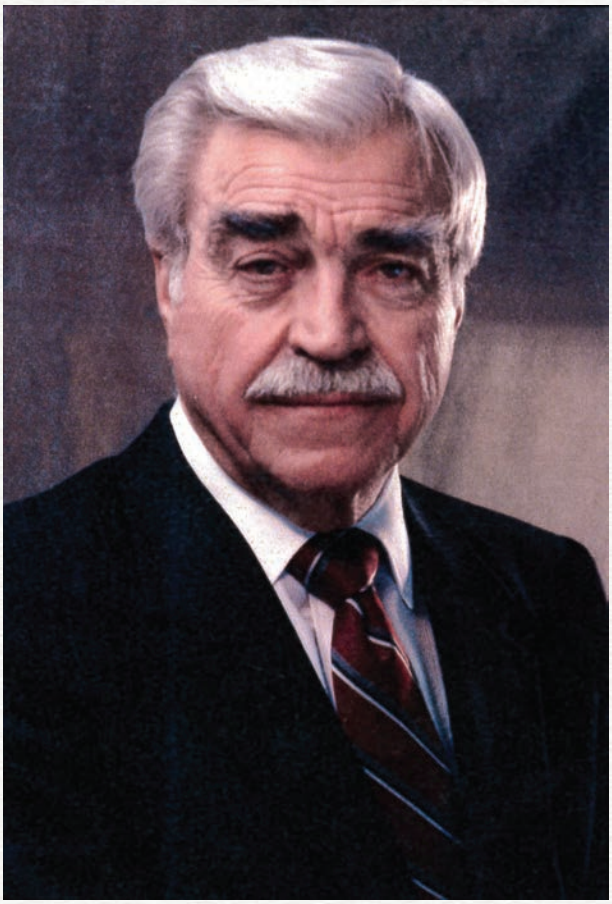
Justice Kennedy asked if Ms. Watt conceded the stop's illegality wasn't flagrant. Ms. Watt answered that actually, according to prior Supreme Court case law, *Brown v. Illinois*, 422 U.S. 590, 604 (1975), *Taylor v. Alabama*, 457 U.S. 687, 691 (1982), and *Dunaway v. New York*, 442 U.S. 200, 218 (1979), any unlawful police conduct deliberately undertaken with the purpose to investigate, even absent some other "overarching flagrancy," is flagrant. *Id*. at 32.

It's hard to predict the outcome. Justices Sotomayor, Kagan, and Ginsberg appeared to agree with Mr. Strieff and Ms. Watt that failure to suppress evidence flowing from illegal stops threatens ordinary Americans' freedom. Chief Justice Roberts seemed most concerned that suppressing evidence from a bad stop could jeopardize future officer safety, repeatedly stating that officers in traffic stops need to be able to find out names and look for warrants. Justice Alito appeared to doubt illegal stops are common enough for the Court to address. Justice Kennedy may have been persuaded by Officer Fackrell's claimed good faith. Or, recollecting his dissent in *Maryland v. Wilson*, 519 U.S. 408, 422 (1997) (Kennedy, J., dissenting),where he demanded "if a person is to be seized, a satisfactory explanation for the invasive action ought to be established by an officer who exercises reasoned judgement," he may side with the illegally stopped Mr. Strieff. Justice Thomas, relaxed in his chair, said nothing; other observers have found him unpredictable. *E.g.*, Scott Gerber, *Justice for Clarence Thomas: An Intellectual History of Justice Thomas's Twenty Years on the Supreme Court*, 88 U. Det. Mercy L. Rev. 667, 680–683 (2011). Possibly, Justice Breyer's dissent in *Hudson v. Michigan*, 547 U.S. 586, 608 (2006) (Breyer, J., dissenting), arguing to bar all illegally collected evidence, forecasts his favoring Mr. Strieff. Justice Breyer also dissented in *Arizona v. Gant*, 129 S. Ct. 1710, 1725–26 (Breyer, J., dissenting) (2009) (limiting post-arrest vehicle searches to protecting officer safety from actual threats or finding evidence of the crime for which the arrest was made), but limited his dissent to grounds of favoring *stare decisis*, an issue not present in *Strieff*. Justice Breyer tends to take a case-by-case approach, preferring standards to rules. Arnold H. Loewy, *A Tale of Two Justices (Scalia and Breyer)*, 43 Tex. Tech. L. Rev. 1203 (2011).

The Supreme Court had draped Justice Scalia's chair in black and hung black bunting in front of his desk. "He was our man for all seasons and we shall miss him," said Chief Justice Roberts in a eulogy before oral arguments began. While Justice Scalia's opinion on *Strieff* shall remain forever unknown, it is possible that Justice Scalia, who wrote the opinion in *Hudson v. Michigan*, holding failure to "knock and announce" before serving "knock and announce" warrants didn't make suppression appropriate for lack of likely deterrence, might have ignored the illegal stop in favor of upholding the traffic warrant. On the other hand, the same Justice Scalia, who dissented in *Navarette v. California*, 134 S. Ct. 1683, 1692 (2014), because he was outraged at police automatically crediting an anonymous tip and using it as the basis for a stop, might have sided with Mr. Strieff, also the victim of an anonymous tip without reasonable suspicion for a stop. Previously, in *Minnesota v. Dickerson*, 508 U.S. 366, 381 (1993) (Scalia, J. concurring), Justice Scalia criticized *Terry* stop-and-frisks for lack of intellectually rigorous analysis in determining a *Terry*-search's reasonableness; he doubted "whether the fiercely proud men who adopted our Fourth Amendment would have allowed themselves to be subjected, on mere suspicion, of being armed and dangerous, to such indignity." Justice Scalia's passing further clouds the Court's predictability of the Court's decision in *Strieff*.

"The Supreme Court had draped Justice Scalia's chair in black and hung black bunting in front of his desk. 'He was our man for all seasons and we shall miss him,' said Chief Justice Roberts in a eulogy before oral arguments began."

An even split may vindicate Mr. Strieff, who successfully completed his probation in 2011. Or, the Court may ask parties to reargue the case once a new justice is sworn in. Although an enjoyable and enlightening experience, I doubt I will line up at 3:30 a.m. a second time to watch. At the time, I assumed Supreme Court Bar members, arriving at the Court around 7 a.m. and waiting in a special, shorter line that was seated first, were likely working on cases soon to be argued and needed for their own work to be assured easier access to oral arguments. Only, it turns out, the Court provides same-day online transcripts. I wonder how it may affect public perception of lawyers, the rule of law, public institutions in general or the United States Supreme Court specifically, that a taxpayer-funded institution's formalized rules guarantee that pizza-makers, teachers, electricians, *inter alia*, wait on a cold sidewalk for hours while lawyers who have paid extra arrive after dawn, pass those in line and, with their guests, are seated ahead. With inequality on every news program, *Strieff* asks whether public safety requires that one profession, law enforcement, may stop all others and demand accountability without necessarily reciprocating.



Glenn Charles Hanni

1923 - 2015

Glenn was born in Moore, Idaho, and passed away from natural causes at his home in Salt Lake City, Utah. He was almost 93 years old and found joy in each day. If asked, "How are you?" he always replied, "I couldn't be better!"

"He had boundless energy and zest for life. He never asked anyone to work harder than he did. He skied, rode horses, flew airplanes, and danced with his lovely wife Brunheild."

He moved to Salt Lake during his high school years and basically resided there the remainder of his long life. After serving in the U.S. Navy as a pilot, he attended the University of Utah and graduated "Order of the Coif" (number one in his class) from the university's law school.

"He exuded good will and graciousness. He could win and lose with equal dignity. He never retired because he loved what he did so much."

In 1962 he joined with Gordon Strong and established Strong and Hanni Law Firm. He was named "Utah Trial Lawyer of the Year" twice, was a member of the American College of Trial Lawyers and was a member of the International Academy of Trial Lawyers. He loved his law practice and always said, "If you love what you do, you never work a day in your life." He was a good man who lived a full and extraordinary life and will be missed by many.

"For many years, when a Utah lawyer or anyone else got in a tight spot personally or professionally, they picked up the phone and called Glenn Hanni. They knew they would get a calm non-judgmental listening ear and sound advice."

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Licensed Paralegal Practitioners

by Justice Deno Himonas and Timothy Shea

Introduction

In his State of the Judiciary address to the Utah Legislature, Utah Supreme Court Chief Justice Matthew Durrant highlighted three initiatives recommended in three collaborative studies: indigent representation in criminal cases, pretrial release practices, and access to civil justice. In the chief justice's words:

> Now let me turn to the values I mentioned earlier – fairness, access to justice, individual rights, and public safety. Judges are in a unique position. Though we have a very limited policy role, we encounter the concrete consequences of numerous policy issues that relate to these values. I believe that with this perspective comes a responsibility to raise issues for discussion that may not otherwise be addressed. In this way, we in the judiciary serve as conveners. We bring various stakeholders together to examine these issues and to explore potential solutions to identified problems. We then usually present whatever consensus proposal there may be to you, the Legislature, for your consideration of possible action. We believe this shared process has served Utahns well.

The three initiatives are responses to difficulties faced by the judiciary, and, more important, difficulties faced by parties in the litigation process or by those whose participation is marginalized. The 2016 General Session of the Legislature considered legislation addressing the first two – indigent representation in criminal cases and pretrial release practices. The third initiative does not require legislation and is moving forward under the supervision of the Utah Supreme Court.

In May 2015, the Utah Supreme Court appointed a task force to examine a market-based, supply-side solution to the unmet needs of litigants. The court has approved the task force's recommendations, which are available on the court's website, and has appointed a steering committee to implement those recommendations. *See* http://www.utcourts.gov/committees/limited_legal/Supreme%20Court%20Task%20Force%20to%20Examine%20Limited%20Legal%20Licensing.pdf. In a nutshell, the task force recommended:

- The Utah Supreme Court should exercise its constitutional authority to govern the practice of law to create a subset of discrete legal services that can be provided by a paralegal practitioner in three practice areas:
  - temporary separation, divorce, paternity, cohabitant abuse and civil stalking, custody and support, and name change;
  - residential eviction; and
  - debt collection.
- Within an approved practice area, the court should authorize a paralegal practitioner to:
  - establish a contractual relationship with a client who is

JUSTICE DENO HIMONAS is a justice of the Utah Supreme Court. He was the chair of the Task Force to Examine Limited Legal Licensing and is chair of the Paralegal Practitioner Steering Committee.

TIMOTHY SHEA is the appellate court administrator and staff to the task force and steering committee. He retires at the end of June following more than thirty years of service with the Utah courts.

not represented by a lawyer;

- conduct client interviews to understand the client's objectives and to obtain facts relevant to achieving that objective;
- complete court-approved forms on the client's behalf;
- advise which form to use; advise how to complete the form; sign, file and complete service of the form; obtain, explain and file any necessary supporting documents; and advise the client about the anticipated course of proceedings by which the court will resolve the matter;
- represent a client in mediated negotiations;
- prepare a written settlement agreement in conformity with the mediated agreement; and
- advise a client about how a court order affects the client's rights and obligations.

- The court should establish the education requirements and regulatory requirements to qualify as a paralegal practitioner.

The recommendations describe the advanced qualifications needed for a paralegal practitioner to provide relevant legal services in response to an identified need.

Identified Need

In a contribution to *The New York Times* on June 17, 2015, Theresa Amato cites the World Justice Project's 2015 Rule of Law Index for the point that "the United States ranks 65th [out of 102 countries] for the accessibility and affordability of its civil justice. We're tied with Botswana, Pakistan and Uzbekistan, not far behind Moldova and Nigeria." By all accounts the United States has a good civil justice system, scoring high in several factors and ranking twenty-first overall, but for too many people, a civil remedy is simply out of reach.

Based on American Bar Association research cited in the task force report, people do not employ lawyers for a variety of reasons. The cost of hiring a lawyer is often a factor, especially because lawyers frequently do not quote a bottom-line price for their services. Some people do not understand that recourse to the courts to solve a problem is an option. Some do not consider intervention outside of the family an appropriate solution to the problem. Some believe that self-representation, especially with help from time-to-time, will yield more satisfactory results.

District court data shows that family law, residential evictions, and debt collection are the types of cases in which the concentration of self-represented parties is highest. Whatever the reasons for not hiring a lawyer, paralegal practitioners will be offering their services to clients who largely are not currently represented by lawyers.

Relevant Legal Services

The task force built upon the work of the American Bar Association Task Force on the Future of Legal Education and the ABA Commission on the Future of Legal Services, which respectively call for and establish objectives for licensing persons other than lawyers to deliver limited legal services. The Utah task force also considered the limited license legal technician (LLLT) program from the State of Washington and document-preparation programs in Arizona, California, Louisiana, and Nevada. The Oregon State Bar has published a report with recommendations for a LLLT, and, although not as far along, California and Colorado are examining the potential of a Washington-like program.

Other than a Washington LLLT, the paraprofessionals in the other states are limited to document preparation. The spectrum of authority runs from Louisiana, which allows notaries public to draft original documents, to California, which allows legal document assistants only to record in a court-approved form what the client dictates.

> *"As the committee considers the finer details of regulation, it likely will find distinctions between the two professions that legitimately mean different regulations."*

The ABA Task Force on the Future of Legal Education endorses the Washington LLLT program as a positive contribution to meeting the increasing need for qualified professionals who provide limited law-related services without the oversight of a lawyer. The Washington program allows a LLLT in family law cases to advise the client about the forms and to select, complete, file, and effect service of the forms. Beyond forms, the authority of a licensed technician is limited, but it is sufficient to assist the client with the proceedings in which the forms are relevant.

The Washington program allows a LLLT to perform certain legal services under the supervision of a lawyer. Under current Utah law, these services would be allowed to be performed by any paralegal under the supervision of a lawyer, so the task force's recommendations do not extend beyond the services that a paralegal practitioner may offer directly to a client.

The authority recommended for a Utah paralegal practitioner has four focal points:

- engaging the client and determining the client's objectives;
- preparing the court-approved forms necessary to present the client's case;
- helping the client understand the other party's documents; and
- helping the client understand the court's order.

Within an approved practice area – family law, residential evictions, and debt collection – a paralegal practitioner will be authorized to enter into a contractual relationship with the client and determine the client's objectives. If there are forms to achieve the client's objectives, the paralegal practitioner will be able to advise about those forms and to assist the client in completing them. The paralegal practitioner will be able to explain documents filed by an opposing party and to represent the client in mediated negotiations with the other party. Finally, the paralegal practitioner will be authorized to explain a court order resulting from the proceedings.

A rule defining the authority of a paralegal practitioner is still a ways away, but, if a client needs legal services beyond those ultimately specified in a Utah Supreme Court rule, the client will need to hire a licensed lawyer, who might be assisted by a traditional paralegal or by a paralegal practitioner.

Advanced Qualifications

Other than Nevada, which does not have a minimum education requirement, the other states require a high school education to qualify as a document preparer. The higher minimum qualifications of a Washington LLLT reflect that paraprofessional's wider authority and discretion: an associate's degree with forty-five credit hours of paralegal study and fifteen credit hours of advanced study plus 3,000 hours of law-related experience supervised by a lawyer.

Under current Utah law, non-lawyers in general and paralegals in particular may perform a wide range of services that are or come close to the practice of law, yet there are no minimum education or experience requirements.

Rule 14-113 of the Judicial Council Rules of Judicial Administration authorizes a paralegal to do just about anything a lawyer may do. There are conditions on the paralegal's work, but no limits. The

paralegal may perform the "substantive legal work…that absent… assistance, the attorney would perform." Utah R. Jud. Admin. 14-113(a). The paralegal must perform the work for the lawyer, not the client. The client's protection lies in the lawyer being accountable for the paralegal's work.

