

# Utah Bar JOURNAL

A large, snow-covered Christmas tree is the central focus of the image. It is heavily laden with warm white lights and red ornaments. The tree is set against a dark night sky. The snow on the branches is thick and white, contrasting with the dark green of the needles and the warm glow of the lights.

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*Lights on Temple Square* by Utah State Bar member Robert J. Church.

*ROBERT J. CHURCH is the Director of the Utah Prosecution Council. Asked about his photo, Bob said "I was riding TRAX in to work very early the morning of a big snowstorm. As the train passed Temple Square, I saw the lights on the trees under the newly fallen snow and decided I could not pass up the photo opportunity. Being that early in the morning, Temple Square was deserted so made for the perfect photo shoot."*



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### GUIDELINES FOR SUBMISSION OF ARTICLES TO THE UTAH BAR JOURNAL

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

#### ARTICLE LENGTH

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

#### SUBMISSION FORMAT

Articles must be submitted via e-mail to [barjournal@utahbar.org](mailto: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.

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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.

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

#### PUBLICATION

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

#### LETTER SUBMISSION GUIDELINES

1. Letters shall be typewritten, double spaced, signed by the author, and shall not exceed 300 words in length.
2. No one person shall have more than one letter to the editor published every six months.
3. All letters submitted for publication shall be addressed to Editor, *Utah Bar Journal*, and shall be emailed to [BarJournal@UtahBar.org](mailto: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.
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### *Regarding Lawyer Well-Being*

*by H. Dickson Burton*

One of my early senior colleagues in an east coast law firm bragged about working so hard he rarely had time to go home to his family, even on weekends. And he often did not go home. Pretty much every single day he paused his grueling and (by some measures) successful practice, taking time only to go across the street to the same restaurant and have the very same prime rib and vodka martini meal. For both lunch and dinner. His apparent success in the office was held up by many as a standard to be emulated. But at what cost? Over time, his victories at work seemed pyrrhic as his physical health and his family fell apart.

My colleague's story and pattern are not unique, and all of us have either lived similar patterns or observed them in others close to us, whether the addictions or vices include excessive work, excessive martinis, excessive video games, or any variety of alternative unhealthy escapes. Indeed, many of us began working as lawyers during a time when working excessive hours, followed by equally unhealthy eating, drinking, etc. was not only routine, it was held up as the objective. In many offices that may still be the case. Other attorneys suffer serious cases of anxiety, stress, and depression not just from lifestyle choices but also from various forces known and unknown.

In the bar's September eBulletin, I wrote briefly about the challenges we face in our profession relating to our well-being and that of our colleagues. I noted recent studies showing a much higher rate of depression, problem drinking, job dissatisfaction, and other related difficulties among attorneys as opposed to the general population. The response I have received since that message was published is both surprising and encouraging. Many have reached out thanking me for even raising the issue, as brief as my comments were. Others have contacted me expressing a willingness to help and in some cases to share their own stories with others. Thanks to all for your positive response and desire to help.

The response from members of the bar to my eBulletin message also confirms the need to talk about these issues and to face and address them head-on as a profession. It has been said that to be a good lawyer, one has to be a healthy lawyer. And of course it follows that to be a good friend, colleague, spouse, or parent, it also helps

to be a healthy friend, colleague, spouse, or parent. We should be serious in addressing these issues both for our own sakes and for the sake of those around us, whether at work or at home.

Some will question why we are talking about lawyer well-being. Is this just another New Age idea infecting the bar? Will we now have crystals and candles at our conventions and CLEs? Probably not, though we will definitely be talking about well-being more than we have in the past. For example, the Fall Forum, which will have been concluded by the time this issue of the *Bar Journal* is published, included an entire track addressing well-being. This is all with good reason.

For example, if you are one of those who think about the bottom line first, and anything else – including well-being – second, keep in mind that from a purely economic and business perspective, we should all be rushing to address well-being issues. In addition to the obvious point that healthy attorneys will always be more productive, there is a significant economic cost to our organizations from lost attorney time due to well-being challenges. That loss may be from a downturn in productivity, days away from work, or even departure from the organization, voluntary or not. Studies consistently show that the costs to an employer of losing an attorney, including severance and termination costs and the costs of replacing and training a new hire, far exceed the costs of extra efforts to retain the attorney in the first place. In other words, it is simply good business to proactively address well-being issues in our organizations. Helping ourselves and our colleagues is also the right thing to do.

As mentioned in my September eBulletin message, Chief Justice Durrant has organized the Joint Committee on Lawyer and Judge Well-Being to consider and investigate well-being in our profession in Utah and to make recommendations, including specific objectives and specific goals for addressing and improving well-being, tailored to judges and lawyers in Utah. That committee is, among other things, considering the recommendations of the Report of the ABA-sponsored National Task Force on Lawyer Well-Being issued in



August 2017.<sup>1</sup> The committee has been meeting since early summer and expects to issue its own Utah-specific report and recommendations sometime in 2019. But none of us need wait for a committee report, as helpful as we hope it will be, to start addressing wellness issues individually and in our organizations. There are things we can all do right now. Let me suggest a few.

### Talk About Lawyer Well-Being and Address the Stigma

Engage. Start the conversation. In our organizations, whether they be law firms, government or corporate offices, or other groups with whom we interact regularly, talk about how you are doing in acknowledging that well-being problems exist and can easily develop. Talk about what you can do better for yourself and your colleagues – especially in allowing others to *safely* talk about their anxiety, depression, addictions, or other problems. Having an open dialogue is the first step towards allowing those who need help to seek it.

Studies have shown that perhaps the biggest obstacle we face in addressing wellness issues, including addictions, is the negative stigma associated with self-identifying with anxiety, depression, an addiction or other well-being issues. People do not want others to know of their problems. They fear the reactions of those

whose opinions are important to them. They worry about the impact on their reputation in the firm, with clients, or even families. And attorneys are concerned about the possible threat to their bar license and career. They do not want to be discovered because they sought help.

We all contribute to the stigma by talking about the issues only in hushed tones, behind backs, or when sharing gossip concerning a competitor. And we still tend to glorify and praise working extreme hours or participating in other excesses which we now recognize (or should recognize) as dangerous. Let us talk instead of positive examples of balance, moderation, and well-being – and openly encourage help-seeking behaviors while of course offering privacy, discretion, and confidentiality.

### Make A Commitment to Your Own Well-Being

Talking and issuing policy statements will not change a culture. But leaders (and all lawyers are leaders) set the tone for those around them and will be looked to for what is truly important and expected in their organizations. Let us all self-evaluate and consider what we can improve regarding our own mental and physical health. We owe it to those around us, including our families, our employees, and our clients.

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Erin St. John practices in the area of environment and natural resources. She received her B.S. in Resource Ecology and Management from the University of Michigan, *summa cum laude*, and her J.D. from University of Utah S.J. Quinney College of Law, Order of the Coif, Barristers Award.

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Victoria Luman is a member of the firm's litigation practice group with emphasis in employment law and employment defense. She received her B.S. in Psychology, *cum laude*, and a B.S. in Human Development & Family Studies, *cum laude* from the University of Utah. She received her J.D. from the University of Utah S.J. Quinney College of Law, High Honors.

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Kassidy Wallin is a member of the Natural Resources, Energy, and Environmental Law group. He received his B.A. in Speech Communication, *cum laude*, from the University of Utah and his J.D. from the University of Utah S.J. Quinney College of Law, *cum laude*, William H. Leary Scholar.

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### Create a Work Environment of Respect and Balance

Leadership in the workplace can do more for promoting individual well-being than we realize. Fostering an environment that promotes and respects healthy lifestyles and balanced approaches to the practice, and removes stigmas associated with help-seeking behaviors, is key. But so also is creating an environment of mutual respect, including diversity and inclusion. While promoting diversity and inclusion has always been the right thing to do (though also severely lacking in many cases), it is also a key to promoting well-being. As noted in the National Task Force Report, “[a] significant contributor to well-being is a sense of organizational belongingness, which has been defined as feeling personally accepted, respected, included and supported by others.”<sup>2</sup>

### Promote Collegiality and Respect in the Profession

For many attorneys one of the leading contributors to anxiety, stress, depression, and even addiction is the conflict and stress that come from a lack of collegiality and civility in the profession. Nothing makes our practice more unpleasant than an opposing counsel who fallaciously sees the practice of law as requiring nastiness, bullying, and non-cooperation as the path to success. Some attorneys see their bar license as a license to be abusive and unprofessional. But it is dangerous and harmful. “Chronic incivility is corrosive. It depletes energy and motivation, increases

burnout, and inflicts emotional and psychological damage.”<sup>3</sup>

On the other hand, most attorneys correctly see a duty to be professional and civil as not only an obligation of the profession but also as the best and most successful way to serve their clients. We should all self-evaluate and consider what we can do to lift our behavior and those around us to promote a truly collegial and respectful bar.

These are just a few ideas we can all consider in attempting to make a dent now in this important effort to improve lawyer well-being. There is much more we can do. As mentioned, the supreme court’s Joint Committee on Lawyer and Judge Well-Being will be issuing a report in the coming months. But we must not wait to address these issues. For more ideas to consider now, I again suggest you take a look at the comprehensive and eye-opening Report of the National Task Force on Lawyer Well-Being. It is well worth your review, particularly as a leader – which we all are. Let’s not wait any longer, as we owe it to ourselves and to those around us to improve our individual and collective well-being.

1. *Report of National Task Force on Lawyer Well-Being*, August 14, 2017, <http://lawyerwellbeing.net>.
2. *Id.* at 15.
3. *Id.* at 14.

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### *More Than Just Traffic Court*

by Judge Paul C. Farr

“So you’re a justice of the peace?” someone asks. “No, they were done away with in 1989. I’m a justice court judge,” I respond. “What is that, like a traffic judge?” I then respond that part of my duties do involve presiding over traffic cases. The conversation then typically spirals out of control with a discussion about a prior traffic ticket.

This is a common conversation I have had with members of the public, but also with members of the bar. Many people are unfamiliar with the role of a justice court judge. This is understandable. Most cases in justice court are not exciting enough to make the news or be the subject of a television show. Many members of the bar do not practice in justice court. For many people their only interaction with a justice court may be a traffic violation. The purpose of this article is to provide a glimpse into the important, even if not so glamorous, work of a justice court judge.

#### **Traffic Cases**

Yes, justice court judges do preside over traffic cases. In fact, in fiscal year 2018, Utah’s eighty-two justice court judges presided over a total of 342,854 traffic related cases. The Salt Lake City Justice Court handled the most traffic cases, with 45,794, while the Spring City Justice Court had the fewest, with just seventeen. More traffic cases are filed in the justice courts, by far, than any other type of case. If you talk to a justice court clerk, many would tell you that a large amount of their time is spent dealing with traffic cases. This includes answering phone calls, scheduling court dates, managing court files, processing payments, and many other duties.

The same is not necessarily true of a justice court judge. Most traffic cases get resolved before coming to court. Many people choose to pay the ticket rather than schedule a court hearing. For me, less of my time is spent on traffic cases than my other duties. For example, the Sandy City Justice Court, where I serve, handles the second largest number of traffic cases in the state with 19,001 last year. Yet, I would estimate that only maybe 25% of my time as a judge is spent dealing with traffic cases. The majority of my time is spent dealing with the much smaller number of criminal cases and other duties as described below. However, just because I do not spend as much time on traffic cases does not mean they are not important.

In 2016 there were 62,471 car accidents in Utah. This resulted in 26,738 injuries and 281 deaths. Utah Highway Patrol, 2016 Utah Crash Facts, <https://highwaysafety.utah.gov/wp-content/uploads/sites/22/2015/02/OverviewFactSheet2016.pdf>. That is almost six times the number of homicides in Utah during the same period. The Utah Highway Patrol also reports that 94% of those crashes are the result of human choice or error. In other words, they are preventable. Nobody would argue that homicides should not be taken seriously. Similarly, we shouldn’t discount the importance of something that causes six times that many people to lose their lives. Traffic cases are important.

#### **Small Claims**

Justice courts have jurisdiction over small claims cases filed within their jurisdiction. Small claims are those involving up to \$11,000 in damages. In fiscal year 2018 there were a total of 25,943 small claims cases filed in justice courts. Not surprisingly, the largest number were filed in the Salt Lake City Justice Court, with 6,281. There are several jurisdictions, including Alta where I also serve, that did not have any small claims filings.

Some justice court judges hear small claims cases. In other jurisdictions, the court uses *pro tem* judges. These are attorneys who are appointed by the Utah Supreme Court specifically to preside over small claims cases. They do this without compensation. They are required to receive ongoing judicial education in small claims related matters. Typically a *pro tem* will serve once or twice per month, in a rotation. This is an invaluable service that helps justice courts handle high volume dockets. It also provides great experience and education, as well as pro bono service, for the *pro tem*. Even in those courts where justice court judges do hear small claims cases themselves, it typically does not take a large amount of the judge’s time.

*JUDGE PAUL C. FARR is a full-time justice court judge serving the cities of Sandy, Herriman, and Alta. He is this year’s recipient of the Utah judiciary’s “Quality of Justice” award.*





### Class B and C Misdemeanors and Infractions

Justice court judges preside over class B and C misdemeanor offenses and infractions committed within a court's territorial jurisdiction. Common offenses include first and second DUIs, domestic violence, theft, marijuana possession, possession of drug paraphernalia, and others. In fiscal year 2017 there were 110,384 criminal cases filed in Utah. Justice court judges presided over 68,273, or 62% of those cases. Utah Court statistics, <https://www.utcourts.gov/stats/>.

While there are not nearly as many criminal case filings in justice court as there are traffic filings, it is the criminal cases that take most of a justice court judge's time. I would estimate that at least two-thirds of my time is spent dealing with these misdemeanor criminal cases. Proceedings on these cases are governed by the Utah Rules of Criminal Procedure. A defendant has most of the same rights in a misdemeanor case as he or she does in felonies, including the right to be represented by counsel and the right to a jury trial. Similar to the district courts, a majority of cases are resolved by plea agreements. Many cases are tried to the bench. I typically have between two and eight criminal bench trials per week. While we schedule many jury trials, most do resolve

before trial. Over the past few years I have had three to six jury trials per year that do go forward. Other justice court judges may have more, or fewer, trials depending on the caseload of the court.

### Warrants

It used to be that when an officer needed a search warrant in the middle of the night he had to go to a judge's house to make the request and get the warrant signed. While I have heard some great stories regarding this procedure, I am very glad we have moved past it. All judges, as magistrates, have the authority to issue warrants. This includes justice court judges. Several years ago the warrant process changed and it is now done electronically. An officer can submit a request on an e-warrant system. The assigned judge gets a text or email letting him or her know a request has been submitted. The judge logs into the e-warrant system, reviews the probable cause statement, and can sign or deny the warrant request.

In the Third District, the judges have set up a rotation system where they serve one week as the on-call judge for e-warrants. The on-call judge receives all of the requests for warrants in the district during that week. In the Third District, justice court judges serve on that rotation alongside district court judges.

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That rotation usually requires two weeks or rotations per year. Based on my experience, a typical week will see between fifty to seventy-five warrants. Holidays tend to increase that. Many of the warrant requests occur in the middle of the night and on the weekend.

Each district establishes its own procedures. Some justice court judges throughout the state participate in a similar warrant process, while others do not.

### Probable Cause Determinations and Bail/Release Decisions

Pursuant to Rule 9 of the Utah Rules of Criminal Procedure, when an individual is arrested without a warrant, the arresting officer, jail staff, or prosecutor must file a probable cause statement with a magistrate within twenty-four hours of the arrest that provides information to support probable cause to believe the defendant has committed a crime. If available, the magistrate must also be presented with the results of a validated pretrial risk assessment tool. The magistrate must then determine if probable cause exists. If it does not, the magistrate orders the defendant released. If it does, the magistrate determines release conditions.

Some districts have also set up on-call rotations for probable cause determinations, while others have not. In the Third District, probable cause determinations in class A misdemeanor and felony cases are handled in an on-call rotation. Some justice court judges serve on that rotation. The justice courts have not established an on-call rotation for probable cause determinations on class C and B misdemeanors. For me personally, in addition to serving on the on-call rotation for class A misdemeanors and felonies, I also receive all of the probable cause determination in class C and B misdemeanor cases that occur in my jurisdictions. The number of probable cause determinations a judge has to address depends on the size of the court and the number of cases filed. I receive five to ten per week on average. Other courts, like Salt Lake City and West Valley, receive substantially more. Some judges in small courts may not receive any.

### Other Responsibilities

Pursuant to Utah Code section 78A-2-220, justice court judges, as magistrates, have authority to conduct preliminary hearings, in the district court, on class A misdemeanor and felony cases. This is subject to approval by the Judicial Council and appointment by the presiding judge. In some locations within the state, justice court judges conduct some of these proceedings. Currently, however, this is not a common practice.

All judges are required to attend thirty hours of continuing judicial education annually. This applies to judges of all court levels and even those justice court judges who are serving part-time. Justice court judges are also responsible for the administration of their courts. Some judges have court administrators while others do not. The Administrative Office of the Courts also provides assistance in this regard. However, it is ultimately the judge's responsibility to oversee administration. This can include things like establishing a budget and spending priorities, human resource issues, courthouse security, and much more.

Many justice court judges also serve on various boards and committees. These include the Judicial Council and its committees, the Board of Justice Court Judges, Supreme Court Rules committees, and many, many others. Some judges spend a significant amount of time in service on such committees.

### Conclusion – More Than Just a Traffic Judge


While traffic cases certainly are a part of a justice court judge's job, and an important part at that, there is much more to the job. I am privileged to work alongside many other men and women who devote significant time and effort to serve at the will of the citizens of this state and ensure that justice is provided in their courts.

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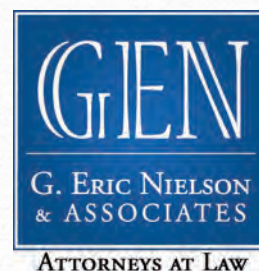


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## *A Primer on Jurisdiction Over Offenses Committed by Juveniles*

Patricia S. Cassell & Blake R. Hills

It comes as no surprise to members of the public that the juvenile court generally has jurisdiction over delinquent acts committed by juveniles. However, the public, and even some practitioners, are surprised to learn that the district court actually has jurisdiction over many offenses committed by juveniles. Indeed, jurisdiction over juveniles who commit serious offenses and jurisdiction over adults who committed offenses as juveniles are areas that are not particularly well known.

### General Juvenile Court Jurisdiction

Utah law provides, in pertinent part, that the general rule for juvenile court jurisdiction is that: “[T]he juvenile court has exclusive original jurisdiction in proceedings concerning: (a) a child who has violated any federal, state, or local law or municipal ordinance or a person younger than 21 years of age who has violated any law or ordinance before becoming 18 years of age. . . .” Utah Code Ann. § 78A-6-103(1). The code provides that the juvenile court does not have jurisdiction over many traffic, wildlife, and boating offenses but does have jurisdiction over juveniles charged with driving under the influence, reckless driving, and – of all things – reckless water skiing! *See id.* §§ 78A-6-103, 78A-7-106(2).

It should be noted that Utah law does not have a minimum age for which a child’s conduct can be labeled delinquent, leading to jurisdiction over the child in juvenile court. Although there are several states that do set a minimum age of delinquency, Utah does not.

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### Transfer of Jurisdiction to District Court

In Utah, there are two ways for a prosecutor to seek transfer of jurisdiction for juvenile offenses from juvenile to district court. The first is known as certification, and the second is by proceeding under the Serious Youth Offender (SYO) provisions.

Under the certification procedure, the prosecutor files an information in juvenile court alleging that a minor fourteen years of age or older has committed an offense along with a motion requesting that the court waive its jurisdiction and certify the minor to the district court. *Id.* § 78A-6-602(3). If the prosecution has alleged that the juvenile has committed a felony, a preliminary hearing will be conducted in juvenile court. *Id.* § 78A-6-703(1). At the preliminary hearing, the prosecution has the burden of proving that there is probable cause to believe that a crime was committed by the juvenile and proving by a preponderance of the evidence “that it would be contrary to the best interests of the minor or of the public for the juvenile court to retain jurisdiction.” *Id.* § 78A-6-703(3). In making the decision of whether to retain jurisdiction, the juvenile court is required to consider enumerated factors:

- (a) the seriousness of the offense and whether the protection of the community requires isolation of the minor beyond that afforded by juvenile facilities;
- (b) whether the alleged offense . . . was committed:
  - (i) in concert with two or more persons; (ii) for the benefit of, at the direction of, or in association

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with any criminal street gang...or (iii) to gain recognition, acceptance, membership, or increased status with a criminal street gang...;

(c) whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;

(d) whether the alleged offense was against persons or property, greater weight being given to offenses against persons, except [for damaging a jail];

(e) the maturity of the minor as determined by considerations of the minor's home, environment, emotional attitude, and pattern of living;

(f) the record and previous history of the minor;

(g) the likelihood of rehabilitation of the minor by use of facilities available to the juvenile court;

(h) the desirability of trial and disposition of the entire offense in one court when the minor's associates in the alleged offense are adults who will be charged with a crime in the district court;

(i) whether the minor used a firearm in the

commission of an offense; and

(j) whether the minor possessed a dangerous weapon on or about school premises....

*Id.*

The amount of weight to be given to each factor is within the discretion of the court, and the court could base its retention decision on a single factor. *Id.* § 78A-6-703(3)–(4). The court also has the option of considering written “reports and other materials relating to the minor’s mental, physical, educational, and social history.” *Id.* § 78A-6-703(5). The Utah Supreme Court has held that the certification procedure does not violate a juvenile’s right to equal protection. *In re Clatterbuck*, 700 P.2d 1076, 1083–84 (Utah 1985).

A prosecutor may also seek transfer of jurisdiction for juvenile offenses from juvenile to district court under the SYO procedure. Under this procedure, a prosecutor files an information in juvenile court alleging that a minor sixteen years of age or older has committed:

(a) any felony violation of:

- (i) ...aggravated arson;
- (ii) ...aggravated assault resulting in serious bodily injury to another;
- (iii) ...aggravated kidnapping;
- (iv) ...aggravated burglary;
- (v) ...aggravated robbery;
- (vi) ...aggravated sexual assault;
- (vii) ...felony discharge of a firearm;
- (viii) ...attempted aggravated murder; or
- (ix) ...attempted murder; or

(b) an offense other than those listed in Subsection (1)(a) involving the use of a dangerous weapon, which would be a felony if committed by an adult, and the minor has been previously adjudicated or convicted of an offense involving the use of a dangerous weapon, which also would have been a felony if committed by an adult.

Utah Code Ann. § 78A-6-702(1). The juvenile court will conduct a preliminary hearing, in which the prosecution has the burden of proving that there is probable cause to believe that one of the listed crimes was committed by the juvenile, and for subsection (b),



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of proving by a preponderance of the evidence that the juvenile has previously been adjudicated or convicted of an offense involving the use of a dangerous weapon. *Id.* § 78A-6-702(3).

If the prosecution meets this burden, the court shall bind the case over to the district court unless the court finds that doing so “would be contrary to the best interest of the minor and the public.” *Id.* In making that determination, the juvenile court shall only consider the following factors:

- (i) whether the minor has been previously adjudicated delinquent for an offense involving the use of a dangerous weapon which would be a felony if committed by an adult;
- (ii) if the offense was committed with one or more other persons, whether the minor appears to have a greater or lesser degree of culpability than the codefendants;
- (iii) the extent to which the minor’s role in the offense was committed in a violent, aggressive, or premeditated manner;
- (iv) the number and nature of the minor’s prior adjudications in the juvenile court; and
- (v) whether public safety and the interests of the minor are better served by adjudicating the minor in the juvenile court or in the district court, including whether the resources of the adult system or juvenile system are more likely to assist in rehabilitating the minor and reducing the threat which the minor presents to the public.

*Id.* § 78A-6-702(3)(c). The defense has the burden of proving by a preponderance of the evidence that, under these factors, “it would be contrary to the best interest of the minor and the best interests of the public” to bind the case over to district court. *Id.* § 78A-6-702(3)(d). The Utah Supreme Court has held that the SYO procedure satisfies federal and state due process requirements, does not violate a juvenile’s right against self-incrimination, and does not violate either the uniform operation of laws provision of the Utah Constitution or the Equal Protection Clause of the United States Constitution. *In re A.B.*, 936 P.2d 1091, 1102 (Utah 1997).

### Direct File

Unlike the certification and SYO procedures in which prosecutors have discretion on whether to seek transfer of jurisdiction from juvenile to district court, Utah’s direct file (also known as automatic



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waiver) statute provides that certain cases involving juveniles must be filed in district court. This statute provides that “[t]he district court has exclusive original jurisdiction over all persons 16 years of age or older charged with an offense that would be murder or aggravated murder if committed by an adult.” Utah Code Ann. § 78A-6-701(1). In addition, the district court has jurisdiction over all other offenses from the same criminal episode. *See id.* § 78A-6-701(2). Once the district court takes jurisdiction under this section, all subsequent offenses committed by the juvenile will be handled in district or justice court, rather than juvenile court. *See id.* § 78A-6-701(3)(a). The Utah Supreme Court has held that this direct file (automatic waiver) statute does not violate either the Utah or federal Constitutions. *State v. Angilau*, 2011 UT 3, ¶ 40, 245 P.3d 745.

### Adults Charged for Committing Offenses as Juveniles

Perhaps the least known aspect of court jurisdiction involves jurisdiction over an adult over the age of twenty-one who is charged with committing an offense as a juvenile. As previously noted, Utah law provides: “[T]he juvenile court has exclusive original jurisdiction in proceedings concerning: (a) a child who has violated any federal, state, or local law or municipal ordinance or a person younger than 21 years of age who has violated any law or ordinance before becoming 18 years of age. . . .”

Utah Code Ann. § 78A-6-103(1). In response to an argument that the identical language in the prior version of this statute does not mean what it says, the Utah Supreme Court stated,

The plain language of the statute in question creates two classes of offenders for determining jurisdiction of the juvenile court: (1) those who commit crimes while under age eighteen and are charged before reaching age twenty-one, and (2) those who commit crimes while under age eighteen and are charged after reaching age twenty-one. Only the first class of offenders comes under the jurisdiction of the juvenile court.

*State v. Schofield*, 2002 UT 132, ¶ 9, 63 P.3d 667. Thus, charges against defendants who are over the age of twenty-one must be filed and must remain in district court, even if the charges are for offenses committed when the defendant was under the age of eighteen. *See id.* ¶¶ 9–10.

The Utah Supreme Court has held that trying an adult in district court for crimes committed as a juvenile does not violate the uniform operation of laws provision of the Utah Constitution. *Id.* ¶ 19. However, the court has issued a caution about the handling of these cases:

Under our current statutory scheme, it is left to the wisdom of the prosecutor and the trial judge to make allowance, in possible plea negotiations and at sentencing, for the fact that defendant was under the age of eighteen when he allegedly committed the crimes for which he is charged.

*State v. Hodges*, 63 P.3d 66, 70 (Utah 2002). Unless there is a good reason not to, such as an egregious fact pattern or a prior criminal record, a prosecutor should attempt to fashion a plea bargain that treats the defendant in a similar manner to how the defendant would have been treated if the conduct had been reported and charges had been filed when the defendant was still a juvenile.

### Conclusion

Jurisdiction over offenses committed by juveniles is much more complicated than the public, and even many practitioners, realize. While the juvenile court has jurisdiction over most offenses committed by juveniles, there are a significant number of cases that the district or justice courts have jurisdiction over. Prosecutors and defense attorneys who handle juvenile cases would be wise to pay close attention to jurisdiction.

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## Commentary

# *Legal History in the Utah Desert, Reflecting on Topaz*

by Steffen Thomas

Photo credit: Steffen Thomas, 5/19/18 Topaz, UT

Beneath the sprawling shadow of Swasey Peak, there is a place in the central Utah desert that stands as a living memorial to one of the most significant decisions in American legal history: *Korematsu v. United States*. What was once home to more than 11,000 Japanese Americans is now a collection of fragments. What's left of Topaz is stitched together by roads made from black volcanic stone. The ground surrounding these makeshift roads is littered. Amongst the nails, brush, and blow snakes are the aged bric-a-brac of everyday life. Buttons, shower heads, rings, furnace legs, and bottles are all evidence of the lives that Japanese Americans made for themselves within the barbed wire boundaries of their concentration camp.

The ACLU of Utah, in partnership with the Constitutional Law, Appellate Practice, and Litigation Sections of the Utah State Bar, brought a group of Utah attorneys, law students, and their families together this spring for a day trip to the Topaz Museum and concentration camp in Delta, Utah. The plan was that the group

would visit the site, take a tour of the Topaz Museum, and attend a screening of the film *Never Give Up! The Minoru Yasui Story*. This group, which included former internee Judge Raymond Uno, the first ethnic minority to serve in the judiciary in Utah, came together to reflect on one of the most significant legal proceedings in our nation's history from the location where in 1944, more than 11,000 Japanese Americans were stripped of their fundamental rights and left to combat the elements of the unfamiliar Utah desert.

*STEFFEN THOMAS is a 2L at the University of Utah, former ACLU Utah legal intern, and Pro Bono Initiative Fellow.*





## Never Give Up! The Minoru Yasui Story

The day began with the film and a panel discussion with Holly Yasui, the director and daughter of the film's hero. The film told the story of Min Yasui, a Japanese-Oregonian attorney who, in an effort to bring test litigation challenging the constitutionality of Executive Order 9066, violated the curfew imposed by the order itself. As a result of the violation, Min Yasui spent nine months in solitary confinement before being sent to camps like the one at Topaz. Like many of his peers in camp, Min was not only loyal to his country but wanted to join the war effort like many other Japanese American men who were drafted and served honorably. However, because of Min's curfew violation he could not be accepted for renewed military service. This contradiction served as a major theme in the discussion that followed.