There are no minimum requirements for a paralegal in Utah. A paralegal is anyone "qualified through education, training, or work experience, who is employed or retained by a lawyer."

Similarly, Rule 14-802 of the Judicial Council Rules of Judicial Administration is quite liberal in what it allows anyone to do, even though those services might be considered the practice of law. Prohibited in some other jurisdictions, Utah allows anyone to "[provide] general legal information, opinions or recommendations about possible legal rights, remedies, defenses, procedures, options or strategies, but not specific advice related to another person's facts or circumstances." *Id.*

As much as they widen the scope of legal services by a qualified non-lawyer, the task force recommendations will also promote consumer protection by establishing reasonable minimum requirements for a paralegal practitioner. The details will be developed by an implementation steering committee, but a paralegal practitioner will be required to have an associate's degree with a paralegal or legal assistant certificate from a program approved by the ABA, plus:

- successful completion of the paralegal certification through the National Association of Legal Assistant's Certified Paralegal/Certified Legal Assistant exam;
- successful completion of a course of instruction for a practice area (content to be determined based on the approved practice area); and
- experience working as a paralegal under the supervision of a lawyer or through internships, clinics, or other means for acquiring practical experience.

The steering committee will also recommend appropriate licensing and administrative regulations. Although the myriad rules currently regulating lawyers offer a sound starting point for regulating paralegal practitioners, the steering committee will not take a "copy and paste" approach. As the committee considers the finer details of regulation, it likely will find distinctions between the two professions that legitimately mean different regulations.

The Challenges Ahead

Building a new profession from scratch is no simple task. The task force identified in its report some of the challenges that lie ahead. The market is already saturated with lawyers, yet parties are largely self-represented in the three recommended practice areas. Can paralegal practitioners offer services at a price that will find clients while enabling a living wage? There will be administrative costs to regulating this new profession; how are those expenses paid when there are as yet no paralegal practitioners to pay them?

These are just a few of the challenges facing a nascent profession.

Next Steps

In his State of the Judiciary address, Chief Justice Durrant described the task force's recommendations as putting Utah "on the cutting edge of innovation and public service when it comes to access to justice." After commending the Bar and the courts for their considerable and continuing efforts to address the public's unmet legal needs, Chief Justice Durrant recognized the remaining hard work of implementing these recommendations:

> There is still much to be done, such as finalizing minimum education, certification, and licensing requirements. But we believe this new client and market-driven approach holds great promise – not as a substitute for attorneys – but as a complementary legal resource for providing meaningful assistance in specific areas where existing legal resources are inadequate and the need is great.

The Utah Supreme Court has appointed a steering committee to engage in that hard work, to take up where the task force left off. With broad representation from judges, lawyers, paralegals, educators, and administrators, the steering committee will develop the learning objectives and curriculum required of a paralegal practitioner and the method for delivering that education to students. The committee will develop the regulatory infrastructure for the program, including licensing, mentoring, continuing education, rules of professional responsibility, and discipline. And the committee will develop the measures of a successful program and the methods for gathering data.

The steering committee is projected to complete its recommendations in early 2017, making it possible for Utah to see its first paralegal practitioners by the end of next year.

From Bar to Bench: First Impressions and Important Lessons

by Judge Laura S. Scott

Monday, January 5, 2015. The most terrifying day of my life. Scarier than jumping out of an airplane or getting married for the second time or being peppered with statutory construction questions by Associate Chief Justice Lee. It was my first day on the bench, and I was facing a 100-plus criminal law and motion calendar. Not only did I lack criminal law experience, the last time I reviewed the rules of criminal procedure was in 1993 studying for the bar exam. In the weeks leading up to that day, I observed court, read and re-read the rules of criminal procedure, and bombarded Judge Blanch with questions. But even after extensive preparation and Judge Blanch's patient mentoring, I still fantasized about getting into a non-fatal single-car accident on the way to court that would result in a short trip to the emergency room, cancellation of the law and motion calendar, and time to re-think my decision to become a judge.

I survived my first day as a criminal-calendar judge in large part because of the prosecutors and legal defenders. Without ego or condescension or attempting to take advantage of my inexperience, they helped me navigate this new world of bond hearings, probation violations, plea colloquies, AP&P reports, competency evaluations, and sentencings. They embodied professionalism and civility by treating everyone with respect, granting continuances and other accommodations, conceding obvious points and unwinnable arguments, and not squabbling about inconsequential matters. After a "mere" three months, I came to truly enjoy the criminal calendar.

I then transferred to a civil calendar, which I naively assumed would be an easier learning curve because of my seventeen years as a civil litigator at a large law firm. I described my civil practice as "broad based." But "broad" does not begin to describe the diversity of cases on a civil calendar or the sheer volume of them. In a given week, I will review fifty-plus motions, orders, and other pleadings involving everything from adoption to zoning. But unlike at a large law firm, where I had the support of associates and paralegals and staff, court resources are limited, and I share my excellent law clerk with two other judges.

Which brings me to this article. A few months ago, Judge Orme asked me to write an article on the transition from being a civil litigator at a large law firm to a trial court judge, including what I miss, what I don't miss, and what I have learned in my first year on the bench.

So what do I miss about working at a law firm besides dear colleagues and year-end bonuses? Working as a team to solve a legal problem or resolve a conflict. Winning as a team and losing as a team. Having the resources to thoroughly research and brief an interesting or novel legal issue. Deposing expert witnesses. Being an advocate. Presenting my best evidence and arguments and then turning the unresolvable problem over to the court or jury for a decision.

What has surprised me the most? How much trial court judges rely on lawyers to be, as Judge Voros so aptly put it, "an objective and reliable resource in the court's decision-making process." J. Frederick Voros, Jr., *To Persuade a Judge, Think Like a Judge*, 24 Utah Bar Journal 12, 12 (Sep/Oct 2011). Credibility and professionalism really do matter. Every interaction with the court, no matter how seemingly inconsequential, adds to or subtracts from a lawyer's reputation. Every day I have to ask myself, "Can I believe and trust this lawyer?" If the answer is "no" or "I'm not sure," it impacts how I may view

JUDGE LAURA S. SCOTT was sworn in as a judge of the Third District Court in January 2015, having previously been in practice with a large Salt Lake City law firm.

a discovery dispute or the proffered "good cause" under various rules. It dictates how much additional time I have to spend reviewing a proposed order or an unopposed motion. It gives me pause when the case involves unrepresented parties. And it doesn't matter whether you are a brand new lawyer or one of Utah's legal elite, if you mislead or overreach, if you are unprepared or sloppy, if you are unprofessional or unreasonable, you lose your credibility.

This shift in perspective has also caused me to reflect on what I would have done differently if I knew then what I know now. For what it's worth, here are my thoughts after a year on the bench.

I would have been more thoughtful about my motion practice. Civil litigators, particularly those with sophisticated and well-funded clients, have subconscious "check lists" for cases, which usually include filing a motion to dismiss and a motion for summary judgment as a matter of course. While there may be strategic reasons for doing so – settlement, forcing an opposing party to show its hand, etc. – a motion is often the court's first impression of the lawyer and the case. Should this first impression be a motion that does not comply with the rules, fails to reflect an understanding of the applicable standard or case law, or barely avoids running afoul of Rule 11?

I would have written shorter cleaner briefs. I would have avoided requesting leave to file an over-length memorandum by forcing myself to ruthlessly edit the statement of material facts and eliminate second tier arguments. I would not have wasted so many precious pages unveiling the mysteries of Rule 12(b)(6) or Rule 56 or arguing over minor procedural flaws in the other side's memorandum. As a judge, I have never read a brief and wished it were longer. I would have removed all exaggeration, sarcasm, insults, and unnecessary adjectives so the judge did not feel like I was yelling at him when reading my brief.

I would have recognized that organization is a powerful tool and that if an argument is worth making, it is worth developing, particularly because not every motion, much less every issue, will be reviewed by the judge's law clerk. I would have conceded the obvious and withdrawn any motion that did not have a reasonable chance of success because of disputed facts or unfavorable case law identified by the opposition.

I would have embraced the idea that oral argument is a conversation with the judge and thought should be given to who is the best person to have that conversation. The "expert" in the area of law? The lawyer who is most familiar with the facts and procedural history? Or the associate who researched and wrote the brief and knows the case law inside and out?

I would have assumed there are no "hostile" questions. As a judge, I like asking questions during oral argument. Perhaps it's because I miss the back and forth of a litigation strategy meeting. But sometimes I just need an answer or I am eliminating contention from consideration or I am confirming my tentative ruling. And sometimes I just enjoy having a really good conversation with a smart lawyer who can teach me about an interesting legal issue.

I would have perfected my poker face. As Justice Wilkins once remarked, judges are perfectly aware that we are not perfect and we know that one party (and maybe both) will be unhappy with our ruling. I appreciate lawyers who are gracious when I rule against them, regardless of what they actually think of my decision. By doing so, they convey their respect for the judicial process.

I would have worked harder to resolve discovery disputes and taken the "meet and confer" requirement more seriously by sitting down with opposing counsel rather than sending an email. I would have been more thoughtful about the sanctions I requested to make sure they were reasonable and proportional, reserving requests for severe sanctions for only the most egregious cases.

I would have performed more pro bono work. Or felt more guilt for not performing it. When I used to hear judges talk about the importance of pro bono work, I wondered how long it had been since they had to meet ever-increasing billable hour requirements while engaging in client development during their "free time" as they were trying to raise a family. But now I get it. There are few things that make me happier than pro bono lawyers appearing on the debt collection or unlawful detainer calendar. On a practical level, it is one of the quickest ways for new lawyers to get in-court experience and build their reputations with the court.

But perhaps most importantly, I would have understood how much judges value and appreciate the hard work that lawyers do. I hope I never forget what it is like to be in the trenches. And if I do, please gently remind me. I am truly grateful for this opportunity and take the responsibility entrusted to me very seriously. And yes, Justice Himonas, I just might come to "love" being a trial court judge.

How to Sound Smart With Your Clients and Friends When Talking About the Legislature

A recap of the 2016 General Legislative Session

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

After forty-five calendar days, Utah's 2016 Legislative General Session adjourned March 10.

Every legislative session has underlying issues or themes that drive deliberations and policy (especially in election years), but these generally fall into one of two categories: major appropriations changes and bills. This article will discuss the major appropriations, pick out a few of the top bills that passed (or didn't), and detail matters identified as being of particular interest to the Bar. Unless otherwise stated, all bills are effective May 10, and new appropriations will be available July 1 when the 2017 Fiscal Year begins.

Major Appropriations and Funding Issues

As the legislature prepared to meet, projected budgets surpluses were reduced. Education Fund revenues from the state income tax were up, but General Fund revenues were down. This left the overall budget essentially flat and complicated legislators' plans to fund projects important to their constituents as they headed into an election year.

Public and Higher Education

With more flexibility in the education budget, Utah increased its investment in public education by over $400 million. The state fully funded enrollment growth, plus added an additional 3% to the primary funding mechanism for education, the Weighted Pupil Unit. Utah also moved closer to funding parity between charter and district schools by increasing the property tax proxy provided to charters. The legislature gave initial approval to a major technology grant program, established a preschool option for four year olds suffering from or at risk of poverty, and put in place several changes that will increase funding to schools from the state's trust lands.

On the Higher Education front, Colleges and Universities received a 5.3% overall budget increase. The state also funded four building projects: a CTE Center at Salt Lake Community College ($42,590,500); a new Business Building at Southern Utah University ($8,000,000); a Biological Sciences Buildings at Utah State University ($38,000,000, two-year phased funding); and a Performing Arts Building at Utah Valley University ($32,000,000, two-year phased funding).

Transportation and Infrastructure

After outcry by cities, towns, and other transportation policymakers, in 2015 the legislature passed a $75 million gas tax increase to meet the maintenance and capital project demands required for Utah roads. Thus, eyebrows were raised when lawmakers agreed this year to divert about $36 million annually in funds currently earmarked for transportation and

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reallocate the money to water infrastructure projects. The largest water districts in the state raised concerns about unmet infrastructure needs and how to fund water projects in an era of diminished federal investment, while opponents cited environmental concerns and urged greater conservation.

The state also agreed to spend $53 million from the Transportation Fund to fund a deepwater port in Oakland, California. It proposed to fill this hole by shifting back into the Transportation Fund an equal amount of money already collected by mining and energy companies in the form of community impact fees.

Medicaid

Utah took the first step towards expanding Medicaid after three years of debating how or whether to expand the program. The agreed expansion will provide previously unavailable coverage to around 17,000 childless adults suffering from homelessness or poverty or who have recently exited the criminal justice system.

Many advocacy organizations hailed Representative Dunnigan's plan as an important remedy to the plight of Utah's poorest, though some still wished for full expansion. On the other hand, the legislation was the only bill that could address concerns from House Republicans about the unknown fiscal impact of a broad entitlement expansion.

The healthcare industry gave a collective sigh of relief when they learned that the state was only considering one new tax on the industry to pay for the program: against Utah's hospitals, who had publicly agreed to the concept as a mechanism to expand Medicaid.

Major Legislative Changes of General Interest

Utah Employment Law: From Non-Competes to Breastfeeding

With the strong backing of Speaker Greg Hughes, members of the Utah State Legislature codified several restrictions on non-compete agreements in Representative Mike Schultz's H.B. 251, *Post-employment Restrictions Amendments*, after significant debate and revision.

Bill proponents provided examples of "common calling" employees with no special skills being prevented from switching employers through the questionable use of such contracts, while Utah businesses argued the agreements were necessary to protect unique relationships, trade secrets, and other misuse of corporate assets.

The final version limits non-compete agreements entered into after May 10, 2016, to no longer than one year. For employers with twenty or more employees, the bill unilaterally awards attorney fees to an employee if an employer seeks to enforce an unenforceable agreement. The bill generally otherwise incorporates existing case law.

With employment experts focused on non-compete agreements, Senator Todd Weiler quietly expanded the protections provided to individuals under the state's non-discrimination act. S.B. 59, *Antidiscrimination and Workplace Accommodations Revisions*, requires employers to provide reasonable accommodations to pregnant women and nursing mothers.

Medical Marijuana Goes Up in Smoke

After coming just one vote short of authorizing medical marijuana in the Senate in 2015, retiring Senator and attorney Mark Madsen and other marijuana proponents felt optimistic entering the 2016 Session that legislation would pass. Two competing bills emerged, one a "whole plant" bill sponsored again by Senator Madsen available for a range of diagnoses, and a second bill with a substantial regulatory framework and limited to "cannabidiol"

substances sponsored by Senator Evan Vickers, a pharmacist.

Passage seemed possible and even Governor Herbert supported the concept, until public comments by the LDS Church exposed a preference for Senator Vickers's bill. Senator Madsen made several revisions to assuage those concerns, and both bills passed the Senate.

A House committee merged the regulatory framework of Senator Vickers's bill with Senator Madsen's more permissive usage. However, without clear support from House Republicans and questions regarding how to pay for the bill, the full House was spared from having to take a vote.

Given the loss and with time too short to place the issue on the 2016 general election ballot, marijuana advocates appear poised to bypass the legislature and seek an initiative petition in 2018 if something does not happen in 2017.

The Commonly Asked Question

After several quiet years, for the second session in a row the LDS Church spoke out publicly and influenced several policy decisions at the legislature. Despite hopes by LGBT advocates to build on last year's statements that helped pass statewide protections for individuals in housing and employment, this year the LDS Church warned against upsetting the delicate balance agreed to last year. These comments doomed any chance of retiring Senator and attorney Steve Urquhart from passing Hate Crimes legislation. Insiders surmised the church's public position was an effort to avoid broad public discussion on religious liberties and marriage bills.