Photo credit: Steffen Thomas, 5/19/18 Topaz, UT

After the film, Holly hosted a short panel discussion where she explained the patriotism that drove Japanese Americans to serve their country despite their confinement behind barbed wire fences. Holly also spoke about George Takei's involvement (narration) and how they themselves are evidence of the lasting generational impacts of internment.

## The Internment Site: Beauty and Brilliance, Dust and Death

The Topaz Museum offers a glimpse into the lives of the interned by showcasing oil paintings, charcoal illustrations, tools, and diaries. Artists like Chiura Obata depicted the lunar-like landscape of Topaz in surreal and beautiful ways. One of the most memorable pieces included a young girl's diary which jumped between everyday childhood desires and her ongoing discovery of the strange plants and creatures that inhabited her new desert home.

A short video marked the beginning of the official tour. The fuzzy

video was an excerpt from footage secretly shot by Dave Tatsuno during his internment at Topaz. His film is one of the only two American home videos to be included in the library of congress. Sean Means, *Film Shot by WWII Internee at Topaz Going to Library of Congress*, THE SALT LAKE TRIBUNE (Sep. 10, 2012), [available at http://archive.sltrib.com/article.php?id=54851348&itype=cmsid](http://archive.sltrib.com/article.php?id=54851348&itype=cmsid). The room where we watched the film was flanked by two glass cabinets brimming with colorful shell art. The cabinets housed a range of keepsakes such as jewelry boxes, necklaces, brooches, and ornaments. Apparently, internees were occasionally given the opportunity to visit nearby hot springs where they would collect colorful shells that they would repurpose and use for jewelry. The colorful shells were twisted and manipulated to look like blooming glass flowers that would be more at home in the British

Museum than amongst the dusty artifacts left behind at Topaz.

## Coram Nobis, Korematsu, and the Anti-Canon

During our time in the museum's room dedicated to constitutional law we were joined via Skype by Professor Lorraine Bannai of Seattle University School of Law. She was part of a group of attorneys who worked on the writ of *coram nobis* seeking to correct the fundamental error of fact on which the government's argument in *Korematsu* was based. The *coram nobis* writ is available to correct the erroneous exclusion of relevant evidence to a criminal conviction and prevent injustice where another remedy like a writ of habeas corpus would be moot. *Korematsu v. United States*, 584 F. Supp. 1406, 1411, (N.D.

Cal. 1984). Professor Bannai explained that this writ was so important because it would not only expunge Fred Korematsu's criminal conviction, but it would strike the military report that served as justification for the government's argument in the original *Korematsu* ruling. This effort to correct the record made sense to me: standing there in the wing of the museum dedicated to the law, one could not help but look for some sort of explanation for how the courts could justify their decisions in the internment cases.

The original case that led to Fred Korematsu's internment, *Korematsu v. United States*, 323 U.S. 214 (1944), was a landmark ruling where the court first established the doctrine of strict scrutiny. Pursuant to Justice Harlan's footnote 4 in *U.S. v. Carolene Products Co.*, 304 U.S. 144 (1938), the court in *Korematsu* acknowledged an increased level of scrutiny for laws curtailing the rights of a single racial group, "not to say that all such restrictions are unconstitutional. It is to say that



courts must subject them to the most rigid scrutiny.” *Korematsu*, 323 U.S. at 215. This rigid scrutiny, considered by many to be the first application of such a standard by the court, was only overcome because the court “could not reject the finding of the military authorities that it was impossible to bring about an immediate segregation of the disloyal from the loyal that we sustained the validity of the curfew order as applying to the whole group.” *Id.* at 219. This first application of strict scrutiny remains one of the few where the government action challenged was able to meet the bar raised by strict scrutiny. Justice Frankfurter’s landmark dissent points to the president’s executive order as a violation of the equal protection clause and goes so far as to characterize the holding as the “legalization of racism.” *Id.* at 242 (Frankfurter, J., dissenting).

The backlash to *Korematsu* came to a head in 1984, when a team of attorneys from Seattle petitioned in federal court for a writ of *coram nobis* based on government misconduct in suppressing and destroying evidence. The government tried to end the case with a procedural move meant to vacate the conviction but also avoid court scrutiny of the government’s actions. *Korematsu v. United States*, 584 F. Supp. 1406, 1410 (N.D. Cal. 1984). Fred Korematsu’s team successfully rebuffed the effort; Korematsu

stated that it was he who ought to be pardoning the government. Brian Niiya, *Coram Nobis Cases* (2018). A writ of *coram nobis* is the appropriate remedy to correct an error in criminal conviction and prevent injustice where other remedies like habeas corpus might be moot. *Korematsu*, 584 F. Supp. at 1411. The court was reluctant to reopen the partially healed wounds left by such a disfavored case, but it acknowledged that “there are few instances in our judicial history when courts have been called upon to undo such profound and publicly acknowledged injustice.” *Id.* at 1413.

Using the findings of the 1984 Commission on Wartime Relocation and Internment of Civilians, the *coram nobis* team showed that at the time of the executive order, there had been substantial credible evidence contradicting a report by General J.L. DeWitt. General DeWitt’s *Final Report, Japanese Evacuation from the West Coast* (1942), stated that “military necessity justified exclusion and internment of all persons of Japanese ancestry without regard to individual identification of those who may have been potentially disloyal.” *Id.* at 1416. A Department of Justice report at the time directly contradicted DeWitt’s report, stating that it

makes flat statements concerning radio transmitters and ship-to-shore signaling which are categorically



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denied by the FBI and by the Federal Communications Commission. . . [S]tatements made by General DeWitt are not only contrary to our views but they are contrary to detailed information in our possession and we ought to say so.

*Id.* at 1424. The Court found for the petitioners, granting *coram nobis* and providing vindication for the many Americans who had objected to the *Korematsu* ruling since the day it was handed down.

Many considered the *coram nobis* Court's conclusion that the original *Korematsu* ruling had been based on misinformation to be a final nail in the coffin for that case. Some, like legal scholar Richard Primus, have called the original *Korematsu* decision "anti-canon." "Anti-canon" is what some scholars call a group of disfavored cases including *Plessy*, *Lochner*, and *Dred Scott* that, because of the ethically repugnant positions they took, represent "land mines of the American constitutional order" which subsequent courts should carefully avoid and strongly refute. Jamal Greene, *The Anticanon*, 125 HARV. L. REV. 379, 381 (2011). To say that *Korematsu* is disfavored or that it is "anti-canon" is nothing new: Justice Jackson considered it disfavored at the time it was handed down. Recent discussion surrounding *Korematsu*, however, suggests that others anticipate it may see a repeat. Justice Antonin Scalia stated in 2014, "Well,

of course, *Korematsu* was wrong, . . . and I think we have repudiated it in a later case. But you are kidding yourself if you think the same thing will not happen again," referencing the war time panic surrounding the executive order. Cassens Weiss, Scalia: *Korematsu Was Wrong, But 'You Are Kidding Yourself' If You Think It Won't Happen Again*, ABA JOURNAL (2014), available at [http://www.abajournal.com/news/article/scalia\\_korematsu\\_was\\_wrong\\_but\\_you\\_are\\_kidding\\_yourself\\_if\\_you\\_think\\_it\\_won/](http://www.abajournal.com/news/article/scalia_korematsu_was_wrong_but_you_are_kidding_yourself_if_you_think_it_won/) (last visited Aug. 7, 2018). He went on to say, "I would not be surprised to see it happen again, in time of war." *Id.* Indeed, when our group spoke to Professor Bannai, she raised the alarm that some are currently trying to again elevate war powers to suppress the rights of vilified minorities, pointing specifically to the Trump administration's various travel bans on people from several countries and the resulting challenges that are winding their way through the courts.<sup>1</sup> While the current consensus strongly disfavors *Korematsu*, it has not been formally overruled, raising the specter that a future court, facing national tragedy, could recognize *Korematsu* as precedent.

### More Than a Ghost Town

Walking through the remnants of Topaz, where a town had been erected and hauled off in the blink of an eye, the possibility of it all happening again does not feel all that remote. While the remaining buildings of Topaz now serve as barns, guest houses, and classrooms for the community of Delta, the site is easily identified by the large flattened plots and the almost perfectly intact western fence of the camp. As we passed through the site, the feeling of exposure was immediate. There is nothing to guard against the oppressive desert. The low brush that had grown in since the time of the camp did little to prevent the stinging wind of dust storms. It was hard to imagine what it might be like for a young kid from Oakland or Seattle to find himself or herself suddenly transported to this strange landscape. Time has passed, but the landscape of Topaz has not changed. Anyone can go into the desert and feel for himself or herself what it was like to suddenly find yourself at the wrong end of one of the most monumental judicial rulings in this country's history.

A visit to the Topaz site ought to be a pilgrimage for any Utah attorney. Tucked away in the central Utah desert is one of the most unique, relevant, and haunting pieces of American legal history. Two-and-a-half hours away from Salt Lake City, the moral, ethical, and legal advancements of the last seventy-six years disappear and one is left with the very same whipping winds and desert sun endured by more than 11,000 patriotic Japanese Americans.

1. While some were quick to assume that the majority opinion in *Trump v. Hawaii*, 585 U.S. \_\_\_\_ (2018), overturned *Korematsu*, the decision does not explicitly do so.



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## Utah Legislature Enacts UELMA

by Melissa J. Bernstein

As more primary legal material is published online, and in many cases solely online, it is vital that states take steps to ensure the accuracy and continued availability of those sources. In an attempt to address issues relating to the online publication of primary legal sources, the Uniform Law Commission approved the Uniform Electronic Legal Material Act (UELMA) in July 2011. The UELMA

establishes an outcomes-based, technology-neutral framework for providing online legal material with the same level of trustworthiness traditionally provided by publication in a law book. [UELMA] requires that official electronic legal material be: (1) authenticated, by providing a method to determine that it is unaltered; (2) preserved, either in electronic or print form; and (3) accessible, for use by the public on a permanent basis.<sup>1</sup>

During the 2018 General Session of the Utah Legislature, the Utah Legislature adopted the UELMA.<sup>2</sup> Sponsored by Senator Lyle Hillyard and by Representative Lowry Snow, the UELMA applies to all “legal material” in electronic format that are designated as official. “Legal material” is defined to include the Utah Constitution, the Laws of Utah, the Utah Code, the Utah Administrative Code, and the Utah State Bulletin. For material covered by UELMA, items must be: (1) authenticated, by providing a method to determine that it is unaltered; (2) preserved, either in electronic or print form; and (3) accessible, for use by the public on a permanent basis. The UELMA applies to legal material first published electronically on or after January 1, 2019.

Currently, only two publications in Utah will be immediately impacted by the UELMA: the Utah Administrative Code and the Utah State Bulletin. The online versions of these publications have been designated as the official versions. The UELMA requires that these publications be (1) authenticated, (2) preserved, and (3) permanently accessible. Both the Administrative Code and the State Bulletin are already authenticated in the form of MD5 hash files (an algorithm whose main purpose is to verify that a

file has been unaltered) and are available online through the website of the Utah Office of Administrative Rules. Additional publications may become subject to the UELMA in the future. If, for example, the electronic version of the Utah Code is designated at some point as the official version, it would be covered by the UELMA and need to be authenticated and preserved.

The UELMA is supported by the Uniform Law Commission, the American Bar Association, and the American Association of Law Libraries.<sup>3</sup> To date, eighteen states and the District of Columbia have adopted the UELMA, and it has been introduced in a few others. Law librarians and others, with the support of the American Association of Law Libraries, continue to advocate for the passage of the UELMA in the remaining states.

The enactment of the UELMA in Utah ensures that important legal sources will remain trustworthy and available to users in the digital age. Its continued enactment across the country will help all citizens by ensuring that they have continued access to accurate and reliable electronic sources of legal information, and by encouraging uniformity in state legal internet sites.

1. The National Conference of Commissioners on Uniform State Laws, *Legislative Fact Sheet – Electronic Legal Material Act*, Unif. Law Comm’n, <http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=Electronic%20Legal%20Material%20Act> (last visited October 1, 2018).
2. Uniform Electronic Legal Material Act, S.B. 121 Gen. Sess. (Utah 2018).
3. The National Conference of Commissioners on Uniform State Laws, *Legislative Fact Sheet – Electronic Legal Material Act*, Unif. Law Comm’n, <http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=Electronic%20Legal%20Material%20Act> (last visited October 1, 2018).

*PROFESSOR MELISSA J. BERNSTEIN is the Director of the James E. Faust Law Library at the S.J. Quinney College of Law, University of Utah. She is also a Professor of Law. She advocated for the passage of UELMA in Utah.*



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IN MEMORIAM



**Stephen B. Nebeker**

FEBRUARY 21, 1929 – AUGUST 19, 2018

In honor of our colleague and friend – Stephen B. Nebeker – one of the most admired lawyers in the State. He joined the law firm of Ray Quinney & Nebeker in 1957, where he practiced law as a defense trial attorney until his retirement in 2001.

Mr. Nebeker was named Lawyer of the Year by the Utah State Bar, became the first Utahn to serve as a Regent of the American College of Trial Lawyers and was a model of civility his entire career. His integrity, kindness, courtesy, diligence and fairness were and are foundations of the Firm.

Our sincere condolences are with the Nebeker family.





## Appellate Highlights

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

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

### UTAH SUPREME COURT

#### ***State v. Sanchez*, 2018 UT 31 (July 5, 2018)**

In rejecting an appeal for a murder conviction, the court held that the subjective element for demonstrating extreme emotional distress under the special mitigation statute **required a showing that (1) the defendant was “exposed to extremely unusual and overwhelming stress,” (2) that he had an “extreme emotional reaction” to the stress such that his capacity for reason was overcome, (3) that the emotional distress was not the result of a mental illness, and (4) that the distress was not “substantially caused by his own conduct.”**

#### ***Espenschied Transp. Corp. v. Fleetwood Servs., Inc.*, 2018 UT 32 (July 5, 2018)**

As part of a settlement of a wrongful death suit, a trucking company agreed to pursue claims against its insurance agent and use any funds recovered to satisfy attorney fees and the settlement in the wrongful death. In the subsequent lawsuit, the district court granted the insurance agent's motion for summary judgment because the trucking company suffered no actual damages. Affirming, the supreme court declined the plaintiff's invitation to extend *Ammerman II* to insurance agents and brokers, and held that the **plaintiff had failed to create a genuine issue of material of fact on damages, primarily because the plaintiff had never paid any money as a result of the settlement and consent judgment.**

#### ***Teamsters Local 222 v. Utah Transit Auth.*, 2018 UT 33 (July 9, 2018)**

The court dismissed this appeal on mootness grounds without reaching the merits of the dispute over whether UTA supervisors had collective bargaining rights. The court held that **the controversy became moot when the supervisors held an election and**

**voted not to unionize.**

#### ***Mower v. Baird*, 2018 UT 29 (July 5, 2018)**

The district court granted summary judgment to the defendant therapist, concluding that the therapist did not owe a duty to the non-patient parent who sued her. The supreme court reversed this decision and remanded for further proceedings, holding that **a treating therapist working with a minor child owes a limited duty to a non-patient parent to refrain from affirmative acts that recklessly violate the standard of care in a manner that gives rise to false memories or false allegations of sexual abuse committed by the non-patient parent.**

#### ***Build v. UDOT*, 2018 UT 34 (July 17, 2018)**

The court repudiated an interpretation of a prior line of cases purporting to place limits on a successor judge's authority to overturn a predecessor judge's rulings. The court held that **a successor judge has the same authority as the predecessor judge in reviewing and overturning prior decisions, and that the supposed limits placed on successor judges by the prior case law are merely advisory statements of best practices, not enforceable standards on appeal.**

#### ***Gregory & Swapp, PLLC v. Kranendonk*, 2018 UT 36 (July 26, 2018)**

In this legal malpractice action, the jury awarded the plaintiff \$2.75 million in non-economic damages arising out of emotional distress. Vacating and remanding for a new trial, the supreme court held that the trial **court erred in allowing the plaintiff to recover damages for emotional distress based on a breach of contract theory, where neither the nature nor the language of the contract demonstrated that emotional distress damages were expressly contemplated by the parties.**

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

***Haik v. Jones, 2018 UT 39 (Aug. 7, 2018)***

This was an appeal from the district court's dismissal of a petition for judicial review of the State Engineer's approval of a water right change application. The court held the appellant lacked statutory standing because he was not an "aggrieved party." While the majority assumed that the appellant could rely on public interest standing but held the requirements of that standing were not met in this case, it noted in a footnote that **"Any invocation of the public standing doctrine should come with a warning label that two members of this court have expressed serious doubt about the intellectual underpinnings of the doctrine and have invited further discussion of its continued viability."**

***Copper Hills Custom Homes, LLC v. Countrywide Bank, FSB 2018 UT 56 (Sept. 27, 2018) (amended opinion)***

The court held that **when a court certifies its decision as final and appealable under Rule 54(b) based on lack of factual overlap between the claims, the certified order should "detail the lack of factual overlap between the certified and remaining claims" as well as include an "express determination by the district court that there is no just reason for delay,"** and provide the district court's reasoning for that determination.

***Savely v. Utah Highway Patrol, 2018 UT 44 (Aug. 22, 2018)***

The Utah Highway Patrol seized nearly \$500,000 in cash from the plaintiff after a traffic stop. The plaintiff filed suit seeking to have his money returned to him after it sat in a UHP bank account for seventy-five days and no forfeiture proceedings were filed in a Utah state district court. The district court initially concluded that it lacked in rem jurisdiction over the seized funds because a federal magistrate had issued a seizure warrant for the money on behalf of the Drug Enforcement Agency, and the UHP had sent a check for the cash amount to the DEA, although that check was never cashed. On appeal, the court reversed and remanded, concluding that **a district court begins exercising in rem jurisdiction, at the very latest, when property is held for forfeiture and that the federal seizure warrants had no effect on the district court's in rem jurisdiction.**

***State v. Martinez-Castellanos, 2018 UT 46 (Aug. 29, 2018)***

The court overturned a court of appeals decision ordering a new trial due to the cumulative errors at the district court. The court held that **under the cumulative error doctrine, only those errors that are substantial enough to cause harm can accumulate.** Minor errors that could result in no harm do not accumulate so as to warrant a new trial.

***Judd v. Bowen, 2018 UT 47 (Aug. 29, 2018)***

The supreme court revoked its grant of certiorari review after briefing and argument on the basis the criteria for certiorari set forth in Utah R. App. P. 46 were not present and certiorari had been improvidently granted. In doing so, the court **discussed the bases for certiorari review and "encourage[d] future parties to keep in mind the guidelines we have set out in this opinion as they prepare their petitions for certiorari."**

**UTAH COURT OF APPEALS*****Krahenbuhl v. The Cottle Firm 2018 UT App 138 (July 12, 2018)***

In this legal malpractice case, the plaintiffs filed an interlocutory appeal of the district court's denial of their objection to a subpoena duces tecum issued by the defendant-counsel to successor counsel the plaintiffs had retained to continue their representation in the underlying case. The court of appeals agreed with the plaintiffs that the subpoena violated the attorney-client privilege and reversed the district court's decision. It held the **"at issue" exception to the attorney-client privilege does not apply in this case because the defendants' defense, and not**

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the plaintiff's claims, put the correspondence with successor counsel at issue, or made them potentially relevant. In doing so, it rejected the defendants' argument that by filing a legal malpractice claim against one lawyer in the underlying case, a plaintiff waives the privilege with respect to all lawyers who represented him in the underlying case.

***Nat'l Title Agency LLC v. JPMorgan Chase Bank NA*  
2018 UT App 145 (July 27, 2018)**

The plaintiff sued a bank for releasing funds in a trust account that belonged to the plaintiff's clients in order to satisfy judgments against the plaintiff in two unrelated lawsuits. The district court dismissed these claims as time-barred by the applicable four-year statute of limitations. On appeal, the plaintiff argued that its claims were timely because it was not seeking recovery of the funds, but rather was seeking special or consequential damages for harms that the loss of those funds later caused. The court rejected this argument and affirmed the district court, concluding that **plaintiff's claim accrued in 2010 when it sustained the loss of the escrowed funds for which it was responsible – not in 2013 when aspects of its claimed special or consequential damages at last came to fruition.**

***State v. Argueta*  
2018 UT App 142 (July 27, 2018)**

This appeal from a criminal conviction involved what the defendant told – and more importantly, did not tell – officers on the night of the incident after he had been arrested. Under *Doyle v. Ohio*, 426 U.S. 610 (1976), “it is ‘fundamentally unfair and a deprivation of due process’ to allow a prosecutor to use a defendant’s silence at the time of arrest ‘to impeach an explanation subsequently offered at trial.’” The court held the **prosecutor’s questioning did not violate Doyle because it asked “why, if [the defendant’s] testimony at trial were true, he omitted many of those details in the explanation he gave to [the] Officer.”** This line of questioning did not impermissibly refer to the defendant’s exercise of his right to remain silent, but rather to his prior omission of exculpatory details when he voluntarily spoke to the officer.

***Day v. Barnes*  
2018 UT App 143 (July 27, 2018)**

During a custody dispute, the mother sought permission from the court commissioner to relocate. The commissioner recommended denial of the motion to relocate and the mother appealed. The district court overruled the objection, stating that under Utah R. Civ. P. 108, the party objecting to a decision made

by the commission bears the burden of demonstrating that the recommendation is incorrect. The court of appeals held that **the plain language of Rule 108 requires the district court to make independent findings, and there is no burden on the party objecting to a commissioner’s recommendation to demonstrate that the recommendation is incorrect.**

***State v. Soto*  
2018 UT App 147 (Aug. 9, 2018)**

The criminal defendant appealed the denial of a mistrial, arguing he was denied the constitutional right to an impartial jury in light of comments a Utah Highway Patrol officer and court IT employee made to the jury while they were riding in the private court elevator. The court of appeals agreed the defendant’s constitutional right was violated and reversed his conviction. In doing so, it **clarified that the rebuttable presumption of prejudice announced in prior cases for unauthorized communications during trial between attorneys, witnesses, and court personnel and jurors is not limited to court personnel who are participants in the trial.** The rebuttable presumption applied in this case, and the State had not overcome it.

***Vander Veur v. Groove Entm’t Techs.*  
2018 UT App 148 (Aug. 9, 2018)**

In an employment suit involving a dispute over unpaid commission, the court of appeals held that in narrow circumstances, a company could breach the implied warranty of good faith and fair dealing, even in an at-will employment relationship. Specifically, **when an employee and employer enter into a separate compensation agreement, the employer cannot terminate the employment relationship in bad faith to avoid paying the compensation that the employee has a justified expectation to receive.**

***In Interest of B.T.B.*  
2018 UT App 157 (Aug. 23, 2018)**

This appeal arose of a termination of a father’s parental rights. Disavowing prior cases which had suggested that the conclusion that termination was in the best interest of the child “almost automatically” followed if one of the statutory grounds for termination had been met, the court of appeals clarified that **courts should analyze the best interests of child independent of the enumerated statutory grounds for termination and “ask whether it is absolutely essential to the child’s best interest that a parent’s rights be permanently severed.”**



## 10TH CIRCUIT

***United States ex rel. Polukoff v. St. Mark's Hosp.*  
895 F.3d 730 (10th Cir. July 9, 2018)**

This appeal arose from a qui tam action alleging violations of the False Claims Act (“FCA”) by a medical doctor who allegedly performed thousands of unnecessary heart surgeries and received reimbursement through the Medicare Act by certifying that the surgeries were medically necessary. The district court granted the defendants’ motion to dismiss, reasoning that a medical judgment could not be false under the FCA. The Tenth Circuit reversed and remanded, holding that **a doctor’s certification that a procedure is reasonable and necessary is false under the FCA if the procedure was not reasonable and necessary under the government’s definition of that phrase.**

***Bailey v. Indep. Sch. Dist. No. 69 of Canadian Cty. Oklahoma*  
896 F.3d 1176 (10th Cir. July 24, 2018)**

In this wrongful termination case, a gym teacher alleged the school district terminated his employment in retaliation for letters in which the teacher asked a state court for leniency for his nephew. Reversing the district court’s grant of summary judgment in favor of the school district, the Tenth Circuit held, as a matter of first impression, that **a letter requesting modification of a criminal sentence constituted a statement on a matter of public concern, subject to the protections of the First Amendment.**

***Montoya v. Vigil*****898 F.3d 1056 (10th Cir. Aug. 7, 2018)**

The Tenth Circuit concluded that it lacked jurisdiction to consider a qualified immunity argument, because the defendants had not adequately raised that defense by making a Rule 12(b)(6) “failure-to-state-a-claim” argument. The court **articulated the following rule for determining whether it has jurisdiction over interlocutory qualified immunity appeals:** “if the district court explicitly decided the qualified immunity question, we will usually have jurisdiction,” but if the district court is silent on the issue, the silence can be interpreted as an implicit denial only when the defendant has expressly raised the defense.

***United States v. Sample*****901 F.3d 1196 (10th Cir. Aug. 27, 2018)**

After entering guilty plea to wire fraud involving the theft of \$1.08 million, the defendant was sentenced to a five-year term of probation. The United States, which had requested a prison term of 78 to 97 months, appealed the sentence. Reversing and vacating, the Tenth Circuit held that the **district court abused its discretion when it allowed considerations of wealth, income, and restitution to override the other sentencing factors and imposed a lenient sentence that amounted to an extreme variance from the guidelines range.**

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## *The Self Driving Car: A Disruptive Innovation on Established Industries and Legal Practices*

by Paul Hoybjerg and Adam Buck

### Introduction

In 1955, Walt Disney opened his historic Disneyland. In Tomorrowland, visitors were confronted with futuristic inventions: a box that could cook food in less than a minute, small telephones that could be carried anywhere, and house-cleaning robots. Microwaves, smart phones, and robotic vacuums are now commonplace, despite the fact that just a few decades ago, these futuristic inventions seemed far-fetched.

Enter the automated car – a disruptive innovation that will have wide-ranging impacts on virtually all daily activities. Although the automated car could have been a key attraction of Tomorrowland just a couple of decades ago, it is a reality here and now, and will affect much more than just daily commutes and long road trips. The self-driving, or driverless, car will completely change the automotive industry, city planning, home construction, insurance markets, the legal industry, millennial milestones, and the Americana mentality of “freedom” at the wheel – certainly a threat to “car guys” and “car gals,” like one of the authors of this article. Nevertheless, self-driving cars are making headlines every day. State and local leaders are similarly taking note, with Utah leaders seeking to be at the cutting-edge of the driverless experience. For example, Utah Representative Robert Spendlove recently introduced H.B. 371 during the 2018 General Session of the Utah State Legislature, which would have been the first legislative bill in the country to fully legalize fully autonomous vehicles on a state’s public roads. Kelsey Johnson, *Utah: The Perfect Place for Self-driving Cars*, THE DAILY UNIVERSE, May 10, 2018, available at <https://universe.byu.edu/2018/05/10/utah-the-perfect-place-for-self-driving-cars/>. Similarly,

downtown Salt Lake City was recently selected as a “lab for ‘smart city’ wireless technology,” where wireless nodes and networking services will be installed and tested throughout the downtown area. Ultimately, this network could one day be used to support connected vehicles and even flying taxis. Sean P. Means, *Self-driving Cars in Salt Lake City? Downtown Chosen To Be Lab For ‘Smart City’ Wireless Technology*, THE SALT LAKE TRIBUNE, Apr. 9, 2018, available at <https://www.sltrib.com/news/2018/04/09/self-driving-cars-in-salt-lake-city-downtown-chosen-to-be-lab-for-smart-city-wireless-technology/>.

Like all disruption, the self-driving car means change. Lawyers and professionals are already confronting entire shifts in the legal industries, and many practitioners will now need to modify their practices and prepare for a vanishing supply of human negligence cases and increasing legal battles that will result from even the slightest malfunction in technology and the resulting question of liability.

### Current Trends

Driving attitudes are changing. Millennials are getting their licenses later, if they get them at all. No longer are the days when a teenager would eagerly await his or her fifteenth or sixteenth birthday to attain the freedom that driving promised. The shift in mentality is significant. In 1983, people between the ages of 20 and 24 got their licenses at a rate of 92%. That percentage dropped to 77% in 2014, a drop of 15% in only one generation. Michael Sivak & Brandon Schoettle, *Recent Decreases in the Proportion of Persons with a Driver’s License Across All Age Groups*, University of Michigan Transportation Research

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Institute, Report No.: UMTRI-2016-4, Jan. 2016, *available at* [http://www.umich.edu/~umtristwt/PDF/UMTRI-2016-4\\_Abstract\\_English.pdf](http://www.umich.edu/~umtristwt/PDF/UMTRI-2016-4_Abstract_English.pdf). The first big milestone in a millennial's life is now getting his or her first cell phone, not a driver license. Associated Press, *No, millennials aren't "the end of car culture,"* CBS NEWS, Mar. 9, 2016, *available at* <http://www.cbsnews.com/news/no-millennials-arent-the-end-of-car-culture/>.