Regarding alcohol, discussion of repealing the requirement to conceal alcoholic beverage preparation in restaurants was tabled, while reforms that increased available permits and authorized sampling at distilleries passed.

Advocates of various causes frequently solicit the church's support and rarely receive it. But that does not prevent unsubstantiated rumors about the church's involvement in other major policy decisions, including the repeal of the death penalty (this died in the House after passing the Senate), addressing Salt Lake City's homeless situation, and other moral issues.

Public Lands

The West's war to claim ownership of its public lands is not new. But the fight has been reinvigorated with an exhaustive legal analysis outlining the legal arguments that favor the state's position to manage its land. The legal consultants hired by the state estimated this litigation could cost up to $14 million. The legislature appropriated $4.5 million this year to begin pursuing this legal action. The state also outlined its proposed land management policies should transfer be successful.

Representative Mike Noel, sponsor of the aforementioned legislation and a known critic of the federal government's management of public lands, cautioned against pursuing a lawsuit at this time. He voiced concern that the nomination of an unfriendly Supreme Court Justice could jeopardize the state's chances for success.

The Stewardship of Public Lands Commission has directed the legal team to prepare a draft complaint and submit to the Attorney General for his consideration to pursue it or not.

Internet Sales Tax Trumped by Mommy Bloggers

For a majority of the session, it seemed that legislation expanding online sales tax collection would pass.

Americans for Prosperity unleashed a groundswell of grassroots activists to contact their legislators opposing the measure. In the end this fast-tracked bill was killed by so-called "Mommy Bloggers." These entrepreneurs chronicle their lives online and generate income by recommending products to their readers. The bill would have used these and other affiliated marketers to establish nexus for the underlying online retailer. Although the legislation never proceeded from the House, insiders expect a similar push next year.

The grassroots showing was a powerful example that even on Utah's Capitol Hill, corporate pressure and political will can be defeated by well-organized constituents.

Sustainable Transportation and Energy Plan

S.B. 115, *Sustainable Transportation and Energy Plan Act*, sponsored by Senator Stuart Adams, established a five-year Sustainable Transportation and Energy Plan pilot program. The bill also allows Rocky Mountain Power to recover $10 million annually from ratepayers to implement the program, which calls for creation of an electric vehicle infrastructure and incentives, authorizes a renewable energy incentive and tariff program, and provides funds to research "clean coal" and other related technologies. The bill also increases the amount of costs borne by the utility that can be recovered from ratepayers.

Consumer advocates, large industrial customers, and clean energy advocates had concerns with several aspects of the bill, which passed the Senate but initially failed in the House. Their victory was short-lived, however, as the House reconsidered and passed the bill in the final hours of the Session.

Employee Computer Abuse

H.B. 241 provides civil penalties for an individual (an employee or former employee) who, without authorization from a protected computer's owner, obtains information from the protected computer; causes the transmission of a program, code, or command to the protected computer; or traffics in a technological access barrier that could be used to access the protected computer.

The legal stuff that happened in the legislature

The Utah State Bar is authorized to engage in legislative activities in accordance with Rule 14-106 of the Utah Code of Judicial Administration. Utah R. Jud. Admin. 14-106. The Bar is limited to taking positions only on

> those issues concerning the courts of Utah, procedure and evidence in the courts, the administration of justice, the practice of law, and matters of substantive law on which the collective expertise of lawyers has special relevance and/or which may affect an individual's ability to access legal services or the legal system.

Id. 14-106(a).

Legislation of possible interest to the Bar is vetted by the Government Relations Committee (GRC), a group that meets weekly during the course of the legislative session and is comprised of representatives from each section of the Bar. The GRC provides advisory recommendations to the Bar Commission, which has ultimate authority over which bills the Bar takes a position on. The Bar may adopt a position, take no position, or remain silent on legislation. The Bar may also authorize a section to take a position on legislation without taking a position for the entire organization. Below are some of the bills the Bar weighed in on this year.

A new Power of Attorney

St. George attorney (and former Bar President), Representative Lowry Snow sponsored H.B. 74, *Uniform Power of Attorney Act*. In a comprehensive manner, this legislation expanded and detailed the obligations and responsibilities of agents. The elements of authority are defined and clarified. Ever the pragmatist, Representative Snow placed in the statute a form that satisfies all requirements of the new law. Please note that all future Power of Attorney documents must be in compliance. But the good news is all your office needs to do is cut-and-paste from the statute to develop the new form for future clients.

Narrow Defeats: Disabled Adult Guardianship and Lawful Commerce in Arms

The legislature passed H.B. 101, *Disabled Adult Guardianship Amendments*. This bill allows a judge to waive the requirement of counsel for a disabled adult in certain circumstances where a parent is seeking guardianship and other perceived safeguards are met. The Utah State Bar and disability advocacy organizations opposed this legislation on the grounds that counsel is required to protect the due process rights of guardianship respondents and removing the existing requirement to provide counsel in such proceedings limits that individual's access to justice.

The legislature also passed H.B. 298, *Lawful Commerce in Arms*. This bill limited the liability of manufacturers and sellers of firearms and ammunition in circumstances where such products were lawfully used and performed as designed. The Bar did not take a position on any Second Amendment issues related to the bill. However, the Bar did oppose the bill on the grounds that eliminating an existing cause of action without providing an alternative remedy presented serious access to justice concerns.

Supporting the Courts: Justice Court Amendments / Fourth District Court Juvenile Judge

West Valley City attorney Representative Craig Hall worked closely with the Administrative Office of the Courts, cities, counties, and other stakeholders to require that certain justice court judges be law trained. Under H.B. 160, *Justice Court Amendments*, applicants for justice court judge positions in Davis, Salt Lake, Utah, Washington, and Weber Counties must have a law degree. The legislation also provides alternative mechanisms where fewer than three qualifying applicants apply and grandfathers existing judges until they no longer hold the position. The Utah State Bar supported the changes proposed by Representative Hall.

The Bar also supported Representative Dean Sanpei's H.B. 207, *Fourth District Juvenile Court Judge*, which created a new juvenile court judge in the Fourth District. The Administrative Office of the Courts had identified this important need.

Criminal defense: New Oversight and Sentencing Requirements

Woods Cross attorney Senator Todd Weiler sponsored and passed S.B. 155, *Indigent Defense*. This bill establishes a statewide Indigent Defense Commission (the Commission), which will work with counties and other jurisdictions to ensure that the minimum standards of indigent criminal defense required under the United States and Utah State Constitutions are being met. Utah was previously one of only two states with no state oversight of the indigent defense system.

The Commission will collect data, develop guidelines, and make recommendations related to the criminal defense system and minimum standards of effective representation. In its first year the Commission will allocate $2,000,000 in grants to help jurisdictions meet these goals. This funding structure of the bill is designed to have greater financial impact in rural counties, where the shortage of indigent counsel is particularly acute. The Commission will be comprised of attorneys from several sections of the Bar, public defenders, city and county representatives, legislators, a retired judge, and the Administrative Office of the Courts.

The Bar also supported Representative Lowry Snow's H.B. 405, *Juvenile Sentencing Amendments*, which prohibits sentencing an individual under eighteen years of age to life in prison without parole. This bill brought Utah in line with recent United States Supreme Court precedent.

Summary

While the Bar and its members may agree or disagree with the policies rejected and adopted by the legislature and governor, these public servants work incredibly hard to represent their constituents and the State of Utah. In a future article, we will follow up on how you can be smart when engaging with these individuals in your capacity as an individual, as member of the Bar, or on behalf of your clients.

Advocating for Homeless Youth

by Nicole Lowe

You see them throughout the city, huddled in corners with their backpacks, sleeping bags, and vacant expressions. At times you stumble across their tents and tarp lean-tos when you are out for a walk in a park or paved trail hand-in-hand with a loved one. Have you ever wondered how these kids ended up on the streets or why they have nowhere to go?

Many people's initial thought is the homeless (youth or otherwise) are homeless because they are lazy, drug addicts, and have serious mental health issues. This is a simplistic view of the problem and of people who find themselves homeless. Mental health concerns, substance abuse, and lack of motivation cut across cultures and socioeconomic class in Utah.

Youth who find themselves homeless are some of the most vulnerable and most valuable people we have in the state of Utah and across the nation. One problem is most people don't see them as such. Most people, walk right by with their head down, thinking "please don't talk to me," and "please don't ask me for money." Passersby don't make eye contact, and they definitely don't speak with the youth.

Making a difference in the lives of homeless youth will not only change your life but holds the potential to change the lives of thousands. Any one of these kids could be the one who will propose an idea that will change global warming, reduce hunger among children in poverty, or create a solution to the struggles of inner city youth. They could become the doctor who saves the life of your grandchild or a teacher who makes effortless connections with children who have autism or Down syndrome.

You just don't know what they are capable of and if you don't do anything to help them, you will never find out. None of us will.

I know of this hidden potential because I was a homeless youth from the age of thirteen to sixteen. I had that vacant look. My experiences are not exceptional among homeless youth. I've struggled with depression. I've been a high school dropout, drug addict, a victim of rape, a victim of domestic violence, a drug dealer, a member of a cult, and a runaway. I begged for money and slept in parks, behind bars, in boxes, and under overpasses.

My story is terrifying and heart wrenching, but most of all it's full of hope. I've turned what could have been a story ending with me strung out on drugs or dead into something so much more.

I found myself pregnant after three years on the streets hitchhiking around the western United States following the Grateful Dead. The entire time I was pregnant, my plan was to continue to chase the deadhead lifestyle only with a Volkswagen bus for the baby.

I was seventeen when my son was born, and my life changed. I wasn't willing to put him at risk. I didn't want him to live the same life I had been living for the past four years. I returned to high school and graduated in December 1998. I graduated from Salt Lake Community College with my associate's degree in 2000 and from the University of Utah with my Bachelor's in psychology in 2002.

From 2002 through 2005, I investigated child abuse and neglect cases for the Division of Child and Family Services (DCFS). In the autumn of 2005, I started at S.J. Quinney College of Law with a goal to become a child welfare attorney in the juvenile court. I graduated in 2008 and became an assistant attorney general in the child protection division representing DCFS when I was twenty-eight years old. As a single mother, I've raised two

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passionate and caring sons. My oldest son has successfully launched from home and begun his studies at the University of Utah. My youngest doesn't miss an opportunity to stand up for strangers who are in need of assistance. I've completed five 100-mile runs, five century cycling events, and two half Ironman Triathlons. I'm working on an autobiography and other novels.

Most people would call my life a success, but my experiences and my education are a waste if I cannot use them to change one person's life for the better. I would willingly live it all again to change the course for one person who spends the night pulling a tarp tighter around their shoulders against the frigid wind and who hangs their head in shame because they had to prostitute themselves for a place to stay the night before and will many times more.

It can take as little as one person acknowledging these youth and seeing them as valuable members of the human race to begin their journey to independence. Seventy-five percent of homeless youth drop out or will drop out of school. *Homeless and Runaway Youth*, National Conference of State Legislators, http://www.ncsl.org/research/human-services/homeless-and-runaway-youth.aspx (last visited March 30, 2016). Many homeless girls will become pregnant. Less than two percent of teen mother's get a college degree by thirty. *Teen Pregnancy Statistics*, Teen Help, https://www.teenhelp.com/teen-pregnancy/teen-pregnancy-statistics/ (last visited March 30, 2016). Homeless youth are seventy-five percent more likely to use controlled substances to deal with trauma and abuse. Lisa A. Melander, Kimberly A. Tyler, and Rachel M. Schmitz, *An Inside Look at Homeless Youths' Social Networks: Perceptions of Substance Use Norms*, available at http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4792125/ (last visited March 30, 2016). Fifty percent of youth who experience rape, physical or sexual abuse will attempt suicide. *11 Facts About Teen Dating Violence*, Do Something.org, https://www.dosomething.org/us/facts/11-facts-about-teen-dating-violence (last visited March 30, 2016). Many of the street kids are trading sex for food, clothing, drugs, or just a place to sleep at night.

Because of my experiences on the streets of Salt Lake City, Utah, I've partnered with the Volunteers of America (VOA) and Legal Aid Society to bring free legal services to the youth who call Salt Lake Country streets, foothills, and parks home.

The Street Youth Legal Clinic (SYLC) will provide free legal services to youth ages fifteen to twenty-three who are accessing VOA's homeless youth resource center or the new overnight shelter scheduled to open in the Spring 2016. VOA's goal is to help youth overcome the legal barriers to obtaining housing, employment, education, or achieving their potential in any way.

The VOA Youth Resource Center will be twenty-thousand square feet and will have thirty beds available along with services youth need including an education center, mental health and substance abuse counseling, a food and clothing pantry, laundry, showers, housing assistance, employment assistance, and just normal social activities kids participate in today. These are basic needs all of us strive to give our children and many of us had as children.

These homeless youth can become so much more than what we see huddled in corners, if we all fight for their chance to dream. They deserve to have their basic needs met and the chance to dream of what their future holds. Dreams, goals, and ambition develop after our basic needs for shelter, food, and protection are met.

VOA's Street Youth Legal Clinic's mission is to remove legal barriers for homeless youth. Because of the age range of youth who access services through the VOA Youth Resource Center, legal issues span across the juvenile courts, municipal justice courts, district courts, bankruptcy courts, and federal courts.

Legal issues seen at the SYLC include immigration, emancipation, abortion, juvenile expungement, adult expungement, adult protective orders, child protective orders, dating violence protective orders, delinquency issues, run-away issues, unaccompanied minors from another state, those fleeing polygamist communities, human trafficking issues, adult criminal issues, child abuse, child neglect, dependency, marriage, custody, paternity, child support, housing, employment, bankruptcy, and disability law.

Youth end up on the streets for many different reasons and no story is the same as another. Some have been forced out of their homes, and some made the decision that the street is safer than home. Another portion of these youth have aged out of the foster care system and have no family to teach them to live independently.

In their efforts to meet their basic needs for safety, food, and shelter, many youth become involved in high risk behaviors resulting in criminal charges and victimization through sex trafficking and violence. As a way to deal with past trauma and mental health, they turn to substance abuse and then drug dealing or prostitution. If they didn't have trauma before they

reached the streets, it finds them once they are on the streets.

Having outstanding criminal cases and prior convictions can prevent youth from obtaining housing and employment. Active warrants can land them in jail, resulting in them getting fired from jobs and losing their housing and then they are back out on the streets. Youth who are sixteen and seventeen are even more limited in housing and employment options due to their status as minors. Minors can't enter into any contracts, open a bank account, or consent to their own medical treatment.

Without an advocate at their side when they stand before a judge, they agree to sentences and plead guilty just to end pending legal proceedings regardless of whether their rights have been upheld. Without the support of an advocate, their belief in injustice and the propensity of the system to be against them proves to be too much and they fail to appear before the court. This results in a default judgment being entered against them or a warrant for their arrest being issued. They are trapped in a judicial revolving door.

The SYLC will be staffed by an attorney who will screen cases and assign them to volunteer attorneys who practice the particular type of law needed. The volunteer attorneys will then advocate for the youth and guide them through the court system until the resolution of the legal matter whenever possible.

SYLC has an advisory board managing decisions and financial allocation. SYLC has received grants from the Family Law Section, Juvenile Law Section, and Utah Bar Foundation. We are seeking additional funding to support the clinic and provide the youth with the chance they need to overcome the barriers standing before them. The minimum amount of funding we need for 2016 is near $10,000.