The changing attitude is not solely confined to millennials. Non-millennials are showing a lower interest in vehicle driving and vehicle ownership. Google, Lyft, and Uber have illustrated with incredibly high valuations that this mentality is occurring. The consuming public is showing that cars are not as desirable as they once were. Aside from collector's items, the average car is a horrible investment. It depreciates rapidly the moment you drive it off the lot. It is expensive to maintain, fuel, and insure and takes up a considerable portion of the square footage of your home to store. Cost is listed as a top reason millennials do not get their license. Brandon Schoettle & Michael Sivak, *The Reasons for the Recent Decline in Young Driver Licensing in the US*, University of Michigan Transportation Research Institute, Report No.: UMTRI-2013-22, Aug. 2013, *available at* <https://deepblue.lib.umich.edu/bitstream/handle/2027.42/99124/102951.pdf?sequence=1>.

Survey results demonstrate that additional reasons young adults decline obtaining a driver's license include: Too busy or occupied with other activities (37%); Easy access to transportation from someone else (31%); Preference for biking or walking (22%); Preference for public transportation (17%); Environment concerns and harmful contributions of vehicle emissions (9%); Communication with others is available by phone and internet and no need to meet in person (8%); and Medical problems (7%). *Id.* at i.

The statistics show that the attitudes are changing across the consumer demographics with an accelerated shift occurring in millennials. *Id.* at 7–8. People do not care if they are the ones driving. They have shown that if the transportation does not change to accommodate their mentality, they will find another way to move themselves, or their ideas, from Point A to Point B.

### Current Technology

As of 2013, the U.S. Department of Transportation categorized vehicles within five levels of automation:

1. **No-Automation (Level 0):** The driver is in complete and sole control of the primary vehicle controls – brake, steering, throttle, and



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motive power – at all times.

## 2. Function-specific Automation (Level 1):

Automation at this level involves one or more specific control functions. Examples include electronic stability control or pre-charged brakes, where the vehicle automatically assists with braking to enable the driver to regain control of the vehicle or stop faster than possible by acting alone.

## 3. Combined Function Automation (Level 2):

This level involves automation of at least two primary control functions designed to work in unison to relieve the driver of control of those functions. An example of combined functions enabling a Level 2 system is adaptive cruise control in combination with lane centering.

## 4. Limited Self-Driving Automation (Level 3):

Vehicles at this level of automation enable the driver to cede full control of all safety-critical functions under certain traffic or environmental conditions and in those conditions to rely heavily on the vehicle to monitor for changes in those conditions requiring transition back to driver control. The driver is expected to be available for occasional control, but with sufficiently comfortable transition time. The Google car is an example of limited self-driving automation.

## 5. Full Self-Driving Automation (Level 4):

The vehicle is designed to perform all safety-critical driving functions and monitor roadway conditions for an entire trip. Such a design anticipates that the driver will provide destination or navigation input, but is not expected to be available for control at any time during the trip. This includes both occupied and unoccupied vehicles.

United States Department of Transportation, *U.S. Department of Transportation Releases Policy on Automated Vehicle Development*, NHTSA 14-13, May 30, 2013, available at <https://www.transportation.gov/briefing-room/us-department-transportation-releases-policy-automated-vehicle-development>.

In 2017, the National Highway Traffic Safety Administration (NHTSA) provided additional guidance and recognized the Society of Automotive Engineers Levels of Automation. These

Automation Levels include Levels 0–5, where Level 0 continues to include no automation whatsoever and Level 5 possesses a full “Automated Driving System” that can perform all driving at all times. *U.S. DOT Releases New Automated Driving Systems Guidance*, September 12, 2017, available at <https://www.transportation.gov/briefing-room/dot7017>; NHTSA, Automated Vehicles for Safety, available at <https://www.nhtsa.gov/technology-innovation/automated-vehicles-safety>.

Lower levels of automation are easily available in many newer cars. Function automation is not simply a luxury item available in a Porsche or Bentley; it comes standard in many new models. Additionally, more advanced vehicles are already hitting the road, with full automation on the horizon. As a point of reference, Google’s self-driving car – a car with Level 3 automation under the 2013 standards – had traversed 1,644,154 miles in four test cities by May 31, 2016. Google, *Google Self-Driving Car Project Monthly Report*, May 2016, available at <https://static.googleusercontent.com/media/www.google.com/en/selfdrivingcar/files/reports/report-0516.pdf>.

Automated vehicles are being integrated in cities as well. In the heartland of vehicle production, the University of Michigan has developed “Mcity” on its North Campus in Ann Arbor. “Mcity” is closed to all other traffic and used solely to test autonomous vehicles and methods to increase their connectivity. At “Mcity” researchers test and examine how vehicles can talk to each other around buildings and plan for unexpected events such as a child running into the street or rain or snow blocking the road. The vehicles talk to each other wirelessly, even sending signals to warn about a potential hazard that may be in the way. Developers of automated cars are not just looking at how the car can react in isolation but using data gathered from other automated vehicles in the same area to operate at the highest level. Automated cars are gathering data and sharing it with each other. This takes the old tradition in which ships on the sea would transmit to other ships and warn if they saw an iceberg or treacherous waters. Vehicles are telling other vehicles about cracks in the road, pedestrians on the street, and less than ideal driving conditions. Instead of the driver’s two eyes on the road, you have thousands of sensors on multiple vehicles, gathering data and working together to achieve safety. Mcity is preparing to defeat the criticisms of automated cars that they cannot react as a human would to hazardous and unexpected situations. Chris Paukert, *Mcity: America’s True Nexus of Self-Driving Research*, Road Show by CNET, Jan. 19, 2016, available at <https://www.cnet.com/roadshow/news/mcity-americas-true-nexus-of-self-driving-research/>.

Mcity and Google’s Level 3 automated car shows that the self-driving



car is here now and is not in some lab, waiting to be unveiled. Each day consumers buy vehicles with more automated features and further spur the growth of automation. It will only increase. Nissan plans to have fully autonomous vehicles available for commercial sale by 2020. Peter Valdes-Dapena, *Nissan Plans to Sell Self-Driving Cars by 2020*, CNN MONEY, Aug. 27, 2013, available at [http://money.cnn.com/2013/08/27/autos/nissan-autonomous-car/index.html?source=cnn\\_bin](http://money.cnn.com/2013/08/27/autos/nissan-autonomous-car/index.html?source=cnn_bin) (observing autonomous vehicles may be available in many makes and models within ten to twelve years). Elon Musk, CEO of Tesla, in 2014 predicted that by 2023 “we’ll be able to achieve true autonomous driving where you could literally get in the car, go to sleep and wake up at your destination.” Alexander C. Kaufman, *Elon Musk: We’ll Have Driverless Cars by 2023*, HUFFINGTON POST, Oct. 15, 2014, available at [https://www.huffingtonpost.com/2014/10/15/tesla-driverless-cars\\_n\\_5990136.html](https://www.huffingtonpost.com/2014/10/15/tesla-driverless-cars_n_5990136.html).

If Mr. Musk is accurate, then by the time your middle-schooler graduates from high school, you can take him or her to college without ever having your hands on a steering wheel.

### Big Money Investments

The automated industry is not simply for tech giants such as Google to sell a few microchips. The three automobile giants – Ford, Fiat Chrysler, and GM – have bought into partnerships with automated vehicle developers. Ford invested an additional \$182 million into Pivotal, a software technology company, to help develop automation for Ford’s existing models. Mark Price, CEO of Ford, described the investment as “going from dating to getting married.” Brent Snively, *Detroit Automakers Ink Deals for Self-Driving Cars*, USA TODAY, May 16, 2016, available at <https://www.usatoday.com/story/money/cars/2016/05/16/detroit-automakers-ink-deals-self-driving-cars/84438032/>. Fiat Chrysler and Google agreed on a deal in which Chrysler would develop a hundred hybrid minivans for Google to test and automate. *Id.* GM has invested \$1 billion to acquire a Silicon Valley startup, Cruise Automation, that specializes in autonomous vehicle technology; this came after GM already pledged \$500 million to Lyft, an app for ride-sharing, and did so with hopes of having fleets of shuttles available for public use. *Id.*; see also Dan Primack & Kirsten Korosec, *GM Buying Self-Driving Tech Startup for More than \$1 Billion*, FORTUNE, Mar. 11, 2016, available at <http://fortune.com/2016/03/11/gm-buying-self-driving-tech-startup-for-more-than-1-billion/>.

In addition to Google, tech giant Apple announced it will enter the automated car industry and has invested \$1 billion in Didi Chuxing, the largest competitor to Uber in China in ride-sharing technology. Julia Love, *Apple Invests \$1 billion in Chinese Ride-bailing Service Didi Chuxing*, REUTERS, May 12, 2016, available at



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<https://www.reuters.com/article/us-apple-china/apple-invests-1-billion-in-chinese-ride-hailing-service-didi-chuxing-idUSKCN0Y404W>. Tim Cook, CEO of Apple, states that the investment will signal a “massive change” to the entire automotive industry. Daisuke Wakabayashi & Douglas MacMillan, *Apple’s Latest \$1 Billion Bet Is on the Future of Cars*, WALL STREET JOURNAL, May 14, 2016, available at <https://www.wsj.com/articles/apples-1-billion-didi-investment-revs-up-autonomous-car-push-1463154162>. In the same way that Mcity is gathering data from vehicles talking to each other, the automated vehicle is advancing rapidly as both tech companies and auto giants are each racing to the same goal and sharing information and advancements along the way. Apple will use information gleaned from Didi vehicles; Didi’s investment in Lyft will give it information, which is being supplemented by the partnership with GM. *Id.* Additional data is being gathered as Didi is supported by Alibaba—China’s eBay, and UberChina has been supported by Baidu, which is China’s largest search engine. *Id.*

There will no doubt be immense legal battles and massive mergers and acquisitions as this race toward automation occurs. In July 2016 Uber sold Uber China to Didi for \$35 billion. Arjun Kharpal, *Taxi App Rival Didi Chuxing to Buy Uber’s China Business in \$35 billion Deal*, CNBC, Aug. 1, 2016, available at [https://www.cnbc.com/2016/08/01/chinas-di-](https://www.cnbc.com/2016/08/01/chinas-di-chuxing-to-acquire-ubers-chinese-operations-wsj.html)

[chuxing-to-acquire-ubers-chinese-operations-wsj.html](https://www.cnbc.com/2016/08/01/chinas-di-chuxing-to-acquire-ubers-chinese-operations-wsj.html).

The largest companies in the world – Google, Ford, and Alibaba – and the largest industries in the world – automotive, technology, and data mining – are all invested heavily in this pursuit to take the steering wheel out of your hands. Each of these massive investments come with the expectation that a return will come sooner rather than later. That expectation will drive companies to race towards the finish line of full automation as quickly as possible.

### Legal Ramifications

The promise that self-driving cars provide is expansive: fewer auto-related deaths and injuries, decreased traffic, shorter travel times, greater productivity while commuting, less stress on public transportation, fewer and smaller parking lots, increased square footage for business development rather than vehicle storage, and billions of dollars saved in property damage and insurance premiums. Chris Woodyard, McKinsey Study: *Self-driving Cars Yield Big Benefits*, USA TODAY, Mar. 4, 2015, available at <https://www.usatoday.com/story/money/cars/2015/03/04/mckinsey-self-driving-benefits/24382405/>. Imagine having an office in your home where your garage currently is. When you need a car, you press an app on your phone and your vehicle comes from a giant storage locker to your home, takes you to work, and returns to the locker where it is automatically re-charged and ready for your trip home. The possibilities seem so positive, why should there be any resistance?

Warren Buffett, whose company, Berkshire Hathaway, owns GEICO, provided the warning that the self-driving car, for all its promises and answers to our commuting questions, will impact the auto industry adversely leaving one paramount question: in the event of an accident, who is responsible – the self-driving car or the “driver”? James E. Peltz, *Self-driving Cars Could Flip the Auto Industry on Its Head*, LA TIMES, June 20, 2016, available at <http://www.latimes.com/business/la-fi-agenda-driverless-insurance-20160620-snap-story.html>.

In fact, the question is likely to become even more complex, potentially implicating not only the auto industry, but the insurance industry, tech firms, and more. For example, the occupying “driver” of an autonomous vehicle will undoubtedly argue that he or she did nothing wrong, with any negligence being attributed to the manufacturer and the vehicle’s faulty technology. Much like a law school exam, liability may then flow further upstream to software programmers, tech firms, and more. Product liability questions then potentially place manufacturers and others directly and solely responsible for any and all accidents. This begs the question – If manufacturers, their suppliers, or both are legally responsible for the accidents caused by the automated cars they

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produce, what role will traditional auto insurance play, as it often intends to insure against the negligence of the vehicle's driver? It appears the answer to this question is that autonomous vehicles will likely limit the need for traditional auto insurance. *Id.* Indeed, according to recent research by KPMG, autonomous vehicles' increased safety, assumption of driving risk and liability by manufacturers, and opportunities for manufacturers to provide their car buyers with insurance, could hit the auto insurance industry with shrinkage of 70%, or \$137 billion, by 2050. *Auto Insurance Market to Shrink by 70% by 2050: KPMG*, INSURANCE JOURNAL, Jun. 29, 2017, available at <https://www.insurancejournal.com/news/national/2017/06/29/456094.htm>. Nevertheless, "[a]s that debate continues, analysts agree that consumers probably still will need insurance even if they one day own self-driving cars. If a tree falls on the car or it's vandalized, for instance, they'll need coverage." Peltz, *Self-driving Cars Could Flip the Auto Industry on Its Head*.

Undoubtedly, the legal question of liability is one that will be fought vigorously. Although a number of states have enacted legislation concerning autonomous vehicles, few states have fully considered the legal implications of liability and fault. For example, Michigan has concluded that, absent manufacturer defect that led to injury, a "manufacturer of a vehicle is not liable and must be dismissed from any action for alleged damages resulting from" such things as "conversion or attempted conversion of the vehicle into an automated motor vehicle by another person." Mich. Comp. Laws Ann. § 600.2949b(1). But the legislation falls short of pronouncing the duties and obligations of the "drivers" of autonomous vehicles and how liability should be determined when a manufacturer's automated vehicle is involved in an accident. *See id.* Unless and until state legislatures wade into the fray, liability will be decided based on traditional notions of negligence, allocation of fault, and manufacturer duties to avoid producing unreasonably dangerous products. Personal injury lawyers, insurance defense lawyers, and intellectual property lawyers will certainly need to remain informed.

In California, these battles have already begun. An automated car recently ran a red light and caused an accident, which resulted in San Francisco shutting the program down. Alex Davies, *As Uber Launches Self-Driving in SF, Regulators Shut It Down*, WIRED, Dec. 14, 2016, available at <http://www.wired.com/2016/12/ubers-self-driving-car-ran-red-light-san-francisco/>. Senate and public hearings are taking place, and it seems like everyone wants his or her hand in the legislation. *See, e.g.,* Queenie Wong, *Google Clashes with California Officials over Proposed Self-driving Car Regulations*, THE MERCURY NEWS, Dec. 16, 2015, available at <http://www.mercurynews.com/2015/12/16/google-clashes-with-california-officials-over-proposed-self-driving-car-regulations/>.

Tesla is finding itself in these battles as well. On March 23, 2018, a thirty-eight-year old Apple engineer died in California after his Tesla Model X crashed into a barrier. Mark Osborne, *Tesla Car Was on Autopilot Prior to Fatal Crash in California, Company Says*, ABC NEWS, Mar. 31, 2018, available at <https://abcnews.go.com/US/tesla-car-autopilot-prior-fatal-crash-california-company/story?id=54142891>.

Tesla's "Autopilot" feature has been questioned more closely to home. On May 14, 2018, the driver of a Tesla in Utah claimed "Autopilot" was engaged when her vehicle struck a fire truck at approximately sixty mph. In controversial statements by Mr. Musk later that day, he quickly defended the safety of the Tesla vehicle, stating that it was "amazing" the Model S hit a "fire truck at 60 mph and the driver only broke an ankle." McKenzie Stauffer, *Elon Musk Responds to Utah Tesla Crash*, KUTV.com, available at <https://kutv.com/news/nation-world/elon-musk-responds-to-utah-tesla-crash> (last visited Aug. 27, 2018).

Unfortunately, questions of liability are not likely to be resolved anytime soon. This is particularly true in light of the complex computer systems involved. If a hacker gains control of an autonomous vehicle, who will bear the burden of injury? A simple malfunction of a computer chip could yield thousands of vehicles

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suddenly unsafe and terribly dangerous. Additional questions surround the extent to which state departments of transportation regulate autonomous vehicle ownership and operation.

Despite the visions of Elon Musk, Google engineers, and others, many of these questions should be answered sooner rather than later.

### Effects on Utah's Law and Insurance Industries

The automated car presents Utah attorneys with opportunities and challenges. Silicon Slopes and Utah's high-tech sector are likely to see growth and innovation tied directly to driverless cars. Representative Spendlove hopes Utah will be at the forefront. Heather Simonsen, *Self-driving Future Is Closer than You Think; Is Utah Ready?*, KSL TV, May 11, 2018, [available at https://www.ksl.com/article/46318320/self-driving-future-is-closer-than-you-think-is-utah-ready](https://www.ksl.com/article/46318320/self-driving-future-is-closer-than-you-think-is-utah-ready). Undoubtedly, this innovation will lead to additional legal work for intellectual property attorneys, transactional attorneys, and litigators engaged to fight over technology rights, legal liability, and more. Millions of dollars of legal work will exist for firms that can specialize in the work needed to address these legal battles, and many other firms will see vanishing work as a result of decreased accidents and obsolete industries.

With respect to insurance companies, whose premiums for auto

insurance currently total about \$200 billion, those insurers will be left searching for a new way to provide value in a world where a "driver" does not "cause" a given auto accident. James F. Peltz, *Self-driving Cars Could Flip the Auto Industry on Its Head*, LA TIMES, June 20, 2016, [available at http://www.latimes.com/business/la-fi-agenda-driverless-insurance-20160620-snap-story.html](http://www.latimes.com/business/la-fi-agenda-driverless-insurance-20160620-snap-story.html). Already rocked by Obamacare and other recent legislative reforms, insurance companies will once again have to adapt to liability issues and decreased vehicle ownership and may find themselves increasingly unnecessary in this new world. Thomas Wilson, the Chairman of Allstate Corp. stated that automated cars will cause "the most detrimental impact on auto insurance" and that "we don't want to wait" for full automation to know the impacts. *Id.*

Lawyers who represent automobile insurance companies need to prepare for the industry change. Personal injury lawyers need to diversify their practice and possibly expand into product liability if they wish to remain in the auto-accident arena. Conversely, lawyers who represent cities and auto manufacturers can expect an increase in work and need to prepare their firms for the increase in workload or aggressively acquire contacts that will fight the immense legal battles that will soon follow.

The automated car will affect any practice involved in the automotive industry. For example, UDOT's annual budget in 2015 was \$1.4 billion and is likely to increase. Office of the Legislative Auditor, State of Utah, *An In-Depth Budget Review of the Utah Department of Transportation*, Report #2016-05, at 2, Aug. 2016, [available at: https://le.utah.gov/audit/16\\_05rpt.pdf](https://le.utah.gov/audit/16_05rpt.pdf). Utah is continually catering to the consumer driven car by creating additional roads, lanes, and repairs. Decreased accidents on the road, decreased demand, and quicker transit will impact the state budget. If your practice relies on work from the Utah Department of Transportation prepare for the innovation. As cars become more autonomous and reliance on rechargeable batteries increases, gas stations, such as Flying J and Maverick, may find that consumers do not need to fuel up as much, if at all, and business may suffer.

### Conclusion

The inventions previously in *Tomorrowland* are here today. The automated car is here and will rapidly approach a similar level of use and acceptance. Established industries must adapt or be left in the dust. Law practices must tackle another disruption to their industry and prepare for innovations, disappearing insurance work, and new market opportunities – otherwise, they too will be left in the past.

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## What Is Access to Justice?

by Molly Barnewitz

Navigating the legal system without professional advice can be intimidating. Although laws, regulations, and processes establish a set of rules, it often takes a lawyer or paralegal to manage the complexities. Unfortunately, access to professional help is not always a possibility, and many people are forced to handle important matters involving their livelihoods, families, and homes all on their own. Barriers including location, language, financial circumstances, and educational background can make the justice system nearly impossible to access. If the justice system is inaccessible, just enforcement of the law is impossible. As a result, attorneys arguably have an ethical duty to use their training for purposes of helping protect the rights of those less fortunate by alleviating the disparities in access to the justice system. Luckily, many attorneys lend their services to the public every day by participating in pro bono efforts nationwide. However, the justice system is still largely inaccessible to many people.

According to the Justice Index, established by the National Center for Access to Justice at Fordham Law School, there are only 40.31 attorneys per 10,000 people in the state of Utah and only 0.64 attorneys per 10,000 people who live in poverty. This lack of access to representation has severe consequences. For example, a 2017 survey of Utah court data showed that in 52% of family law cases no party had an attorney. In debt collection cases that same year, 98% of cases had self-represented respondents, while the collection agency was represented by an attorney in all cases. Similar statistics were true in eviction cases, with 95% of cases having unrepresented respondents. Given the numbers, traditional pro bono representation is not always feasible; however, there are large gaps in access to even basic court-related assistance. That is why the Utah State Bar's Access to Justice programming, under the direction of the Pro Bono Commission and the Access to Justice Coordinating Committee, is working with volunteer attorneys and other service providers to close the gap in access.

### The Pro Bono Commission and Access to Justice Coordinating Committee

Established in 2012, the Pro Bono Commission supports pro bono efforts statewide with the help of each of Utah's eight District Pro Bono Committees. Members work to organize and support

independent projects, data collection, and attorney engagement.

This year, under the direction of Bar President John Lund and chairs Justice Christine Durham and Amy Sorenson, the state bar's Access to Justice Coordinating Committee began to assemble information about public resource service providers in the state. The Access to Justice Coordinating Committee's goal is to address gaps in representation statewide. Members of the committee are keenly aware of the interlacing issues that come into play when discussing access to legal representation and have been seeking ways to engage interested service providers in improving upon the available programs and resources.

Together, the Utah State Bar, Pro Bono Commission, and Access to Justice Coordinating Committee are working to ensure that legal resources are available to the over 300,000 Utahns who live in poverty (statistics available from [talkpoverty.org](http://talkpoverty.org)). Volunteer opportunities exist in many forms. The Utah State Bar coordinates several pro bono and reduced-rate programs to help provide legal guidance to those who cannot afford it.

### Free Legal Clinics

Legal clinics provide the first line of support to the public in need of legal advice. The **Tuesday Night Bar** has been the model for legal clinics for thirty years. Organized by the Young Lawyers Division (YLD), the Tuesday Night Bar offers general legal advice in any area of law in the form of free, thirty-minute consultations. Former YLD Tuesday Night Bar Chair, Josh Chandler, has volunteered with the clinic for several years and often provides CLE guidance and support to other volunteers.

*MOLLY BARNEWITZ is the Utah State Bar Access to Justice Coordinator.*





Josh expresses his confidence in the program, explaining:

The Tuesday Night Bar offers a resource for people who are faced with problems that often seem insurmountable. At the clinic, I've had the opportunity to help people see that answers and solutions are available, and the relief that brings them is easy to see. Unfortunately, we can't always solve every problem that someone brings through the door, but in my experience, we can offer real, meaningful assistance to people every week. I have never regretted taking the time to volunteer at the clinic.

The Tuesday Night Bar is part of a system of free legal clinics available statewide offering legal advice in most areas of law. Organizations including the BYU J. Reuben Clark Law School, the S.J. Quinney College of Law's Pro Bono Initiative, Utah Legal Services, Timpanogos Legal Center, the Young Lawyers Division, and the Utah State Bar, coordinate many specialized clinics. For instance, the attorney volunteers at the **Family Law Clinic** at the Matheson Courthouse help with cases related to divorce, custody, child support, protective orders, and other family law questions. Similarly, the **Debtor's Counseling Clinic** provides help with bankruptcy, debt collection, credit issues, and identity theft. Other clinics in the Salt Lake area include the **Rainbow Law Clinic** (for LGBTQ+ related legal questions), the **Medical Legal Clinic** (for healthcare, housing, and family law questions), the **American Indian Legal Clinic** (which provides guidance on the Indian Child Welfare Act, tribal land, and family claim questions). The **Street Law Clinic** and the **Community Legal Clinics** in Ogden, Sugarhouse, and Salt Lake all offer a range of services to the community. Outside of Salt Lake, the **BYU Law Help Clinic**, **Timpanogos Legal Clinic**, **Weber County Bar Night**, and the **St. George Talk to a Lawyer Clinic** are a key step in the process for self-represented litigants.

Even though the clinics strive to reach as many Utahns as possible, remote areas often go underserved. To help people in rural areas, the American Bar Association has created a virtual clinic available online at [FreeLegalAnswers.org](http://FreeLegalAnswers.org). Individual states oversee coordinating their state's free legal answers website. Participating attorneys provide free, anonymous advice to the public via an online interface that allows attorneys to provide free legal advice at their convenience. Similarly, the Utah Courts Self Help Center coordinates the **Lawyer of the Day** program. Lawyer of the Day provides brief advice over the phone to the public who cannot make it to a free legal clinic.

## Signature Projects

Another way attorneys provide limited-scope assistance to Utahns is through various Pro Bono Commission Signature Projects. Current projects include the **Wills for Heroes** program, a statewide program facilitated by the YLD's Wills for Heroes Foundation to provide wills, estate planning resources, and advice to firefighters, police officers, and first responders and their families. Additionally, alongside the Administrative Office of the Courts, the Pro Bono Commission helps coordinate the **Guardianship Signature Project**. This signature project helps engage attorneys in pro bono representation for indigent litigants in guardianship cases.

Another program, led by Joyce Maughan on behalf of the Elder Law Section, is the **Senior Center Legal Clinic Program**. The program assists senior citizens with estate planning and assistance with elder law advocacy. The program is offered in over fifteen centers in the greater Salt Lake area.

## Pro Se Calendars

The roster of signature projects is always evolving to meet the needs of the community. In recent months, the Access to Justice Department has focused its efforts on coordinating free legal

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representation for pro se litigants in debt collection and eviction matters. The pro se calendar programs began as projects of individual attorneys in the Second and Third Districts. Now, the Access to Justice Department has expanded the projects at the Matheson Courthouse. The pro se calendars are unique opportunities for pro bono representation. Appearing in court to argue their positions is an intimidating process for most people. When an attorney assists at the pro se calendars, they provide legal counsel as well as advice for how to properly navigate the court process. Moreover, the public can face the justice system and feel that their voices are heard.

The pro se calendar programs focus on debt collection and immediate occupancy hearings. Due to the financial hardships they are already facing, most people in these contexts cannot afford an attorney. Indeed, the volunteer attorneys play a critical role in both demystifying the court system and helping the legal process serve everyone justly.

### Reduced-Rate Programs

In addition to free legal resources, the Utah State Bar coordinates a reduced-rate attorney referral program, **Modest Means**, to help those who do not qualify for free representation but who cannot afford a regular rate attorney. The Modest Means program began as an American Bar Association initiative, with each state managing their own program. Over the last few years, the Utah State Bar's Modest Means program has had more and more attorney participation and client applications.

The program refers to attorneys willing to accept cases at a rate of \$50 or \$75 per hour. Often this is the only opportunity for clients to afford quality legal representation, especially if their income disqualifies them from free service. Modest Means is a

statewide program and is particularly important for clients living in rural areas of Utah.

The Modest Means program predominantly serves clients in the areas of family law with more than half of the applicants requesting help in this area. Attorneys provide either full or limited representation in almost all areas of law.

### Get Involved!

The Utah State Bar's vision is to make the justice system understood, valued, and accessible. The three categories are interlocking. Without an accessible justice system, the public will continue to feel unrepresented and even resentful towards the legal system. However, as attorneys step in to demystify the legal world, and provide actual assistance, those most in need will start to feel that their concerns have been heard.

The rules of professional conduct recognize the significance of attorney participation in pro bono and low-bono efforts. Utah attorneys are encouraged to provide at least fifty hours of pro bono service per year. The Pro Bono and Access to Justice Coordinating Committee are grateful for the attorneys and law firms that prioritize pro bono projects, and those organizations working to make the legal system more accessible to all. A list of some of these great attorneys can be found in the Honor Roll section of the *Bar Journal*.

To learn more about the various Access to Justice initiatives and how to get involved with pro bono work, please contact The Access to Justice office at (801) 297-7049 or [probono@utahbar.org](mailto:probono@utahbar.org). The Check Yes! Volunteer Survey is also available on the Utah State Bar's website: <http://www.utahbar.org/public-services/pro-bono-assistance/>.

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- ✓ Amicus brief in *U. of U. Students Against Apartheid* (federal court) (symbolic speech challenge)
- ✓ 2016: *Valdez v. NSA* (federal court) Prevailed against NSA on its Motion to Dismiss

### Accountability for Abuses by Jails, Prison, and Police

- ✓ 2017: *Evans v. Unified Police Dept.* (\$1.2 Million settlement for man mistakenly shot by officer)
- Pending: Kendall v. Salt Lake City* (state court) (police trespass into backyard, killing of pet dog)
- ✓ *Bott v. Deland* (Utah Supreme Court) (after large jury verdict, established right to recover damages, not limited by statute, for violations of inmates' rights under Utah Constitution)
- ✓ *Regan v. Salt Lake County* (federal court) (consent decree in class action challenge to abusive searches)
- Pending: Pursuing justice for detainee who died while jail staff refused medical treatment*
- ✓ *Naugle v. Witney* (federal court) (successful challenge to illegal police search)

### Accountability for Sex Abuse, Rape

- Pending: Mitchell v. Roberts*, (Utah Supreme Court) (revival of previously time-barred child sex abuse claims)
- ✓ Substantial settlement for rape in airport parking lot

### Accountability for Fraud, Antitrust, and Securities Violations

- ✓ *Bradford v. Moench* (federal court) (establishing protections for depositors in financial institutions)
- ✓ Substantial settlement against boycotting physicians (Wyo. federal court)
- ✓ Full recovery of \$1 Million investment in fraudulent scheme

### Successful Advocacy in Commercial and Municipal Cases

- ✓ *Webb v. R.O.A. General, Inc.* (Utah Court of Appeals) (successful advocacy of plaintiff's claims for breach of contract and against defendant's claim for breach of fiduciary duty)
- ✓ 2016: *Salt Lake City v. R.O.A. General, Inc.* (Utah Court of Appeals) (successful challenge to eminent domain by municipality)
- ✓ 2017: Successful defense in complex copyright and employment case

### Personal Injury and Wrongful Death

- ✓ Important victories involving serious injuries and deaths from misconduct or product design

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# Lawyer Well-being: A Call to Action

by Keith A. Call

Two short stories:

Story No. 1. I met “John” in March of 2017. He was twenty years old, extremely personable, worked at a fast food joint, and dreamed of owning his own business. He was also severely addicted to alcohol and homeless, having recently been kicked out of a sober living home after months of expensive rehab followed by relapse.