SYLC will be working with the Division of Child and Family Services to assist youth aging out of the foster care system, who many times spend six months or more living on the streets due to the lack of any family support and mistrust of the system. Juvenile Justice Services is another agency we hope to join forces with to assist youth charged with crimes in the Juvenile Court and aging out. We will also work with Salt Lake City Justice Court where Judge John Baxter runs a homeless court designed to address the needs specific to this population. Ideally, a positive relationship will also develop between the SYLC and the district courts.

Most importantly, we are calling upon the legal community to volunteer to take cases giving these youth access to the judicial system. Most of the youth are suspicious and believe the worst about the judicial system and those involved in it. This is our opportunity to change that belief.

Our skills as compassionate advocates will be challenged as our clients struggle through mental health issues, trauma, and substance abuse while we stand at their side before the courts and opposing parties fulfilling our duty to provide access to the courts for the underprivileged members of our community. Attorneys who choose to become an advocate for this vulnerable population will be able to watch the transformation as the youth grow and realize their potential to become whatever vision they hold in their heart.

To add your name to the growing list of volunteer attorneys or make any inquires, contact Nicole Lowe at Nicole.sylc@gmail.com. To make a donation to support the Street Youth Legal Clinic, go to www.voaut.org/home4teens, click on the Donate to Legal to guarantee your donation goes to help youth overcome their legal barriers. Thank you in advance for your generosity with your resources.

Appellate Highlights

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

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

***Cordova v. City of Albuquerque*, —F.3d—, 2016 WL 873347 (10th Cir. Mar. 8, 2016)**

Plaintiff pursued § 1983 claims for malicious prosecution, excessive force, and interference with the right of familial association. Discussing the malicious prosecution claim, the Tenth Circuit held that **dismissal of an underlying case on speedy trial grounds after five years of delay was not a favorable termination sufficient to support a claim for malicious prosecution,** where the circumstances surrounding dismissal were not indicative of the party's innocence. Separately, the Tenth Circuit affirmed summary judgment on the familial association claim, holding that no constitutional violation occurred, where officers imposed a blanket restriction on visitors and plaintiff failed to present sufficient evidence that the officers intended to interfere with a protected relationship.

***Tripodi v. Welch*, 810 F.3d 761 (10th Cir. Jan. 13, 2016)**

The Tenth Circuit affirmed the district court's finding that a **default judgment against the plaintiff was not dischargeable in bankruptcy because it fell within 11 U.S.C. § 523(a)(19), which renders debts nondischargeable when they arise in connection with a violation of state or federal securities law.** In doing so, the Tenth Circuit Court rejected the plaintiff's argument that it should extend the principle that default judgments generally are not given preclusive effect in bankruptcy to Section 523(a)(19). That section "sought to close '[t]his loophole in the law' and 'hold accountable those who violate securities laws after a government unit or private suit results in a judgment or settlement against the wrongdoer.'" *Id*. at 767 (citation omitted).

***Q-2 L.L.C. v. Hughes*, 2016 UT 8 (Feb. 16, 2016)**

The Utah Supreme Court reaffirmed the implication of its prior decisions regarding how and when a party acquires title under the doctrine of boundary by acquiescence and expressly held that the doctrine confers title by operation of law at the time the elements of the doctrine are satisfied. **A judicial adjudication of a boundary by acquiescence does not grant title but merely recognizes the title that has already vested.**

***Judge v. Saltz Plastic Surgery, P.C.*, 2016 UT 7 (Feb. 4, 2016)**

In the underlying case, a patient sued her plastic surgeon for publication of private facts and other claims when pre- and post-operative photographs of her were aired on the evening news. The Utah Supreme Court **adopted a new element from section 652D(b) of the Restatement (Second) of Torts, which requires a plaintiff suing for publication of private facts to show that the matter publicized is not of legitimate concern to the public.** This element is normally a jury question if reasonable minds can differ concerning the newsworthiness of the information. The court affirmed the Utah Court of Appeals' decision reversing summary judgment that was granted to the plastic surgeon, concluding that there were disputed issues of fact over the public interest in viewing the photographs.

***Royal Consulate of the Kingdom of Saudi Arabia v. Pullan*, 2016 UT 5 (Jan. 15, 2016)**

A Saudi national was arrested and charged with rape. The Royal Consulate of Saudi Arabia posted $100,000 bail. Shortly after, the defendant was detained trying to cross the border into Tijuana, Mexico. The court ordered bail forfeited. The defendant

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

was extradited to Utah and moved to set aside the forfeiture, arguing, in part, that the Consulate was entitled to notice as a surety. The Consulate appealed on the basis that it was a surety and was entitled to notice. The Utah Supreme Court held **the Consulate was not a surety for the purposes of Utah Code section 77-20-4(1)(b).**

State v. McNeil, 2016 UT 3, 671 P.3d 699 (Jan. 6, 2016)

The petitioner was convicted of assault based on testimony about phone records admitted at trial through the declaration of a dead detective. The petitioner appealed the conviction on the grounds of plain error and ineffective assistance of counsel because his counsel initially objected that the testimony about the records was hearsay but withdrew the objection when the judge told him it was not. The Utah Supreme Court held that **defense counsel's withdrawal of the objection and acquiescence with the trial court's statement that the testimony was not hearsay was not invited error.** Instead, it was merely a failure to preserve the objection and remained subject to plain error review. Nonetheless, the court found that the defendant was not prejudiced by the error and affirmed the conviction because it concluded that the phone records would have been admitted at trial by other means if the hearsay objection had been sustained.

Wilson v. Educators Mut. Ins. Ass'n, 2016 UT App 38 (Feb. 25, 2016)

In what appears to be a matter of first impression, the Utah Court of Appeals held that **an insurance company does not have standing to bring a subrogation action in its own name.** Any such action must be brought in the name of its insured or its insured's estate.

Reynolds v. Gentry Fin. Corp. & Royal Mgmt., 2016 UT App 35 (Feb. 19, 2016)

In this employment dispute, the district court held that the plaintiff's discharge was not unlawful because she was an at-will employee. The Utah Court of Appeals reversed, holding (1) **the**

company's employee manuals created a triable issue of fact whether it "intended to be contractually bound by its repeated statements that no employee would be terminated for submitting a complaint or grievance," *id.* ¶ 16 (emphasis added), and (2) the district court erred in holding the parol evidence rule barred the plaintiff's efforts to rely on the employee manual as having created an implied-in-fact contract because **the manual could be offered to show that the parties modified the at-will employment after the plaintiff signed her employment agreement.**

Robinson v. Jones Waldo Holbrook & McDonough, PC, 2016 UT App 34 (Feb. 19, 2016)

The district court granted summary judgment in favor of defendant law firm in this malpractice action. Plaintiff attempted to oppose the motion by seeking additional time under Utah Rule of Civil Procedure 56(d). Affirming the lower court's decision, the Utah Court of Appeals held that **the district court did not abuse its discretion in denying plaintiff's request for time, where plaintiff failed to "explain what facts would likely be uncovered by further discovery"** *id.* ¶ 20 (emphasis added), **or discuss whether there had been adequate opportunities and a conscientious effort by the party for pursuing discovery.**

Robinson v. Robinson, 2016 UT App 33 (Feb. 19, 2016)

Parallel to the parties' divorce proceeding, husband sued wife and third parties for fraud, breach of fiduciary duty, and civil conspiracy. The district court granted defendants' motion to dismiss and motion for summary judgment. The Utah Court of Appeals affirmed. The decision touches on fraud claims in post-divorce actions, the standard for pleading fraud with particularity, and the applicable statute of limitations. Of interesting note, husband argued his wife owed him a fiduciary duty, because she provided accounting services. The appellate court disagreed. **Assuming without deciding whether a fiduciary relationship can arise in a marriage, the Utah Court of Appeals applied the traditional test and held husband failed to state a claim for breach of fiduciary duty, where his complaint only alleged wife provided accounting services, "they acted as partners,"** *id.* ¶ 45 (emphasis added), **and "Husband did not allege that he had reposed his trust in Wife's skill and integrity,"** *id.* (emphasis added).

Asset Acceptance LLC v. Utah State Treasurer, 2016 UT App 25 (Feb. 4, 2016)

The Utah Court of Appeals affirmed the district court's order **quashing a writ of garnishment against the Utah Unclaimed Property Division to obtain property held by the division but purportedly belonging to the debtor, holding that it was barred by the Utah Governmental Immunity Act.** The court went on to explain that the proper way for appellant to access the unclaimed property was to file an administrative claim with the division.

Belnap v. Graham, 2016 UT App 14, 366 P.3d 852 (Jan. 22, 2016)

This decision, affirming the district court's grant of summary judgment to a physician in a wrongful death case, discusses several hearsay exceptions, and illustrates the interplay between the hearsay rule and a plaintiff's burden at the summary judgment stage. Among other things, the Utah Court of Appeals held **that a party seeking to create an issue of fact based on the absence of a record under Utah Rule of Evidence 803(7) must lay adequate foundation under Utah Rule of Evidence 803(6)** as to actual record-keeping practices.

State v. Dozah, 2016 UT App 13 (Jan. 22, 2016)

Defendant was charged with and convicted of aggravated assault, among other crimes, following a gruesome night of abuse the victim endured partly at defendant's hands. The abuse ended with defendant leaving victim at the side of a rural road in the cold with very little clothing. The jury was instructed as to the elements of aggravated assault, but during deliberations, the jury sent a note to the court asking whether leaving the victim at the road side constituted aggravated assault. The court referred the jury back to the instructions and further directed "[i]t is for the jury to decide" whether leaving the victim at the roadside constituted aggravated assault. *Id.* ¶ 24. The jury convicted defendant of aggravated assault. Defendant appealed on the basis that the jury may have confused the court's instruction that it was to decide whether leaving the victim at the roadside substituted the required elements of aggravated assault, thereby misstating the law. The Utah Court of Appeals held that

> **it is reasonably possible that the jury interpreted the court's response as a new**

> **instruction, despite the court's apparent intent to simply refer the jury back to the earlier instructions (which would normally be prudent), and [. . .] the new instruction had the potential to confuse the jury in a way that misstated the law,**

id. ¶ 29 (emphasis added), and vacated and remanded the conviction.

Utah Alunite Corp. v. Jones, 2016 UT App 11, 366 P.3d 901 (Jan. 22, 2016)

Utah Alunite Corporation and the School and Institutional Trust Lands Administration (SITLA) appealed the district court's dismissal of their petition for judicial review from an order of the State Engineer on a different entity's application to appropriate water. Utah Alunite and SITLA were not parties to the informal adjudication on the application and had not exhausted their administrative remedies. On appeal, the Utah Court of Appeals rejected Utah Alunite and SITLA's argument that under Utah Code section 73-3-14, they need only be "persons aggrieved" to seek judicial review. That section further requires the person to comply with Utah's Administrative Procedures Act, which limits the availability of judicial review to a "party aggrieved." **Thus, to obtain judicial review of an order of the State Engineer, the petitioner must not only be aggrieved by the order, but must also have been a party to the proceeding sought to be reviewed.** Because neither Utah Alunite nor SITLA was a party to the proceedings before the State Engineer on the application they sought to have reviewed, the court dismissed the appeal for lack of jurisdiction.

W. Valley City v. Kent, 2016 UT App 8, 366 P.3d 415 (Jan. 14, 2016)

The City appealed the district court's exclusion of the victim's preliminary hearing testimony at trial. After the preliminary hearing, the district court had received two letters purportedly written by the victim in which she stated that she wanted to withdraw her prior statements, had made false accusations, and wanted the charges dropped. On appeal, the Utah Court of Appeals held that **the district court abused its discretion in (1) relying solely on the differences between a preliminary hearing and trial to conclude the defendant did not have the same motive to cross-examine the victim and (2) ruling that the intervening letters made the preliminary hearing testimony inadmissible without considering the factors set out in *State v. Menzies*, 889 P.2d 383 (Utah 1994).**

State v. McCallie, 2016 UT App 4 (Jan. 7, 2016)

The Utah Court of Appeals affirmed the district court's denial of a mistrial, holding that even though the prosecution committed constitutional error by commenting on the defendant's silence, that error was harmless. In holding that there was error, the Utah Court of Appeals rejected the state's argument that the prosecutor did not commit constitutional error because he merely commented on the defendant's statements that he did not know what had happened during the interrogation and did not comment on the defendant's actual silence. Applying two United States Supreme Court cases, the Utah Court of Appeals held that **it was appropriate to analyze the prosecutor's comments as if the defendant had remained silent because the defendant's statements were "post-arrest statements about [his] involvement in the interrogation itself"** *id.* ¶ 21 (emphasis added), **as compared to statements about involvement in the crime.** *Id.* ¶ 21. Under this analysis the prosecutor committed error by commenting on the defendant's "silence."

State v. Ainsworth, 2016 UT App 2 (Jan. 7, 2016)

While driving with methamphetamine in his system, defendant collided with another vehicle, resulting in serious injuries to two adults and the death of their eighteen-month-old child. The state charged defendant with three second-degree felonies under Utah's Measurable Amount Statute. At the district court and on appeal, defendant argued the statute violated his rights under uniform operations of law provision of the Utah Constitution. The Utah Court of Appeals held **the Measurable Amount Statute was unconstitutional because there appeared to be no rational basis for treating individuals with a measurable amount of an illegal substance more harshly than individuals who drove under the influence of an incapacitating amount.**

Could Our "Ethics" Actually Be Illegal?

by Keith A. Call

In an eye-popping decision, the United States Supreme Court recently held that a state board of dental examiners, dominated by practicing dentists, was subject to Federal Trade Commission antitrust enforcement because it sought to prevent non-dentists from offering teeth-whitening services. The Court stated that a non-sovereign actor controlled by "market participants," such as the dental board in question, will enjoy "state action" immunity from antitrust laws only if the "State" has articulated a clear policy to allow the anticompetitive conduct and only if the "State" provides active supervision of the anticompetitive conduct. *N. Carolina State Bd. of Dental Exam'rs v. Fed. Trade Comm'n*, 135 S.Ct. 1101 (2015).

> *"[O]ne could ask whether rules and regulations prohibiting the unauthorized practice of law are protecting consumers, or whether they are really protecting lawyers."*

This decision highlights the tension between a desire to protect consumers of professional services and a desire to protect against competition from outsiders to the particular industry. The Supreme Court's opinion clearly reveals a concern that the dentists involved in that case may have been more interested in protecting their own business turf than protecting the public from real harm. Translating this to the legal profession, one could ask whether rules and regulations prohibiting the unauthorized practice of law are protecting consumers, or whether they are really protecting lawyers.

In fact, the *Dental Examiners* case has already been used as a sword against lawyers. Shortly after the *Dental Examiners* case was issued, LegalZoom sued the North Carolina State Bar. In its complaint, LegalZoom alleged that the "North Carolina State Bar, by and through its agents and Council members, has engaged in unsupervised anticompetitive activity under the guise of regulating the 'unauthorized practice of law.'" *LegalZoom.com, Inc. v. N. Carolina State Bar, et al.*, No. 1:15-CV-439 (M.D.N.C.). The complaint sought over $10 million in damages. *See id.* (seeking damages and injunctive relief). That case resulted in a consent decree that allows LegalZoom to provide certain types of legal services in North Carolina, subject to certain consumer protection measures.

Three consumer groups have reportedly asked all state attorneys general to investigate various state licensing boards for compliance with *Dental Examiners*. *See* Debra Cassens Weiss, *State Bars May Be Affected by SCOTUS Antitrust Case*, ABA Journal, May 12, 2015, *available at* http://www.abajournal.com/news/article/state_bars_may_be_affected_by_scotus_antitrust_case_public_interest_groups (last visited March 31, 2016). That letter is specifically critical of the legal profession. It refers to state bar boards and commissions as part of a "tribal grouping" that is allowed to "carve out momentous exceptions from federal antitrust law." *See* Letter from Robert C. Fellmeth, et al. to State Attorneys General (May 4, 2015), pp. 4–5, n.3, *available at* http://pdfserver.amlaw.com/nlj/licensing.pdf (last

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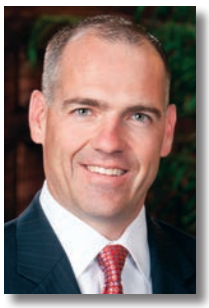

viewed March 31, 2016).

Other state bars have taken note. The Washington State Bar suspended its ethics committee's authority to issue ethics advisory opinions that might be construed as limiting competition in the legal services market. *See* Samson Habte, *Washington Bar Suspends Ethics Opinions, Cites Antitrust Fears*, ABA BNA Law. Man. Prof.l Conduct, *available at* http://www.bna.com/washington-bar-suspends-n57982065288 (last viewed March 31, 2016).

Lawyers in Utah, especially those responsible for regulating the Bar and the practice of law, should take note of this decision, and study it carefully. The *Dental Examiner's* decision opens many new questions about how regulatory agencies may function. As Justice Samuel Alito pointed out in a dissent joined by two other Justices, the Court may have "headed into a morass" because the majority decision "will spawn confusion." *N. Carolina State Bd. of Dental Exam'rs v. Fed. Trade Comm'n*, 135 S.Ct. 1101, 1118 (2015). The dissenters raise numerous difficult questions, and resign to the fact that "this will [all have to] be worked out by the lower courts." *Id*. at 1123. At a very fundamental level, difficult questions include: "What constitutes a clearly articulated state policy against anticompetitive conduct?" and "What constitutes active supervision by a sovereign state agency?"

This should be a matter of interest to all members of the Utah Bar. We must work together to make sure we appropriately protect the interests of consumers, while also assuring we do not run afoul of the *Dental Examiners* decision.

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

Franchise & Business Law

by C. Christian Thompson

There are a number of important elements of trade secret law. An attorney advising a client regarding its trade secrets must understand the following: (1) what constitutes a trade secret; (2) what to do if a third party misappropriates a client's trade secret; and (3) what steps to take to protect a client's trade secret. Each of these components will be discussed below.

What is a trade secret?

The Utah Uniform Trade Secrets Acts defines a "Trade Secret" as:

> information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Utah Code Ann. § 13-24-2(4). Utah has adopted the same definition as the federal Uniform Trade Secrets Act (UTSA).

In summary, a trade secret is a proprietor's confidential bundle of nonpublic information that gives the proprietor a commercial advantage in the marketplace. *See* David Gurnick and James R. Sims III, *The Other IP: Hot Topics in Trade Secrets, Copyrights and Patents*, ABA 33rd Annual Forum on Franchising, October 2010, W-14. Trade secrets are often the most valuable asset of a business and those businesses often go to great lengths to protect that information. Two such examples are Coca-Cola and KFC.

Coca-Cola

> The complete formula for Coca-Cola is one of the best-kept trade secrets in the world. Although most of the ingredients are public knowledge…the ingredient that gives Coca-Cola its distinctive taste is a secret combination of flavoring oils and ingredients known as "Merchandise 7X." The formula for Merchandise 7X has been tightly guarded since Coca-Cola was first invented and is known by only two persons within The Coca-Cola Company. The only written record of the secret formula is kept in a security vault at the Trust Company Bank in Atlanta, Georgia, which can only be opened upon a resolution from the Company's Board of Directors.
>
> …
>
> It is the Company's policy that only two persons in the Company shall know the formula at any one time, and that only those persons may oversee the actual preparation of Merchandise 7X. The Company refuses to allow the identity of those persons to be disclosed or to allow those persons to fly on the same airplane at the same time.

See Hot Topics at 8–9, (citing *Coca-Cola Bottling Co. of Shreveport, Inc. v. Coca-Cola Co.*, 107 F.R.D. 288, 289 (D.Del. 1985) (noting "the complete formula for Coca-Cola is one of the best-kept trade secrets in the world").

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> **KFC**
>
> To protect the secrecy of the composition of KFC Seasoning, KFC has designed a blending system for making the seasoning. With permission from KFC, one part of KFC Seasoning recipe is blended by [John W. Sexton Co.] and another part is blended by [Stange Co.] Neither company has knowledge of the complete formulation of KFC Seasoning nor of the other's specific activities in the production of the other's part of the product. Both companies have entered into secrecy agreements with KFC, binding them to maintain the confidentiality of that portion of the KFC Seasoning formula to which each is privy. KFC's relationship with both Sexton and Stange has existed for more than 25 years. No other companies are licensed to blend KFC Seasoning.
>
> After KFC Seasoning is blended by Sexton and Stange, it is then mixed together and sold directly by Stange to all KFC retail operators and to distributors acting on behalf of KFC retail operators.

See id. at 9 (alterations in original) (citing *KFC Corp. v. Marion-Kay Co*., 620 F. Supp.1160 (S.D. Ind. 1985)).

Although Coca-Cola and KFC go to extreme lengths to protect their trade secrets, the Utah Trade Secret Protection Act only requires that the holder of a trade secret take efforts "that are reasonable under the circumstances to maintain its secrecy." Utah Code Ann. § 13-24-2(4). Therefore, clients should take comfort that although they must take efforts to protect their trade secrets, they need not take the same measures as Coca-Cola and KFC to do so.

Trade Secret Misappropriation

A plaintiff alleging a misappropriation of trade secret must prove three elements: (1) the existence of a trade secret; (2) the use or communication of the trade secret (which may be circumstantial) under an express or implied agreement limiting disclosure of the secret, or by a person who obtained it by improper means; and (3) the defendant's use of the secret that injures the proponent. *See CDC Restoration & Constr. v. Tradesmen Contractors*, 2012 UT App 60, ¶ 15, 274 P.3d 317 (citing *Water & Energy Sys. Tech., Inc. v. Keil*, 1999 UT 16 ¶ 9, 974 P.2d 821).

This section will discuss three recent Utah cases that help us to understand the elements of a claim for trade secret misappropriation. Based on the various rulings, it is important to understand the nuances of what can be considered a trade secret, the damages available for trade secret misappropriation, and the pre-emption rules of the Utah Uniform Trade Secrets Act.

Determination of Trade Secret Misappropriation

In *Medspring Group, Inc. v. Feng*, 368 F. Supp. 2d 1270 (D. Utah 2005), the plaintiff, MedSprings Group, Inc., a medical device company in Bountiful, Utah, (MedSprings) contracted Vicky Feng (Feng) to assist in obtaining investors for MedSprings for the company's special gauze devices S-99 and S-100 that sped up the coagulation of blood and then dissolved. *Feng*, 368 F. Supp. 2d at 1273. At the time Feng contracted with MedSprings, she did not have prior knowledge of medical devices, and she signed a three-year non-disclosure agreement (NDA) with MedSprings by which she agreed not to disclose MedSprings's confidential information and trade secrets. *See id*. at 1272. After three months, Feng terminated her agreement with MedSprings

and started her own competing company. *See id*. at 1275. Feng later created a competing product called BloodSTOP, and registered that device for FDA approval. *See id*. Feng also solicited and did business with a number of MedSprings's same customers. *Id*. MedSprings filed for injunctive relief, and the matter was pleaded before federal court. *See id*. at 1273.

MedSprings alleged that Feng had misappropriated its trade secrets, violated the terms of the non-disclosure agreement, or both and that it would be irreparably harmed should an injunction not be granted. MedSprings did not dispute that Feng had a right to sell competing products but alleged misappropriation of three of MedSprings's trade secrets: (a) MedSprings's method of completing the requirements imposed by the United States Food and Drug Administration (FDA) for registering a medical device; (b) MedSprings's method of marketing its S-99 and S-100 gauze to smaller non-traditional buyers; and (c) the identity of MedSprings's customers. *See id*. at 1276–75.

Despite Feng's unfamiliarity with MedSprings's medical devices prior to contracting with MedSprings, her terminating her contract to directly compete with MedSprings, and despite the fact that she signed an NDA, the court denied issuing an injunction and determined that Feng's conduct was not in violation of her non-disclosure agreement and did not constitute a misappropriation of MedSprings's trade secrets. *See id*. at 1280.

First, the court determined that MedSprings's method of completing the requirements imposed by the FDA for registering a medical device was not a trade secret because the FDA posts the application process of obtaining FDA approval on its website and because Feng had hired an independent specialist with his own knowledge of the FDA registration process to assist her. *See id*. at 1277. The court noted that a trade secret "'should not be in the public domain.'" *See id*. (quoting *Microbiological Research Corp. v. Muna*, 625 P.2d 690, 696 (Utah 1981)).

Second, the court found that MedSprings's method of marketing its S-99 and S-100 gauze to smaller non-traditional buyers was not a trade secret because: (1) although Feng was unaware of this marketing method prior to her contract with MedSprings, it was a widely known marketing technique within the industry and, therefore, not a trade secret; and (2) MedSpring's representatives disclosed its marketing technique to Feng's boyfriend, who was trying to start a business selling hospital beds, demonstrating that MedSprings did not take reasonable efforts to keep its proprietary information secret. *See id*. at 1278.

Lastly, the court found that MedSprings's customer list did not constitute a trade secret because those customers could be found through a simple internet search or a search of a trade journal in the industry, and therefore, such information was "'readily ascertainable outside the employer's business.'" *See id*. at 1278 (quoting *Microbiological Research Corp*., 625 P.2d at 700).

Additionally, the court ruled that MedSprings likely would not prevail on its claim that Feng violated the terms of the non-disclosure agreement. *See id*. at 1279. Although the terms of the non-disclosure agreement provided broader protection than the Utah Trade Secrets Protection Act, the confidential information referenced in the non-disclosure agreement did not include information that (a) was developed independently by Feng, or (b) was or becomes public knowledge (other than by Feng's disclosure). *See id*. The court reasoned the information claimed by MedSprings to be its trade secret was information that Feng developed on her own, or that was public knowledge, and therefore, was not considered a trade secret under the Utah Uniform Trade Secrets Act. *See id*. at 1280.

In *CDC Restoration & Construction, LC v. Tradesmen Contractors, LLC*, 2012 UT App 60, 274 P.3d 317, the defendant brought various claims against a former employee and his business partner, including trade secret misappropriation. *Tradesmen*, 2012 UT App 60, ¶ 7. The two primary defendants were Kenneth Allen (Allen) and Paul Carsey (Carsey). *See id*., ¶¶ 1, 7. Allen was a twenty-eight-year employee of Kennecott and Carsey was a fifteen-year employee of a CDC Restoration & Construction, LC, a contractor company that primarily performed concrete and installation work for Kennecott (CDC). *See id*. ¶¶ 2–3. While still employed with their respective employers and unbeknownst to their employers, Allen and Carsey formed a new company, Tradesmen Contractors, LLC (Tradesmen), to compete with CDC and another company on a new project bid with Kennecott. *See id*. ¶ 3. Both Allen and Carsey were still employed with Kennecott and CDC respectively when the bids were submitted, and Carsey actually assisted in preparing the CDC bid. *See id*. ¶ 5. Kennecott awarded Tradesmen with the contract, and when CDC learned that Carsey had ownership in Tradesmen at the time the bids were submitted, CDC sued. *See*

id. ¶¶ 6–7. CDC alleged (1) misappropriation of trade secrets, (2) breach of fiduciary duty against Carsey; (3) intentional interference with prospective economic relations against Tradesmen, Allen and Carsey; and (4) civil conspiracy. *See id*.

CDC claimed that the defendants had misappropriated CDC's trade secrets (particularly CDC's labor and equipment rates) to compile the Tradesmen bid. *See id*. The court determined, however, that although a unique compilation of generally known information can be considered a trade secret, CDC's labor and equipment rates did not raise to the level of a trade secret. *See id*. ¶ 27.

In making its determination, the court looked to a 2010 Utah Supreme Court case, *USA Power, LLC v. PacifiCorp*, 2010 UT 31, 235 P.3d 749, in which that court laid out six non-exclusive factors to help determine if a compilation of public information can be considered a trade secret. *See Tradesmen*, 2012 UT App 60, ¶ 18 (quoting *USA Power*, 2010 UT 31, ¶ 45). The USA Power court noted that the list is non-exclusive and it requires a fact-intensive analysis to determine whether a compilation can be considered a trade secret. *See USA Power*, 2010 UT 31, ¶ 45.

The six factors are:

> "(1) the extent to which the information is known outside of the business; (2) the extent to which it is known by employees and others involved in its business; (3) the extent of measures taken by the business to guard the secrecy of its information; (4) the value of the information to the business and its competitors; (5) the amount of effort or money expended by the business in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others."

Id. (quoting Restatement of Torts 1939 § 757 cmt. B (1939)).

In reviewing these six factors, the court in *Tradesmen* stated that CDC provided no evidence that its labor and equipment rates could not be easily duplicated by others within the industry (factor six), or that it required great time or financial investment to develop (factor five). *See Tradesmen*, 2012 UT App 60, ¶ 20. Additionally, the court noted that CDC did not require Carsey to sign a confidentiality agreement, demonstrating that CDC did not take reasonable measures to guard the secrecy of the information (factor 3). *See id*. ¶ 3.

The court pointed to examples of other compilations and when those compilations were found or not found to be trade secrets. For example, a customer list was determined to be a trade secret because it took ten years and great expense to the company to develop. *See id*. ¶ 20 (citing *Hammerton, Inc. v. Heisterman*, No. 2:06-CV-00806 TS, 2008 U.S. Dist. LEXIS 38036, 2008 WL 2004327, at *8 (D. Utah May 9, 2008)). However, customer lists, pricing lists, processes, etc., will not be considered a trade secret if the customers or other information can be obtained through simple means such as an internet search or review of a trade journal. *See id*. ¶ 26 (citing *Microbiological Research Corp. v. Muna*, 625 P.2d 690, 700 (Utah 1981)); *see also Medsprings Grp., Inc. v. Feng*, 368 F. Supp. 2d 1270 (D. Utah 2005) (noting that to maintain trade secret status, the customer list cannot be readily ascertainable outside an employer's business).

It is worth noting that it is important for a client to track the amount of time, effort and resources expended in creating a compilation of public information that it wishes to designate as

a trade secret. In *Tradesmen*, the court did not feel that CDC's testimony that it took "years" of experience to develop its labor and equipment rates information was specific enough. *See id*. ¶ 23

As for CDC's remaining claims of breach of fiduciary duty against Carsey; intentional interference with prospective economic relations against Tradesmen, Allen and Carsey; and civil conspiracy, those will be discussed in greater detail in the section below regarding preemption.

Damages for Trademark Misappropriation

In *Storagecraft Technology Corp. v. Kirby*, 744 F.3d 1183 (10th Cir. 2014), James Kirby (Kirby) a former employee of Storagecraft, a computer software company (Storagecraft), shared the company's primary source code with Storagecraft's competitor. *See Storagecraft*, 744 F.3d at 1185. Storagecraft sued and was awarded $2.92 Million by a jury trial for Kirby's misappropriation of Storagecraft's trade secret. *Id*. At issue on appeal was whether the damages awarded to Storagecraft at trial were appropriate because Kirby did not use the alleged trade secret for a commercial purpose. *See id*.