I came to know John closely over the ensuing weeks and months. I remember being sleepless, thinking about my friend trying to stay warm and dry through a rainy, snowy night. I knew he was in a sleeping bag under a tree behind a bank in our relatively affluent suburb. I wondered if he was using alcohol to help him get through it. I saw him lose a few jobs, get kicked out of the gym where his family bought a membership so he could shower, and spend time on Rio Grande street giving in to his demons. I wondered if he would die.

Fortunately, John is now on his way to recovery. He has spent the last several months living and working at the John Volken Academy, a therapeutic community near Seattle that operates a two-year in-patient program. I hope and believe he will succeed.

Story No. 2. Actually this story is a conglomeration of many stories I have experienced. I have lunch with a colleague who, after blustering through how great life and law practice is, becomes deeply personal and expresses how stressful his life is, full of long working hours, high expectations, conflict with clients and opposing counsel, uncertainty about the future, and work-life balance problems. I feel both empathy and anxiety, perhaps in part because I can so easily relate. The experience reminds me of lawyer friends whose lives and families have been significantly impaired (even lost) after they turned to drugs and alcohol to cope. It also makes me think of many people, known and unknown to me, who suffer deeply through

the rigors of law and life without the aid of artificial substances.

As lawyers, chances are you have stories like these of your own. They might even be your story. If not, they are almost certainly a reflection of someone close to you. A recent Task Force Report sponsored by the ABA and other cooperating organizations found that between 21% and 36% of practicing lawyers are problem drinkers, and that 28%, 19%, and 23% are struggling with some level of depression, anxiety, and stress, respectively. “The parade of difficulties includes suicide, social alienation, work addiction, sleep deprivation, job dissatisfaction, a ‘diversity crisis,’ complaints of work-life conflict, incivility, a narrowing of values so that profit predominates, and negative public perception.” *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*, Nat’l Task Force on Lawyer Well-Being, Aug. 2017, at 7 (Task Force Report). I bet there is something in that last sentence that makes the issue more personal for each of you.

It is especially alarming that the highest rates of problem drinking and depression are among younger lawyers in their first ten years of practice. *Id.* This is something each of us should care about.

The Task Force Report is not just about bad statistics. It contains a host of specific and concrete suggestions for improvement. These recommendations are directed at judges, regulators, employers, law schools, bar associations, insurers, lawyer assistance

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





programs, and individuals. For example, the Report includes a checklist to help employers audit their policies and practices related to well-being, and numerous other helpful resources. It includes similar resources for other stakeholders.

Many among our bar have already gone to work in response to the Task Force Report. Our Supreme Court has formed a Joint Committee on Lawyer and Judge Well-Being, chaired by Justice Paige Petersen. The Committee seeks to implement the recommendations of the Task Force Report. The Committee has already assembled a number of excellent resources to help lawyers and stakeholders address well-being issues. *See* <https://www.utcourts.gov/utc/well-being/documents/> (last viewed Oct. 2, 2018). Utah is one of approximately twenty states across the country that have formed a state-level task force on lawyer well-being.

More needs to be done on institutional and individual levels. “The benefits of increased lawyer well-being are compelling and the cost of lawyer impairment are too great to ignore.” Task

Force Report, p. 10. Our various organizations, such as bar committees, employers and others should become familiar with the Task Force Report, the issues it raises, and the resources that are available to educate, train, and change behaviors. Individuals should raise their voices in support of change and work hard to eliminate the stigma attached to seeking help. Each of us needs to become more aware of what may be happening next door, down the hall, or across the street.

Finally, if *you* are the one suffering and need help, please don’t delay. Confidential help is available through Utah Lawyers Helping Lawyers, available at (801) 579-0404, or toll free at (800) 530-3743.

I am interested in hearing your feedback on these important issues. You can reach me at [kcall@scmlaw.com](mailto:kcall@scmlaw.com).

**AUTHOR’S NOTE:** *This article should not be construed to state enforceable legal standards or to provide guidance for any particular case.*

## ClydeSnow

### Clyde Snow Welcomes Two New Associates to its Salt Lake City Office



Katherine E. Pepin

Ms. Pepin received her J.D. in 2018 from the S.J. Quinney College of Law. She graduated with Highest Honors and is a member of the Order of the Coif. She received a B.B.A. in Human Resources Management from Grand Valley State University in Michigan.



Joseph D. Watkins

Mr. Watkins received his J.D. in 2018 from the J. Reuben Clark Law School. He is currently pursuing a Taxation LL.M. at Georgetown University in Washington, DC. Mr. Watkins received his B.S. in Business Management from Utah Valley University.

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## ***Notice of Bar Election: President-elect***

Nominations to the office of Bar President-elect are hereby solicited. Applicants for the office of President-elect must submit their notice of candidacy to the Board of Bar Commissioners by January 2, 2019. Applicants are given time at the January board meeting to present their views. Secret balloting for nomination by the board to run for the office of President-elect will then commence. Any candidate receiving the Commissioners' majority votes shall be nominated to run for the office of President-elect. Balloting shall continue until two nominees are selected.

**NOTICE:** Balloting will be done electronically. Ballots will be e-mailed on or about April 1, 2019, with balloting to be completed and ballots received by the bar office no later than April 15, 2019, by 5:00 p.m.

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

1. space for up to a 200-word campaign message plus a color photograph in the March/April issue of the *Utah Bar Journal*. The space may be used for biographical information, platform, or other election promotion. Campaign messages for the March/April *Bar Journal* publications are due along with two photographs no later than February 1st;
2. space for up to a 500-word campaign message plus a photograph on the Utah Bar Website due February 1st;
3. a set of mailing labels for candidates who wish to send a personalized letter to Utah lawyers who are eligible to vote;
4. a one-time email campaign message to be sent by the bar within three business days of receipt from the candidate; and
5. candidates will be given speaking time at the Spring Convention; (1) five minutes to address the Southern Utah Bar Association luncheon attendees and, (2) five minutes to address Spring Convention attendees at Saturday's General Session.

If you have any questions concerning this procedure, please contact John C. Baldwin at (801) 531-9077 or at [director@utahbar.org](mailto:director@utahbar.org).

## ***Notice of Bar Election: Second and Third Division Commission***

Nominations to the office of Bar Commissioner are hereby solicited for one member from the Second Division and two members from the Third Division – each to serve a three-year term. Terms will begin in July 2019. To be eligible for the office of Commissioner from a division, the nominee's business mailing address must be in that division as shown by the records of the bar. Applicants must be nominated by a written petition of ten or more members of the bar in good standing whose business mailing addresses are in the division from which the election is to be held. Nominating petitions are available at <http://www.utahbar.org/bar-operations/leadership/>. Completed petitions must be submitted to John Baldwin, Executive Director, no later than February 1, 2019 by 5:00 p.m.

**NOTICE:** Balloting will be done electronically. Ballots will be e-mailed on or about April 1st with balloting to be completed and ballots received by the Bar office no later than April 15, 2019, by 5:00 p.m.

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

1. space for up to a 200-word campaign message plus a color photograph in the March/April issue of the *Utah Bar Journal*. The space may be used for biographical information, platform or other election promotion. Campaign messages for the March/April *Bar Journal* publications are due along with completed petitions and two photographs no later than February 1st;
2. space for up to a 500-word campaign message plus a photograph on the Utah Bar Website due February 1st;
3. a set of mailing labels for candidates who wish to send a personalized letter to the lawyers in their division who are eligible to vote; and
4. a one-time email campaign message to be sent by the bar within three business days of receipt from the candidate.

If you have any questions concerning this procedure, please contact John C. Baldwin at (801) 531-9077 or at [director@utahbar.org](mailto:director@utahbar.org).



# Spring Convention

Utah  
State  
Bar®



March  
7-9

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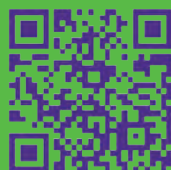
**10** HRS.

CLE CREDIT\*

\*Includes 3 hrs. Ethics and  
1 hr. Prof./Civ.  
Credit-type subject to change.



George



Dixie Center at St. George  
1835 Convention Center Drive | St. George, Utah

# 2019 “Spring Convention in St. George” Accommodations

Room blocks at the following hotels have been reserved. You must indicate that you are with the Utah State Bar to receive the Bar rate. After “release date” room blocks will revert back to the hotel general inventory.

Hotel	Rate (Does not include 11.92% tax)	Block Size	Release Date	Miles from Dixie Center to Hotel
Clarion Suites (fka Comfort Suites) (435) 673-7000 / <a href="http://stgeorgeclarionsuites.com">stgeorgeclarionsuites.com</a>	\$125	10	2/07/19	1
Comfort Inn (435) 628-8544 / <a href="http://comfortinn.com/">comfortinn.com/</a>	\$125	10-2Q 10-K	2/21/19	0.4
Courtyard by Marriott (435) 986-0555 / <a href="http://marriott.com/courtyard/travel.mi">marriott.com/courtyard/travel.mi</a>	\$159	10-K	2/07/19	4
Desert Garden Inn (fka Crystal Inn) (435) 688-6066 / <a href="http://crystalinns.com">crystalinns.com</a>	\$85 (3/7) \$109 (3/8)	5-2Q 5-K	2/07/19	1
Fairfield Inn (435) 673-6066 / <a href="http://marriott.com">marriott.com</a>	\$129	5-DBL 20-K	2/05/19	0.2
Hampton Inn (435) 652-1200 / <a href="http://hampton.com">hampton.com</a>	\$169	20-Q 5-K	2/21/19	3
Hilton Garden Inn (435) 634-4100 / <a href="http://stgeorge.hgi.com">stgeorge.hgi.com</a>	\$132-K \$142-2Q's	25	2/04/19	0.1
Holiday Inn St. George Conv. Center (435) 628-8007 / <a href="http://holidayinn.com/stgeorge">holidayinn.com/stgeorge</a>	\$132-K \$142-2Q's	8-K 7-Q	2/04/19	0.2
Hyatt Place (435) 656-8686 <a href="http://stgeorgeconventioncenter.place.hyatt.com">stgeorgeconventioncenter.place.hyatt.com</a>	\$139-Q \$149-K	10-DQ 10-K	2/11/19	.02
LaQuinta Inns & Suites (435) 674-2664 / <a href="http://lq.com">lq.com</a>	\$99	5-K	2/21/19	3
Red Lion (fka Lexington Hotel) (435) 628-4235	\$119	20	2/13/19	3
St. George Inn & Suites (fka Budget Inn & Suites) (435) 673-6661 / <a href="http://stgeorgeinnhotel.com">stgeorgeinnhotel.com</a>	\$99	10-DQ	2/07/19	1
TownePlace Suites by Marriott (435) 986-9955 / <a href="http://marriott.com/hotels/travel/sguts-towneplace-suites-st-george/">marriott.com/hotels/travel/sguts-towneplace-suites-st-george/</a>	\$159	10-K	2/17/19	3.4

# Pro Bono Honor Roll

## Bankruptcy Case

Douglas Barrett  
Mark Emmett  
KC Garner  
Malone Molgard  
William Morrison

## Bountiful Pro Se Debt Collection & Landlord/Tenant Calendar

Jon-David Jorengsen  
Kirk Heaton

## Box Elder Tuesday Night Bar

Christopher Beins  
Debbie Snow

## Cache County Bar Night

Erin Byington  
Ted Stokes

## Community Legal Clinic: Ogden

Jonny Benson  
Gary Wilkinson

## Community Legal Clinic: Salt Lake City

Jonny Benson  
Kendall Moriarty  
Leonor Perretta  
Bryan Pitt  
Brian Rothschild  
Paul Simmons  
Russell Yaune

## Community Legal Clinic: Sugarhouse

Skyler Anderson  
Jonny Benson  
Brent Chipman  
Sue Crismon  
Craig Ebert  
Sergio Garcia  
Lynn McMurray  
Melissa Moeinvaziri  
Peter Robson  
Reid Tateoka

## Debt Collection Pro Se Calendar – Matheson

Jose Abarca  
Keli Beard  
Michael Brown

John Cooper  
Jesse Davis  
Rick Davis  
Lauren DiFrancesco  
Kim Hammond  
Carley Herrick  
Rob Hughs  
Katrina Judge  
Janise Macanas  
Vaughn Pedersen  
Wayne Petty  
Karra Porter  
Mark Rasich  
Brian Rothschild  
Fran Wikstrom  
Nathan Williams

## Debtor's Legal Clinic

Brian Rothschild  
Paul Simmons  
Kregg Wallace  
Brent Wamsley  
Nate Williams

## Domestic Lawyers Academy

Suzette Alles  
Sean Baker  
Skyler A. Bentley  
Cleve Burns  
Rob Denton  
Carolina Duvanaced  
Karma French  
Rebekah-Anne Gebler  
McKinley Goreham Silvers  
Savanah Lawrence  
Sean B. Leonard  
Michelle Lesué (Instructor)  
Lillian Meredith  
Jaymes Orr  
Sara Payne  
Cecilee Price-Huish  
Rebecca Stewart  
Nicholas Stiles  
Scott Thorpe  
Tyler Vermillion  
Russ Weekes  
Nathan Williams  
Alizandria Young-Jui

## Expungement Law Clinic

Ali Barker  
Kate Conyers  
Josh Egan  
David Ferguson  
Grant Miller  
Jon Waldram

## Family Justice Center: Provo

Camille Buhman  
Chuck Carlston  
Drew Clark  
Elaine Cochran  
Thomas Gilchrist  
Michael Harrison  
Brandon Merrill  
Chris Morales  
Samuel Poff  
Babata Sonnenberg

## Family Law Case

Tatiana Christensen  
Rori Hendrix  
Chad McKay  
Keil Myers  
Tamara Rasch  
Sarah Vaughn

## Family Law Clinic

Justin Ashworth  
Clinton Brimhall  
Sally McMinimee  
Carolyn Morrow  
Stewart Ralphs  
Linda F. Smith  
Simon So  
Sheri Throop  
Leilani Whitmer