> *"[I]t is essential to include a non-competition agreement with non-disclosure/non-use agreements to prevent a former employee or contractor from using information that is not considered a trade secret against your client."*

The appeals court determined that the jury's award was permissible. *See id*. at 1190. The court noted that Utah's Uniform Trade Secrets Act provides for three possible measures of damages for the *disclosure or use* of a trade secret: (1) the defendant's unjust enrichment; (2) the plaintiff's actual loss; or (3) a reasonable royalty that would be set by a willing buyer and a willing seller for a license in the trade secret. *See id*. at 1185.

The court stated that calculating damages based on a reasonable royalty was appropriate because the other two possible measures of damages did not apply – Kirby was not enriched by the disclosure, and it was difficult to impossible to determine Storagecraft's actual loss. *See id*. at 1187. Furthermore, the court determined when one discloses a trade secret to a competitor, he in effect grants to that competitor an unrestricted license in that trade secret, and therefore, determining the value of that license to the plaintiff was an appropriate measure of damages. *See id*. at 1189–90.

Pre-emption of the Utah Uniform Trade Secrets Act

The Utah Trade Secrets Protection Act will pre-empt all claims that provide remedies based upon the misappropriation of a trade secret. *See* Utah Code Ann. § 13-24-8. This is true regardless of whether the information that has been allegedly misappropriated is actually a trade secret. *See CDC Restoration & Construction, LC v. Tradesmen Contractors, LLC*, 2012 UT App 60, ¶ 45, 274 P.3d 317. The reason being that a majority of the states follow that the UTSA provides for a single tort action under state law for the misappropriation of a trade secret, and Utah courts follow the majority view. *See id*. ¶¶ 36–45.

In *Tradesmen*, CDC unsuccessfully argued that its three remaining claims: breach of fiduciary duty; intentional interference with prospective economic relations; and civil conspiracy should not be pre-empted by the Utah Uniform Trade Secrets Act.

First, the court determined that Carsey's alleged breach of fiduciary duty, which was based on the same facts of trade secret misappropriation, and therefore, was pre-empted by the Utah Uniform Trade Secrets Act. *See id*. ¶ 52.

Second, the court determined that the claim for intentional interference with prospective economic relations was pre-empted because one of the elements of that claim, namely that the defendant used improper means to interfere with economic relations, was based on the same factual allegations of a trade secret misappropriation. *See id*. ¶¶ 54–57. The "improper means" was the misappropriation of a trade secret, and therefore, that claim was also pre-empted. *See id*. ¶ 55.

Lastly, the court ruled that the claim for civil conspiracy was pre-empted because again, one of the five elements of civil conspiracy, namely an unlawful or overt act, was based upon

misappropriation of a trade secret. *See id.* ¶¶ 58–59.

Nevertheless, not all claims based on the same factual allegation of a trade secret misappropriation will be pre-empted by the Utah Uniform Trade Secrets Act. There are three exceptions to this general rule: "(a) contractual remedies, whether or not based upon misappropriation of a trade secret; (b) other civil remedies that are not based upon misappropriation of a trade secret; or (c) criminal remedies, whether or not based upon misappropriation of a trade secret." *Id.* ¶ 37 (citing Utah Code Ann. § 13-24-8).

One important exception is the right to protect information contractually regardless of whether such information is a trade secret. Going back to the KFC example, most all franchises take measures to protect their trade secrets and confidential information, one common way being through non-disclosure/non-use agreements and non-competition agreements. Non-disclosure/non-use agreements provide broader protection than the Utah Uniform Trade Secrets Act. Therefore, it is essential to include a non-competition agreement with non-disclosure/non-use agreements to prevent a former employee or contractor from using information that is not considered a trade secret against your client.

Steps to Protect Your Client's Trade Secrets

(Some of these steps were taken from Gurnick, and Sims, *Hot Topics in Trade Secrets*, ABA 33rd Annual Forum on Franchising, October 2010, W-14.)

Limit Disclosure

Clients should limit the disclosure of their proprietary information to only those persons that need to know the information. This includes only giving portions of the operations manual to certain employees and creating password-protected access to online portions of the manuals. If the operations manual is in printed form, managers should be required to take protective measures, such as locking the operations manual in a safe each night. Additionally, the client should not let persons see proprietary information without signing a non-disclosure agreement, see "Confidentiality Agreements" below. By not doing so, the client could waive the confidentiality those items it wishes to maintain as a trade secret.

Mark it "Confidential"

Confidential information should be marked "Confidential." But clients should not mark everything confidential. If everything is marked confidential, it will dilute the credibility of what is actually confidential.

Assert what is a Trade Secret

The client should emphasize during the outset of the relationship with an employee or contractor, during the relationship and after the termination of the employment or other agreement, which items the client considers a trade secret.

Confidentiality Agreements

A client should enter into non-disclosure/non-use agreements and non-competition agreements with its employees, vendors, contractors, and any other consultants or agents of the client. Having a non-compete agreement tied to a non-disclosure/non-use agreement helps to protect information that is not considered a trade secret, and likewise, having a confidentiality agreement tied with a non-compete helps to later enforce the non-compete. The law sometimes disfavors enforcement of restrictive covenant as conflicting with public policy, but the existence of a trade secret claim will boost the client's position in the enforcement of that restrictive covenant.

Clients Should Perform Internal Trade Secret Audits

Clients should perform trade secret audits to inventory what trade secrets they own, what steps they are taking to protect those trade secrets, and the effectiveness of those steps. Doing so will help see what holes exist in protecting the client's trade secrets and will provide evidence that the client has taken reasonable steps to protect its trade secrets.

Conclusion

In conclusion, an attorney should always emphasize to its clients the importance of monitoring and protecting the client's trade secrets. Although clients do not have to take extreme measures to protect their trade secrets, reasonable measures must be taken. This includes having employees, vendors and contractors sign non-disclosure/non-use agreements and non-competition agreements, limiting disclosure, and performing trade secret audits. Doing so may help to prevent others from misappropriating the client's trade secrets, and will help enforce a client's rights if a misappropriation of trade secrets occurs.

President-Elect and Bar Commission Election Results

Congratulations to **John Lund** on his retention election as President-elect of the Bar. He will serve as President-elect for the 2016–2017 year and then become President for 2017–2018. Congratulations also go to **John Bradley** who was elected in the Second Division as well as **Grace Acosta**, **Cara Tangaro**, and **Heather Thuet** who were elected in the Third Division. Sincere appreciation goes to all of the candidates for their great campaigns and thoughtful involvement in the Bar and the profession.

John Lund, President-Elect

John Bradley
Second Division

S. Grace Acosta
Third Division

Cara Tangaro
Third Division

Heather Thuet
Third Division

MCLE Reminder – Even Year Reporting Cycle

July 1, 2014–June 30, 2016

Active Status Lawyers complying in 2016 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, Hannah Roberts, MCLE Assistant at hannah.roberts@utahbar.org or 801-297-7052, or Laura Eldredge, MCLE Assistant at laura.eldredge@utahbar.org or 801-297-7034.

2016 Fall Forum Awards

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

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

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

Commission Highlights

The Utah State Bar Board of Commissioners received the following reports and took the actions indicated during the March 10, 2016, Commission Meeting held at the Dixie Center in St. George, Utah.

1. Bar Commissioners approved a new policy to allow lawyers to opt out of providing a public address.

2. Bar Commissioners approved the formal adoption of current Bar policy of charging a single $200 late fee to a lawyer who is suspended for both failure to pay licensing fees and for failure to comply with MCLE requirements.

3. Bar Commissioners agreed to have Bar staff draft an administrative reinstatement policy for lawyers who fail to pay any fees for three years or more.

4. Bar Commissioners approved the formal adoption of current Bar policy of not allowing lawyers to opt out of receiving emails from the Bar.

5. Bar Commissioners approved the formation of an Indian Law Section.

6. Bar Commissioners approved a new ABA YLD delegate from the Bar.

7. Bar Commissioners approved a $1,000 sponsorship for the Paralegal Division 20th anniversary celebration.

8. Bar Commissioners approved a policy requiring attendees at all CLE events to pre-pay or pay at the door and to add all current past due fees on license renewal.

9. Bar Commissioners agreed to prepare a list of decision items for the new Lawyer Referral Directory for the Commission to vote on at the next meeting.

10. Bar Commissioners agreed to investigate and prepare a report on the ABA YLD electronic job board.

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

Pro Bono Honor Roll

2nd District ORS Calendar
Jake Cowdin
Lauren Schultz

3rd District ORS Calendar
Michael Erickson
A.J. Green
Scott Hagen
Bryant McConkie
Mark Pugsley
Robert Rice
Michael Spence
Liesel Stevens

Adoption Case
J. Taylor Martin
Ralph Petty

Bankruptcy Case
Scott Blotter
David Cook
Ted Cundick
Will Morrison
Michael Park
Andrew Stagg

Community Legal Clinic:
Skyler Anderson
Joel Ban
Heath Becker
Jonny Benson
Todd Jenson
Jacob Kent
Travis Marker
Chad McKay
Bryan Pitt
Francisco Roman
Brian Rothschild
Greg Sanders
Paul Simmons
Michael Studebaker
Brian Tanner
Ian Wang
Russell Yauney

Debt Collection Calendar
David P. Billings
T. Richard Davis
Grant Gilmore
David J. Langeland
M. Covey Morris
Charles A. Stormont
Steven A. Tingey

Debtor's Legal Clinic
Tyler Needham
Brian Rothschild

Estate Planning Case
Walter C. Bornemeier

Expungement Law Clinic
Kate Conyers
Sue Crismon
Amy Fowler
Stephanie Miya
Bill Scarber
Cliff Venable

Family Law Case
Chris Beins
Cory Caldwell
Derek Conver
Thomas Gilchrist
Jordan Haycock
Adam Hensley
Kristi Howard
Scott W. Lee
Taylor Martin
Ken McCabe
Meghann Mills
C.B. Misbach
Nathanael Mitchell
Malone Molgard
Tommy Pedersen
Charles L. Perschon
Peter Richins
Zacchary Sayer
Diana Schaffer
Chris Schmidt
Wiley Willden
Cristina S. Wood

Family Law Clinic
Justin Ashworth
Steven Baeder
Zal Dez
Carolyn Morrow
Trent Nelson
Rachel Peirce
Stewart Ralphs
Bradley Schofield
Linda F. Smith
Sheri Throop
Morgan Vedejs

Guardianship Case
Jamis Gardner
Jennifer Lee

Landlord Tenant Case
Robert Anderson
Chris Hogle
Ken McCabe

Military Service Order Case
Jacob Smith

Minor Guardianship Case
Meghann Mills

Post-Conviction Case
Brian Jackson
Robb Jones

Probate Case
Kyle Adams
Richard S Brown
Celeste C. Canning
William Fontenot
Dave Hatch
Allen McNeil
Jonathon Miller
Brook Sessions
Joseph Taggart

Public Benefits Case
Richard Mahrle
Sam Pappas

Rainbow Law Clinic
Jessica Couser
Russell Evans
Stewart Ralphs

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

Street Law Clinic
Jennifer Bogart
Nathan Bracken
Dara Cohen
Kate Conyers
Sue Crismon
Jeff Gittins
Matt Harrison
Brett Hastings
Stephen Henriod
John Macfarlane
Tyler Needham
Elliot Scruggs
Katy Steffey
Jonathan Thorne
Brent Wamsley
Ted Weckel

Tuesday Night Bar
James L. Ahlstrom
Mike Anderson
Jeffery Balls
Mike Black
Lyndon Bradshaw
Josh Chandler
Tory Christensen
Rita Cornish
Megan DePaulis
Joshua Figueira
Craig Frame
Ruth Hackford-Peer
Chris Hadley
Carlyle Harris
Chris Hogle
Megan Houdeshel
Katie James
Derek Kearl
David Kelley
Ken Logsdon
Romaine Marshall
Gene Masters
Grace Pusavat
Dayne Skinner
Jason Steiert
Chris Stout
Jeff Trousdale
Chris Wade
Ryan Wallace
Adam Weinacker

A special thank you to the attorneys who have volunteered over the last year at the Family Law Pro Se Calendar

Kyle Adams
Dart Adamson
Dean Andreason
Mark Andrus
Chris Ault
Melissa Bean
Paige Bigelow
Daniel Black
Hailey Black
Kevin Bond
Harry Caston
Brent Chipman
Michelle Christensen
Chase Clark
Jill Coil
Kent Cottam
Sharon Donovan
Taryn Evans
Seth Floyd
Stewart Golan
Jonathon Good
Ryan Gregerson
Jared Hales
Lincoln Harris
Jenna Hatch
Danielle Hawkes
Joseph Hinckley
James Hunnicutt
Dixie Jackson
Bart Johnson
Michael Judd
Katherine Kang
Michelle Kennedy
Jay Kessler
Kelli Larson
Patricia Latulippe
Jeanne Marshall
Michelle McCully
James McPhie
Russ Minas
Carolyn Morrow
Holly Nelson
Lori Nelson
Jesse Oakeson
Marty Olsen
Albert Pranno
Robert Pusey
Kris Rogers
Chase Romney
Julie Sagers
Brent Salazar Hall
Nicole Salazar
Alison Satterly
John Scheaffer
Milda Schibonis
Linda Smith
Paul Smith
Sam Sorenson
Chad Steur
Preston Stieff
Benjamin Stoneman
Virginia Sudbury
Landon Sullivan
Nate Sumbot
Heather Tanana
Lindsey Teasdale
Diana Tefler
Leja Thompson
Sheri Throop
Staci Visser
Sherrie Walton
David R. Ward
Orson West
Russell Yauney

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

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.

Nomination forms and additional information are available by contacting Heather Allen at heather.allen@1800contacts.com.

The deadline for nominations is April 28, 2016. The award will be presented at the Paralegal Day Celebration held on May 19, 2016.

Annual Paralegal Day Luncheon

FOR ALL PARALEGALS AND THEIR SUPERVISING ATTORNEYS

Speaker: Tim Shea

May 19, 2016 | Noon to 1:00 pm

Joseph Smith Memorial Building
15 East South Temple | SLC, UT 84150

1 Hour Ethics/Civility Credit

To Register: Email RSVP to: sections@utahbar.org

Utah Minority Bar Association's Community Donation Competition

Participate in the Utah Minority Bar Association's annual community donation competition, this year benefiting The Sharing Place, an organization with nearly two decades of providing grief support to children ages 3½ to 18 and their parents. The Sharing Place is a 501(c)(3) non-profit that provides grief support groups in a comfortable home-like setting and also provides grief groups in 7 schools in Salt Lake County. The competition will take place from June 1–15, 2016, and the winner of the fundraiser will be announced at UMBA's Juneteenth event on June 16. All firms are invited to join the competition; email Kate Conyers at kconyers@sllda.com for more details.

Courthouse Steps Legal Clinic

The Utah State Bar is currently recruiting Utah lawyers to participate in a Bar sponsored, paid legal clinic called Courthouse Steps. Attorneys will charge a flat fee of $100 for one hour of legal advice, document review, and document preparation in divorce and custody matters including initial or final divorce documents, temporary orders, orders to show cause, parentage and paternity documents, etc.

The clinic is held the first Thursday of every month from 6:00–8:00 p.m. at the Utah State Bar, 645 South 200 East in Salt Lake City.

This is a unique opportunity to grow your practice and advance your profession. If you are interested in participating, please contact tyler.needham@utahbar.org.

Elder Law Month

May is National Elder Law Month. In commemoration, we celebrate the 15-year anniversary of the Senior Center Legal Clinics, a program of the Elder Law Section and the Utah State Bar Access to Justice Program. Volunteer lawyers meet with senior citizens at senior citizen centers. The advice is general in nature. An attorney–client relationship is not established. Clinics are conducted once a month for up to two hours. The volunteer lawyer meets one-on-one with senior citizens for 20-minute consultations. The objective is to help senior citizens resolve minor legal problems if possible during a 20-minute clinic consultation, and to provide information about legal service resources for legal problems not resolved during the 20-minute session.

It is not necessary for the volunteering attorney to have specialized knowledge to answer all legal questions. Time commitment and the number of clinics to attend is controlled by each volunteer. The program welcomes new volunteer lawyers. For information on volunteering for the Senior Center Legal Clinics, please contact Joyce Maughan, Chair, Pro Bono Committee of the Elder Law Section maughanlaw@xmission.com, 801-359-5900; or Tyler Needham, Director, Access to Justice Department of the Utah State Bar, Tyler.Needham@utahbar.org, 801-297-7027.

Request for Comment on Proposed Bar Budget

The Bar staff and officers are currently preparing a proposed budget for the fiscal year which begins July 1, 2016 and ends June 30, 2017. The process being followed includes review by the Commission's Executive Committee and the Bar's Budget & Finance Committee, prior to adoption of the final budget by the Bar Commission at its July 6, 2016 meeting.

The Commission is interested in assuring that the process includes as much feedback by as many members as possible. A copy of the proposed budget, in its most current permutation, is available for inspection and comment at www.utahbar.org.

Please contact John Baldwin at the Bar Office with your questions or comments. Telephone: 801-531-9077, Email: jbaldwin@utahbar.org.

Mandatory Online Licensing

The annual Bar licensing renewal process will begin June 1, 2016, and will be done only online. Sealed cards will be mailed the last week of May to your address of record. (*Update your address information now at* https://services.utahbar.org). The cards will include a username and password to access the online renewal form. 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. Subsequently, you will receive an official licensing receipt along with your renewal sticker, via the U.S. postal service. If you do not receive your license in a timely manner, call 801-531-9077.

Licensing forms and fees are due July 1 and will be late August 1. Unless the licensing form is completed online by September 1, your license will be suspended.

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.

Notice of MCLE Amendments

The Utah Supreme Court has approved several amendments to the rules governing mandatory continuing legal education. The most significant change is to Rule 14-410, which will allow a lawyer to attend a course in person or by live, interactive audio-video communication from a Utah state courthouse to another Utah state courthouse or from the Law and Justice Center to a Utah state courthouse and receive live in-person credit.

All MCLE rule changes will become effective May 1, 2016. For questions, please contact Sydnie Kuhre, MCLE Board Director at sydnie.kuhre@utahbar.org or 801-297-7035.

Innovation in Law Practice Committee Created

by Heather S. White and John H. Rees, Committee Chairs

Change is the law of life. And those who look only to the past or present are certain to miss the future.
– John F. Kennedy

We are now sixteen years into a new millennium. Those years have given birth to tremendous changes in the world: apps, smart phones, social media, Google, GPS, flat screen TVs, Wikipedia, and YouTube are some, just to name a few. The changes in technology have shifted not only how our world operates as a whole but how attorneys practice law. Online services such as Rocket Lawyer and LegalZoom provide consumers of legal services the ability to create their own legal documents from forms provided at a much lower rate than lawyers have traditionally charged. Outsourced legal research is another example of a reduced fee for service arrangement. These have, in combination with various other factors, such as an oversupply of attorneys in the marketplace and the Great Recession, continued to impact how lawyers have practiced law. That has left the question, what is next for attorneys?

The key to us not just surviving, but thriving as providers of legal services, depends on our ability to identify how we can be replaced and where we are irreplaceable. The prosperous law practices of the future will be those that successfully adjust their business models to use tools of technology while still promoting and delivering value that machines are not able to provide, such as judgment and persuasion, and for a reasonable fee.

One way attorneys have done so is move to solo or small firm arrangements. The influx of technology has allowed solo and small firm attorneys to access information less expensively and to collaborate with one another similar to the mentoring and support that traditionally only occurred in larger firms. This has enabled such attorneys to compete at a higher level with larger firms.

To address these issues, the Bar has created the Innovation in Law Practice Committee. Our charge is to provide a forum for exchange and exploration of innovative approaches to providing and pricing legal services, not only though the use of new technologies but also through fresh approaches to fee arrangements, relationships with clients, marketing, and business structures. The committee will seek out partnerships with law technology vendors and providers, both to enhance the content of the education and defray the costs and to stay abreast of market-driven innovation in the practice of law. It will then provide continuing legal education on these subjects.

Our committee is excited to learn and grow with you. We are anxious to find ways to adapt in our ever-changing world and to meet the challenges it brings to keep the practice of law the honorable profession it is.

HEATHER S. WHITE leads the Governmental Law Practice Group at Snow Christensen & Martineau.

JOHN H. REES is a corporate and intellectual property lawyer at Callister Nebeker & McCullough and an Adjunct Associate Professor at the S.J. Quinney College of Law.

Bar Thank You

Many attorneys volunteered their time to grade essay answers from the February 2016 Bar exam. The Bar greatly appreciates the contribution made by these individuals. A sincere thank you goes to the following:

Paul Amann	Jacob Gunter	Alyssa Lambert	Jamie Nopper	Marissa Sowards
Mark Astling	Mark Hales	Clemens Landau	Jonathon Parry	Ryan Stack
Justin Baer	Michele Halstenrud	David Leta	Rachel Peirce	Craig Stanger
J. Ray Barrios	Randy Hunter	Greg Lindley	Justin Pendleton	Alan Stewart
Wayne Bennett	David Jeffs	Steven Lovell	Karl Perry	Noella Sudbury
Mike Boehm	Casey Jewkes	Michael Lowe	Tanya Peters	Michael Swensen
Kate Conyers	Craig Johnson	Nathan Lyon	Nora Pincus	Amber Tarbox
Victor Copeland	Randy Johnson	Colleen Magee	RobRoy Platt	Lana Taylor
Daniel Dansie	Paul Jones	Heather McGinley	R. Josh Player	Engels Tejeda
Michelle Diamond	Amy Jonkhart	Elisabeth McOmber	Mark Rose	Steve Tingey
Comm. Anthony Ferdon	Michael Karras	Tony Mejia	Nicole Salazar-Hall	Paul Tonks
L. Mark Ferre	David Knowles	Jonathan Miller	John Sheaffer	James Wood
Andrea Garland	Ben Kotter	Doug Monson	Milda Shibonis	Brent Wride
Michael Garrett	Karen Kreeck	Kim Neville	James Sorenson	John Zidow

Summaries of Recent Opinions from the Utah State Bar Ethics Advisory Opinion Committee

OPINION NUMBER 16-01

Issued February 8, 2016

BACKGROUND

Lawyer A, a sole practitioner, was retained to represent Wife in divorce matter. Husband retained Lawyer B at Law Firm B to represent him in the divorce. Husband later discharged Lawyer B and Law Firm B, and Lawyer A continued to represent Wife. Lawyer A later joined Law Firm B, and Husband executed a waiver consenting to Lawyer A's continued representation of Wife, but only for the express purpose of mediation and settlement negotiation. While employed at Law Firm B, Lawyer A obtained no information regarding Husband from Law Firm B. Lawyer A did not access Husband's electronic or hard file maintained by Law Firm B and did not discuss the case with Lawyer B. Instead, all information obtained about the case came from Wife and/or third parties. The case settled and Lawyer A withdrew. Lawyer A later left Law Firm B and joined Law Firm C. Lawyer B remains employed at Law Firm B.

ISSUE

May Wife re-hire Lawyer A at Law Firm C to represent Wife against Husband on various post-decree enforcement issues?

OPINION

Yes. When Lawyer A left Firm B and joined Firm C, under Rule 1.9(b) of the Utah Rules of Professional Conduct (the URPC), Lawyer A could continue to represent Wife without Husband's consent because Lawyer A did not obtain any information protected by Rules 1.6 and 1.9(c) about Husband.

OPINION NUMBER 16-02

Issued March 23, 2016

ISSUE

What are the ethical constraints on lawyers settling potential legal malpractice claims or bar complaints with clients?

OPINION

A lawyer may neither request nor agree to limit his or her duties to the administration of justice regarding filing or participating in a bar complaint.

A lawyer may not request that a present or former client refrain from filing or participating in a bar complaint as a condition to settling disputes between the client and the lawyer.

A lawyer may not participate in an agreement that limits the lawyer's liability for malpractice or prohibits the lawyer from accepting future clients except as permitted by rule or law.[1]

BACKGROUND

There are three factual situation to consider:

a. In the context of settling civil litigation a lawyer for one party demands as a condition of settlement that the lawyer for the opposing party agree to forgo filing or participating in a bar complaint.

b. A lawyer is settling a dispute with a former client. That client has threatened to file a bar complaint which the lawyer believes frivolous. As a condition of settling the dispute the lawyer wishes to include a provision precluding the former client from filing or participating in a bar complaint.

c. Finally, in consideration of settlement, a party demands conditions that would limit the lawyer's ability to take further cases against the settling party or waives a former client's malpractice claim.

The full text and analysis of these and other Ethics Advisory Opinions are available at http://www.utahbar.org/opc/eaoc/.

1. Rule 1.8(h) of the Utah Rules of Professional Conduct provides:

   A lawyer shall not:

   (h)(1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement; or

   (h)(2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.

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/.

INTERIM SUSPENSION

On February 23, 2016, the Honorable Joseph M. Bean, Second Judicial District Court, entered Findings of Fact, Conclusions of Law and Order of Interim Suspension pursuant to Rule 14-519 of the Rules of Lawyer Discipline and Disability against Stuwert M. Johnson pending resolution of the disciplinary matter against him.

In summary:
Mr. Johnson was placed on interim suspension based upon his criminal convictions for issuing a bad check, a Class A misdemeanor; and, several prior misdemeanor convictions for driving under the influence of alcohol, which led to Mr. Johnson's guilty plea on April 2, 2015, to two third degree felony charges of driving under the influence of alcohol.

DISBARMENT

On January 28, 2016, the Honorable Su Chon, Third Judicial District Court, entered a Findings of Fact, Conclusions of Law and Order of Disbarment, against Larry K. Yazzie for violating Rules 1.3 (Diligence), 1.4 and 1.4(a) (Communication), 1.5(a) (Fees), 1.15(d) (Safekeeping Property), 1.16(d) (Declining or Terminating Representation), 5.5(a) (Unauthorized Practice of Law), and 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

In summary, there are two matters:
In the first matter, Mr. Yazzie was hired to represent a client and two children on a contingency basis for their personal injury claims. Mr. Yazzie did not have a written agreement for the representation. The clients' automobile accident occurred in Colorado. Mr. Yazzie represented the clients from his offices on the Navajo Nation in Arizona. Mr. Yazzie was not licensed to practice law in Arizona or Colorado. During several periods of time when Mr. Yazzie was representing the clients and actively negotiating the minor children's claims with the insurance company, Mr. Yazzie's license to practice law on the Navajo Nation had been revoked.

Mr. Yazzie reached a settlement with the insurance company for one client's claim and accepted a settlement offer for the claims of the minor children. Mr. Yazzie did not complete the resolution of the minor children's claims. When Mr. Yazzie received the client's settlement check for the first client, he negotiated the check and deposited the funds into his personal bank account, not his trust account. Mr. Yazzie failed to pay the client's medical bills; Mr. Yazzie failed to remit the settlement proceeds to the client and failed to provide any written accounting of the settlement funds to the client. Mr. Yazzie converted the entirety of the client's settlement funds for his own purposes.

The client terminated Mr. Yazzie's representation and hired a new attorney. The new attorney sent letters to Mr. Yazzie requesting the client's settlement funds and each clients' file materials. The attorney's correspondence warned Mr. Yazzie that the statute of limitations for the minor children's claims would soon expire. Mr. Yazzie received the attorney's correspondence but did not communicate with the new attorney and failed to provide the clients' files.

In the second matter, Mr. Yazzie was hired to defend a client in a criminal matter when the client's lead attorney on the case was appointed to become a prosecutor and had to withdraw from the representation. During the time that Mr. Yazzie was the sole attorney representing the client, Mr. Yazzie did not have any communication with his client, who was incarcerated. The client's parents tried to communicate with Mr. Yazzie on the client's behalf but Mr. Yazzie did not respond to their attempts at communication.

Mr. Yazzie filed a Notice of Withdrawal from the client's representation and failed to notify the client in advance that he was withdrawing from the case. At the time Mr. Yazzie withdrew from the case, there was a pending trial date scheduled for the client's criminal charges. Mr. Yazzie failed to perform work on behalf of the client to earn the fee he collected for the representation.

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

ADMONITION

On February 2, 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 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

In summary:
The attorney failed to respond to the OPC's requests for information in connection with an informal Bar complaint filed against the attorney by the attorney's client. The attorney failed to respond to the OPC's requests because the attorney believed that in responding, the attorney would have to reveal confidential attorney–client communications. Under the ethical rule regarding confidential information, the attorney's concerns for necessity of revealing protected information was not a proper basis for his failure to respond. The attorney further believed that by responding to the OPC the attorney would have been adverse to the client, creating a conflict of interest, despite there being procedural mechanisms available to the attorney which would have allowed the attorney to avoid any conflict of interest. The attorney's failure to respond harmed the OPC's ability to investigate the informal Bar complaint and harmed the Screening Panel's ability to fully review the case, although the attorney's appearance at a Screening Panel hearing before the Ethics and Discipline Committee and his responses to the Panel's questions significantly lessened the injury.

PUBLIC REPRIMAND

On March 2, 2016, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Mary D. Brown for violating Rules 1.2(a) (Scope of Representation and Allocation of Authority Between Client and Lawyer), 3.3(a) (Candor Toward the Tribunal), and 8.4(d) (Misconduct) of the Rules of Professional Conduct.

In summary:
Ms. Brown represented a wife in connection with a divorce proceeding. A foreclosure sale was noticed and scheduled for real property which was owned by Ms. Brown's client and the client's estranged husband. Ms. Brown discussed the possibility of a Chapter 13 bankruptcy action with opposing counsel for her client's estranged husband. Ms. Brown then filed a Chapter 13 bankruptcy on behalf of her client's estranged husband, which listed Ms. Brown as the husband's attorney. Ms. Brown paid the filing fee for the bankruptcy petition from her own bank account. The petition for bankruptcy and supporting documents filed by Ms. Brown on behalf of her client's estranged husband appeared to have been signed electronically by both Ms. Brown and the husband. The petition contained language indicating that Ms. Brown had explained bankruptcy options to the debtor. After Ms. Brown filed the bankruptcy action, she contacted the law firm pursuing the foreclosure action to inform the firm of the bankruptcy filing and the foreclosure sale was subsequently cancelled by the firm.

Ms. Brown did not have authorization from her client's estranged husband to file the bankruptcy action on his behalf. Ms. Brown had not discussed filing for bankruptcy with her client's estranged husband directly or explained bankruptcy options to him when she filed the petition for bankruptcy. Immediately after the bankruptcy action was filed, Ms. Brown was informed by opposing counsel that her client's husband did not consent to the bankruptcy action.

Ms. Brown filed a Notice of Voluntary Dismissal of Bankruptcy Petition. When the matter came to the attention of the bankruptcy court, Ms. Brown entered into a stipulation and consent to sanctions, which included a one-year suspension of Ms. Brown's electronic filing privileges in the bankruptcy court and required her to self report her conduct to the OPC.

SUSPENSION STAYED WITH PROBATION

On February 17, 2016, the Honorable Ryan M. Harris, Third Judicial District Court, entered an Order of Discipline suspending R. Scott Rawlings from the practice of law for six months and one day with the suspension term stayed pending Mr. Rawlings completion of six months probation for his violation of Rules 1.3, 1.4(a), 1.16(d), 8.1(b), and 8.4(c) of the Rules of Professional Conduct.

In summary:
Mr. Rawlings was retained to represent a client for a personal injury claim and filed a complaint on behalf of his client. The client's case was subsequently dismissed by the Court without prejudice based on Mr. Rawlings' failure to serve the complaint within 120 days as required. The client attempted to contact Mr. Rawlings by telephone regarding the status of the case on numerous occasions but was unable to contact Mr. Rawlings and did not receive any response from Mr. Rawlings. The client wrote a letter to Mr. Rawlings and expressed concerned regarding the statute of limitations. Mr. Rawlings responded to the client by letter and misstated that the statute of limitations for his claim had not expired and that the action was still ongoing.

After the client was further unable to contact Mr. Rawlings regarding the case, the client hired a new attorney. The client's new attorney sent a letter to Mr. Rawlings requesting a complete copy of the client's file. Mr. Rawlings did not provide a copy of the file.

Mr. Rawlings offered evidence that issues with his office computer system and telephone messaging system contributed significantly to the misstatements regarding the status of the case and the communication problems with his client, making his conduct negligent.

The OPC served Mr. Rawlings with a Notice of Informal Complaint (NOIC) requiring his written response within twenty days pursuant to the Rules of Lawyer Discipline and Disability. Mr. Rawlings did not timely respond to the NOIC.

Aggravating circumstances:
Prior record of discipline.

ADMONITION

On March 2, 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 8.4(c) (Misconduct) of the Rules of Professional Conduct.

In summary,
The attorney lied to a police officer who was investigating an incident involving the attorney displaying the attorney's prosecutor's badge to another driver.

RESIGNATION WITH DISCIPLINE PENDING

On March 9, 2016, the Utah Supreme Court entered an Order Accepting Resignation with Discipline Pending concerning Ann L. Wasserman, for violation of Rules 1.3 (Diligence), 1.4(a) (Communication), 1.15(a) (Safekeeping Property), 1.15(d) (Safekeeping Property), and 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

In summary, there are two matters:
In the first matter, Ms. Wasserman was retained by a client for representation in a child welfare matter in juvenile court and a paternity matter. Ms. Wasserman filed a motion to continue a pretrial hearing in the child welfare matter. Ms. Wasserman failed to serve her client with the motion to continue the pretrial hearing. No order was entered continuing the hearing. The court held the pretrial hearing but Ms. Wasserman assumed the hearing had been continued and did not appear at the hearing on behalf of her client.

After a trial date was scheduled in the child welfare matter, the client requested a meeting with Ms. Wasserman prior to the trial date. Even though Ms. Wasserman claims she spoke and met with the client several times in preparation for the trial, Mr. Wasserman failed to meet with the client as the client requested. Ms. Wasserman also failed to timely respond to some of the client's communications requesting status updates. Ms. Wasserman failed to timely file her witness and exhibit lists as ordered by the court. Some of the client's evidence was precluded at trial based on Ms. Wasserman's failure to comply with procedural rules. Ms. Wasserman was further precluded from introducing direct testimony from a doctor on behalf of her client.

Ms. Wasserman failed to keep contemporaneous records of the time she worked on the client's cases. Ms. Wasserman failed to provide an accounting of the fees she collected from the client.

In the second matter, Ms. Wasserman was hired to represent a client in a child custody matter. Ms. Wasserman filed a Verified Petition for Custody on behalf of her client but failed to provide a final copy of the Petition to the client for approval prior to filing the petition with the court. The client made several requests to Ms. Wasserman for a copy of the petition but did not receive a copy. When the client obtained a copy of the petition directly from the court, the clerk told the client about an upcoming pretrial hearing. The client informed Ms. Wasserman of the pretrial hearing. Ms. Wasserman was late to the pretrial hearing and appeared unprepared.

The client terminated the representation and requested that Ms. Wasserman file a notice of her withdrawal with the court. The client also requested an accounting and refund of unearned fees. Ms. Wasserman did not file a notice of withdrawal. Ms. Wasserman failed to maintain the client's unearned fees in a trust account.

In each matter, the OPC served Ms. Wasserman with a Notice of Informal Complaint (NOIC) requiring her written response within 20 days pursuant to the Rules of Lawyer Discipline and Disability. Ms. Wasserman did not timely respond in writing to either NOIC.

Discipline Process Information Office Update

Now in its second year running, the Discipline Process Information Office has already assisted twenty attorneys this year who have called for help about the discipline process. Jeannine P. Timothy is happy to assist by providing information to those who find themselves involved with the Office of Professional Conduct (OPC). If she does not readily know the answer to your questions, then Jeannine will search to get it for you.

Please contact Jeannine with all of your questions regarding the discipline process.

DISCIPLINE PROCESS
INFORMATION OFFICE

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

CLE Opportunities for Paralegals

by Sharon Andersen and Cheryl Jeffs

Continuing Legal Education (CLE) is not technically required to be a paralegal in Utah unless you are a member of one of the local paralegal organizations. However, it should be noted that the Utah State Bar recognized the importance of continuing legal education for paralegals when it approved the Canons of Ethics of the Paralegal Division of the Utah State Bar *See* Appendix B of the Standing Rules of the Paralegal Division of the Utah State Bar. Canon 7 states: "A paralegal must strive to maintain integrity and a high degree of competency through education and training with respect to professional rules, local rules and practice, and through continuing education in substantive areas of law to better assist the legal profession in fulfilling its duty to provide legal services."

In addition to the prerequisite requirements for joining most national and local paralegal organizations, there are ongoing requirements for maintaining membership. The Paralegal Association a/k/a National Association of Legal Assistants (NALA) requires its members to have at least ten CLE hours per year to maintain their membership in the organization. Additionally, to maintain membership in the Paralegal Division of the Utah State Bar (Paralegal Division), a paralegal is required to have at least ten CLE hours per year, which should include an hour of ethics training. The Utah Paralegal Association (UPA) – a local affiliate of NALA, requires its members to have at least six CLE hours per year in order to maintain membership.

CLE Opportunities

Most paralegal organizations, both national and local, were largely created to provide paralegals with opportunities for continuing legal education in addition to providing support and networking tools to its members. Examples of CLE opportunities provided by the aforementioned national and local organizations as well as the Utah State Bar are as follows:

CLE Seminars/Conventions

Paralegals who do not live in or near a metropolitan area or whose firms/employers do not support their paralegals obtaining CLE may find it difficult to attend CLE courses. However, it can be worth a couple of days away to attend a comprehensive one- or two-course seminar. Paralegals are welcome and encouraged to attend Utah State Bar seminars and conventions, and registration is usually available to paralegals at a reduced cost. More information on Utah State Bar CLE seminars, conventions, and other potential CLE options is available on the Bar's website at www.utahbar.org. NALA also provides CLE courses and opportunities throughout the year online and at various locations nationally. Paralegals can easily find out more information on NALA's website at www.nala.org.

CLE Brown Bags

If traveling is not an option, there are local CLE opportunities offered by the Paralegal Division and UPA. Every year, each organization hosts an annual meeting for a nominal charge to educate and assist their members in obtaining CLE. The Paralegal Division's annual meeting is held each year in June, and UPA's annual meeting is generally held each year in October. The annual meetings offer substantial CLE credits, usually ranging from six to eight CLE hours. Each month the Paralegal Division and UPA take turns sponsoring a brown bag lunch where attendees receive one hour of free CLE. These one-hour free CLE brown bag

SHARON M. ANDERSEN is a paralegal at the Law Offices of Eisenberg Gilchrist & Cutt. She has served on the board of the Paralegal Division in several capacities, including serving as chair of the Division and Ex Officio member of the Bar Commission.

CHERYL D. JEFFS, CP is a paralegal at Stoel Rives, where she works in the area of litigation. Cheryl has served in many positions in the Paralegal Division, including, CLE Chair, UMBA liaison, and Membership Task Force.

lunches are usually scheduled the second Wednesday of each month and a CLE certificate is awarded at the end of the hour. The Paralegal Division hosts its CLE brown bag lunches at the Utah Law & Justice Center. UPA usually hosts its CLE brown bags at LDS Business College. Members of each organization receive advanced email notices of the dates, locations and topics for all CLE opportunities. Additional information may be found on the Paralegal Division's website at paralegals.utahbar.org, and UPA's website at http://www.utparalegalassn.org.

Self-Study CLE

In addition to taking advantage of seminars, conventions, and other CLE course opportunities, paralegals are encouraged to read the Utah Bar Journal, legal periodicals, etc. Paralegals should keep current on the rules, codes and statutes in their practice area on a regular basis.

In keeping up with legal changes, paralegals should also stay current on technology and research. For example, there are standard on-line research services offering CLE such as Westlaw and LexisNexis, and these companies are constantly updating and expanding their information in order to determine more efficient ways to find information. A good paralegal should know where and how to find information quickly, and the cost comparison of each method when required.

Firm and/or On the Job CLE

Many firms/employers offer in house training in various forms such as case law updates, court rules updates, legislation updates, statute change updates, training in a specific practice area, etc. These training sessions may be submitted for CLE credit. If the topic is such that it improves skills, knowledge, and value as a paralegal, it will likely be approved for CLE credit.

The Reason for CLE

Paralegals who for whatever reason – either they are not interested or maybe their current firms/employers do not support or require them to stay up to date on their skills and knowledge through CLE – could one day find themselves looking for another job due to a variety of unforeseen circumstances. In today's job market, current skills and knowledge enable a paralegal to better compete with other applicants and will help them find new jobs or advance in their current jobs.

The most important and obvious reason for paralegals to remain up to date on their knowledge and skills is because it is the professional and ethical thing to do in order to provide quality legal services. Imagine for a moment a professional you trusted and depended upon for guidance who failed to remain current in their field of expertise – for example a teacher, doctor, nurse or accountant. How could that negatively affect your life or the lives of your family? When the Utah State Bar approved the Canons of Ethics of the Paralegal Division, those wise leaders understood that paralegals have the same professional and ethical obligation to stay abreast of new and changing developments in the legal profession and their practice area as do other professionals. Not only will the paralegal be more valuable and useful to their attorney and/or employer if they remain current with their skills and knowledge through continuing legal education, they will also be able to assist in making effective and efficient technology choices in order to provide quality legal services to their clients.

2016 Paralegal Division Members at the Utah State Bar Convention

We had at least five members attend the Spring Convention in St. George this March. The quality of keynote speakers and breakout sessions this year was outstanding. We would like to encourage all paralegals to attend the Bar's Spring, Summer, and Fall Conventions!

Seated: Heather Allen, Lexi Balling, Janet Layosa
Standing: Christina Cope, Greg Wayment

CLE Calendar

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

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

May 11, 2016 | 12:00–4:00 pm — **3 hrs. CLE**

Annual Health Law Forum and Annual Meeting: $85 for Health Law Section members, $100 all others. Agenda available online. Elections held at lunch.

May 13, 2016 — **9 hrs. CLE (incl. 1 Ethics on Thurs. evening)**

Ninth Annual Federal Law Symposium, St. George: $175 for Lit, SUBA, and Federal Bar members, $310 for all others. Golf $50, Guest golf $50, Zen in Zion $25 individual or $75 per family. Full agenda available online.

May 17, 2016 | 9:00 am–1:30 pm — **4 hrs. CLE (incl. 1 hr. Ethics)**

2016 Annual Collection Law Seminar: $40 for section members, $105 for all others. Full agenda available online.

May 19, 2016 | 12:00–1:15 pm

Annual Professionalism Civility Lunch sponsored by Law Related Education: $50 All proceeds go to Law Related Education.

May 20, 2016 | 8:00–9:00 am — **4 hrs. CLE (incl. 1 hr. Ethics)**

2016 Annual Spring Business Law Seminar: Grand America Hotel, 555 Main St., Salt Lake City. $75 for section members, $120 for all others. Registration begins at 7:45 am. Continental breakfast and lunch. Time is tentative.

May 22, 2016 | 8:30 am–1:30 pm — **4 hrs. CLE (incl. 1 hr. Ethics)**

2016 Annual Real Property Seminar: Grand America Hotel, 555 Main St., Salt Lake City. $85 for Real Property Section members, $120 for all others. Continental breakfast and lunch. Start time tentative.

June 3, 2016 | All day seminar — **7 hrs. CLE (incl. 1 hr. Ethics)**

2016 Annual Family Law Seminar: S.J. Quinney College of Law, 383 University St. E, Salt Lake City. Parking at Rice Eccles Stadium. $175 for section members, $130 for paralegals, $210 for all others.

June 10, 2016 | 12:00–1:15 pm — **3 hrs. CLE (incl. 2 hrs. Ethics & 1 hr. Prof/Civ)**

Annual Lawyers Helping Lawyers Prof/Civ program. $105, all proceeds are donated to LHL.

June 22, 2016 | 8:30 am–12:00 pm

DR/UCCR/USB Ethics Seminar: $75 UCCR and DR section members, $120 all others.

June 28, 2016 | 8:30 am–4:30 pm — **6 hrs. CLE (incl. 2 Ethics)**

The Google Powered "Cloud" Law Office: Putting "Google for Work" to Work. Welcome Carole Leavitt and Mark Rosch of Internet for Lawyers back to Utah to give another valuable and interesting program. Agenda available online. $195.

July 6–9, 2016 — **TBA**

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

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.

LAW PRACTICE WANTED

READY TO RETIRE? WANT TO SELL YOUR LAW PRACTICE? Need to ensure that your clients will receive excellent care? We are interested in purchasing transactional law practices, including estate planning, business planning and/or general corporate work. Please call Ryan at 855-239-8015 or e-mail ryan@pharoslaw.com.

Retiring? Slowing down? I would like to purchase an estate planning/elder law practice. Your clients would continue to be treated with the greatest of care, kindness, and competence which you have provided. Contact Ben at Ben@ConnorLegal.com or 800-679-6709.

FOR SALE

Professional office suite. Top quality matching pieces includes Table Desk w/drawer and glass protective sheet, computer desk w/pull out keyboard tray, two four drawer file cabinets with hanging folder inserts, bookshelf with two glass doors, Blue leather executive desk chair, two blue leather guest chairs, two marble and brass lamps. Asking $7,500 and will consider offers. Also available is a set of 16 Volume Current Legal Forms and other misc. books. Located in St. George, UT. Reply to queenb_84010@yahoo.com.

OFFICE SPACE

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.

Conference and Meeting Space in Downtown SLC – Conference rooms and day offices available in a professional atmosphere at the Walker Center. Great space for depositions and client meetings. Internet, projector, whiteboard, photo/copier/scanner (per copy charge), and unlimited domestic long distance are all included. Multiple locations available along the Wasatch Front. Contact Paul Kardos at 801-590-4501 or paul.kardos@officeevolution.com.

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

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

Professional Office Space in Downtown SLC – Add a prestigious downtown SLC address to your practice. Furnished office, Internet, 24/7 access, unlimited domestic long distance, live answered calls, front office presence, kitchen, business lounge, on-site gym – all included. FedEx Office, attached parking garage, full service bank, and sports pub also on-site. Includes access to conference rooms (great for depositions), and drop-in access at all locations along the Wasatch Front. Contact Paul Kardos at 801-590-4501 or paul.kardos@officeevolution.com.

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

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

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

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

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

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

For July 1 _____ through June 30_____

Name: _____ Utah State Bar Number: _____

Address: _____ Telephone Number: _____

_____ Email: _____

_____

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

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

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

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

EXPLANATION OF TYPE OF ACTIVITY

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

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

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

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

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

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

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

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

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

Date: _____ Signature: _____

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

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