## Fifth District Guardianship Pro Se Calendar

Aaron Randall

## Free Legal Answers

Nicholas Babilis  
Trevor Bradford  
Marca Brewington  
Jacob Davis  
Chip Shaner

## Guardianship Case

Tamara Rasch

## Guardianship Signature Program

Kent Alderman  
Leslie Francis

## Homeless Youth Legal Clinic

Victor Copeland  
Allison Fresque  
Tyler Hawkins

Bradley Hendersen  
Hillary King  
Erika Larsen  
Sharon McCully  
Steve Peterson  
Allison Phillips-Belnap

## Landlord/Tenant Pro Se Calendar – Matheson

Matthew Vanek  
Nathan Williams

## Lawyer of the Day

Jared Allebest  
Jared Anderson  
Laina Arras  
Ron Ball  
Nicole Beringer  
Justin Bond  
Brent Chipman  
Scott Cottingham  
Chris Evans  
Jonathan Grover  
Robin Kirkham  
Ben Lawrence  
Allison Librett  
Suzanne Marychild  
Shaunda McNeil  
Keil Myers  
Lori Nelson  
Lorena Riffo-Jenson  
Jeremy Shimada  
Joshua Slade  
Linda Smith  
Laja Thompson  
Paul Tsosie  
Paul Waldron  
Brent Wamsley  
Kevin Worth

## Medical Legal Clinic

Micah Vorwaller

## Name Change Case

Rodney Snow

## QDRO Case

Keil Myers

## Rainbow Law Clinic

Jess Couser  
Shane Dominguez  
Russell Evans  
Stewart Ralphs



**Senior Center Legal Clinics**

Allison Barger  
 Kyle Barrick  
 Sharon Bertelsen  
 Richard Brown  
 Phillip S. Ferguson  
 Richard Fox  
 Jay Kessler  
 Joyce Maughan  
 Kate Nance  
 Rick Rappaport  
 Kathie Roberts  
 Jane Semmel  
 Jeannine Timothy  
 Jon Williams  
 Timothy Williams  
 Amy Williamson

**Street Law Clinic**

Nathan Bracken  
 Dara Cohn  
 Dave Duncan  
 Karma French  
 Jennie Garner  
 John Macfarlane  
 Cameron Platt  
 Elliot Scruggs  
 Jonathan Thorne

**SUBA Talk to a Lawyer Clinic**

Carson Bagley  
 Kimball Forbes  
 Maureen Minson  
 James Purcell  
 Lewis Reece  
 Mike Welker  
 Lane Wood

**Third District ORS Calendar**

Erin Adams  
 Whitney Krogue  
 Brit Merrill  
 Greg Newman  
 Ryan Pahnke  
 Rob Rice  
 Adam Richards  
 Rick Rose  
 Liesel Stevens  
 Maria Windham

**Timpanogos Legal Clinic**

Jim Backman  
 Marca Tanner Brewington  
 Chuck Carlston  
 Elaine Cochran  
 Chris Guymon  
 Chase Hansen  
 Carolyn Howe

Isaac MacFarlane  
 Brandon Merrill  
 DeRae Preston  
 Candace Reid  
 Eryn Rogers  
 Simon So  
 Babata Sonnenberg  
 Michael Winn

**Tuesday Night Bar**

Alain Balmanno  
 Kady Bauchman  
 Madelyn Blanchard  
 Jackie Bosshardt  
 Josh Chandler  
 Steve Combs  
 Luke Deppermann  
 Jasmine Fierro Maciel  
 Dave Geary  
 Carlyle Harris  
 John Hurst  
 Emily Iwasaki  
 Annette Jan  
 Parker Jenkins  
 Braden Johnson  
 Patrick Johnson  
 Jon-David Jorgensen  
 Derek Kearl  
 Jon Kotter  
 Todd Labrum

Kurt London  
 Lucia Maloy  
 Eli McCann  
 Nethanael Mitchell  
 Audrey Olson  
 Ben Onofrio  
 Braden Parker  
 Rachel Phillips  
 Rick Robinson  
 Shane Stroud  
 Jeff Tuttle  
 Bebe Vanek  
 Lucy Wasmund

**Utah Legal Services  
Enhanced Services Project**

Donna Bradshaw  
 Justin Clark  
 Kurt Hendricks

**Veterans Legal Clinic**

Brent Huff  
 Jonathan Rupp  
 Joseph Rupp  
 Katy Strand

**Wills/Trusts/Estate/  
Probate Case**

Nicholas Angelides

The Utah State Bar and Utah Legal Services wish to thank these volunteers for accepting a pro bono case or helping at a free legal clinic in August and September of 2018. To volunteer call the Utah State Bar Access to Justice Department at (801) 297-7049 or go to <http://www.utahbar.org/public-services/pro-bono-assistance/> to fill out our Check Yes! Pro Bono volunteer survey.

## *Join the Senior Attorney Section!*

The new Senior Attorney Section of the Utah State Bar is an innovative approach to meeting the legal needs of low-income Utahns. Established this summer, the Senior Attorney Section will create a pool of senior experienced attorneys (active, or inactive from Utah and other jurisdictions practicing under Rule 14-803) who are willing to support pro bono efforts. The Section will also effectively create and continue social associations for attorneys following their retirement from full-time practice.

Through its volunteer members, the Section will support current initiatives sponsored by Pro Bono Commission, District Pro Bono Committees, and various non-profit organizations. Current examples of the projects the Section may support are the Matheson Courthouse Landlord/Tenant and Debt Collection Pro Se Calendars, the Domestic Default Calendars, the Guardianship Signature Program, and the Bankruptcy Signature Program.

While understandably a large majority of attorney efforts will be focused along the Wasatch front, the Section intends to support pro bono initiatives throughout the state and welcomes opportunities and attorneys from across Utah.

The first meeting of the Section will be held in November at the Law and Justice Center. For more information contact: Rick Davis at [trdavis@princeyeates.com](mailto:trdavis@princeyeates.com) or Nick Stiles at [Nicholas.stiles@utahbar.org](mailto:Nicholas.stiles@utahbar.org).

## *Rules Change Allows Self-Study CLE Credits for Lectures to Groups of Five or More Non-Lawyers*

Effective November 1, 2018, Bar members can receive self-study credit for lecturing to groups of five or more non-lawyers in a community outreach capacity. An example of community outreach that would qualify for CLE credit is a presentation made by a legislator to a group of non-lawyers about the legislator's service on the public policy making body.

### **RULE 14-409.**

#### **Self-study categories of accredited MCLE defined.**

(a) Lecturing, teaching, panel discussions and community outreach.

(1) Lawyers who lecture in an accredited CLE program will receive credit for three hours for each hour spent lecturing. No lecturing or teaching credit is available for participation in a panel discussion or for preparation time.

(2) Lawyers who lecture in a community outreach capacity may receive credit for each hour spent lecturing to groups of 5 or more non-lawyers for the purpose of educating a non-lawyer audience about legal topics. Community outreach may include, but is not limited to a lecture made by a lawyer about the lawyer's deliberation on legal subject matter as an elected or appointed member of a public policy making body that is created by statute or constitution and a lecture by a lawyer about the structure of Government, the Utah Constitution, the U.S. Constitution or any legislation of either the Utah Legislature or U.S. Congress. Such community outreach lecturing, however, must be referenced in an agenda or outline format identifying: the body to whom the lecture is presented; the date, hour, and duration of the lecture; and the topics covered. Community outreach lecturing on legal subjects is eligible for a maximum of nine (9) hours of self-study credit for a reporting period.

(b) Final published course schedule, outline or agenda. The Board will determine the number of accredited CLE hours available for a program based on the final published course schedule, outline or agenda, as appropriate.

(c) Equivalent CLE credit for certain self-study activities. Subject to the Board's determination, the Board will allow equivalent

credit for such activities that further the purpose of this article and qualify for equivalency. Such equivalent activities may include, but are not limited to, viewing approved CLE audio and video and webcast presentations, computer interactive telephonic programs, writing and publishing an article in a legal periodical, part-time teaching by a lawyer in an approved law school, or delivering a paper or speech on a professional subject at a meeting primarily attended by lawyer, legal assistants or law students. The number of hours of credit allowed for such activities and the procedures for obtaining equivalent credit will be determined specifically by the Board for each instance.

**Comment:** An example of community outreach that would qualify for CLE credit under subsection (a) (2) is a presentation made by a Legislator to a group of non-lawyers about the Legislator's service on the public policy making body.

**Effective November 1, 2018**

### **RULE 14-413.**

#### **MCLE credit for qualified audio and video presentations, webcasts, computer interactive telephonic programs, writing, lecturing, teaching, public service, and live attendance.**

(a) Credit will be allowed for self-study with Board accredited audio and video presentations, webcasts or computer interactive telephonic programs, writing, lecturing, teaching, and public service and service in accordance with the following.

(a)(1) One hour of self-study credit will be allowed for viewing and/or listening to 60 minutes of audio or video presentations, webcasts or computer interactive telephonic programs in accordance with Rule 14-408(a).

(a)(2) No more than 12 hours of credit may be obtained through self-study with audio or video presentations, webcasts or computer interactive telephonic programs. Upon application to the Board, the Board may grant a waiver, permitting a lawyer on active status to obtain all required hours of credit through self-study, if the lawyer:

(a) (2) (A) does not reside in Utah; and

(a) (2) (B) is engaged in full-time volunteer work for a religious or charitable organization.

(b) Credit will be allowed for writing and publishing an article in a legal periodical in accordance with the following.

(b) (1) To be eligible for any credit, an article must:

(b) (1) (A) be written to address a lawyer audience;

(b) (1) (B) be at least 3,000 words in length;

(b) (1) (C) be published by a recognized publisher of legal material; and

(b) (1) (D) not be used in conjunction with a seminar.

(b) (2) Three credit hours will be allowed for each 3,000 words in the article. An application for accreditation of the article must be submitted at least 60 days prior to reporting the activity for credit. Two or more authors may share credit obtained pursuant to this paragraph in proportion to their contribution to the article. No more than 12 hours of credit may be obtained through writing and publishing an article or articles.

(c) Credit will be allowed for lecturing in an accredited CLE program, part-time teaching by a lawyer in an approved law school, or delivering a paper or speech on a professional subject at a meeting primarily attended by lawyers, legal assistants or law students in accordance with the following.

(c) (1) Lecturers in an accredited CLE program and part-time teachers may receive three self-study hours of credit for each hour spent in lecturing or teaching as provided in Rule 14-409(a) (1); however, no lecturing or teaching credit is available for participation in panel discussions.

(c) (2) Lecturers in a community outreach capacity, as described in Rule

14-409(a) (2), may receive one hour of self-study credit for each hour spent in lecturing or teaching provided such CLE credit does not exceed nine (9) hours for a reporting period.

(c) (3) No more than 12 hours of self-study credit may be obtained through lecturing, community outreach lecturing, part-time teaching and public service, under Rules 14-409(a) (1) or (2).

(d) Credit will be allowed for lecturing and teaching by full-time law school faculty members in accordance with the following.

(d) (1) Full-time law school faculty members may receive credit for lecturing and teaching but only for lecturing and teaching accredited CLE courses.

(d) (2) No lecturing or teaching credit is available for participation in panel discussions.

(d) (3) No more than 12 hours of credit may be obtained through lecturing and teaching by full-time law school faculty members.

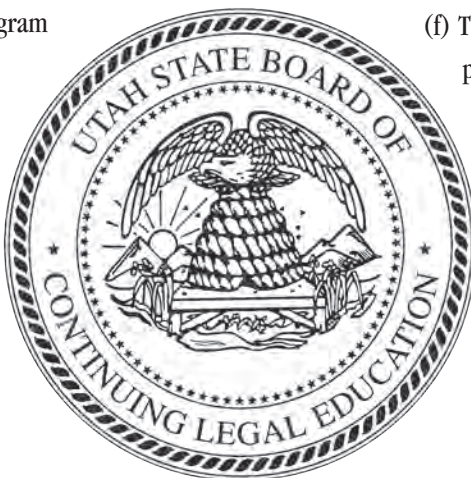
(e) Credit will be allowed for attendance at an accredited CLE program in accordance with the following.

(e) (1) Credit is allowed for attendance at an accredited CLE program in accordance with Rule 14-408(a).

(e) (2) A minimum of 12 CLE hours, with no maximum restriction, must be obtained through attendance at live in-person CLE programs.

(f) The total of all hours allowable under paragraphs (a), (b) and (d) of this rule may not exceed 12 hours during a reporting period.

(g) No credit is allowed for self-study programs except as expressly permitted under paragraph (a).



**Effective November 1, 2018**



## Ethics Advisory Opinion Committee – Recent Opinions

### OPINION NUMBER 17-06 (REVISED)

Issued August 16, 2018

**ISSUES:** The opinion request involved several issues in the practice of consumer Chapter 7 (liquidation) bankruptcies.<sup>1</sup> The issues discussed also have relevance in lawyer advertising, client conflicts, and unbundling legal services.<sup>2</sup> The issues presented include:

- a. Is a lawyer's advertisement of a "\$99" or "Zero Down" for a consumer Chapter 7 liquidation bankruptcy misleading under Rule 7.1 of the Utah Rules of Professional Conduct? Is it misleading to advertise that such a price is good for a limited time or that a promotion with this price has been extended?
- b. What are the ethical constraints when requesting the client sign a post-petition attorney fee contract which will not be discharged?
- c. What disclosures must be made if the lawyer intends to sell the rights to collect the post-petition attorney fee contract to a litigation financing company? Does a relationship with the buyer of the attorney fee contract create a conflict of interest under Rule 1.7 of the Utah Rules of Professional Conduct?
- d. Are the attorney fees reflected in the post-petition contract reasonable when the attorney sells her rights to those fees at a deep discount under Rule 1.5 of the Utah Rules of Professional Conduct?

**OPINION:** Without providing the consumer further information, advertisement of a "\$99" Chapter 7 bankruptcy or a "Zero Down" Chapter 7 bankruptcy is false and misleading under Rule 7.1(a) of the Utah Rules of Professional Conduct because the price refers only to the filing of the initial petition. The price does not include the mandatory filing fee as well as work to be done subsequent to the filing of the petition such as preparation of schedules, meeting of creditors, and reaffirmation agreements. All of these subsequent activities are necessary to obtaining a final discharge of debt which, of course, is the purpose of a consumer bankruptcy. Unless the follow up work is done, the bankruptcy will ultimately be dismissed. The consumer will have wasted both time and money.

In connection with the disclosures required under paragraph two above to avoid running afoul of Rule 7.1(a) of the Utah Rules of Professional Conduct, an attorney must disclose that her fees for post-petition work will be more substantial and not dischargeable in the consumer bankruptcy. The attorney cannot "unbundle" the filing of the petition unless it is reasonable under the circumstances to do so. Further, no case can be unbundled where prohibited by statute, case law or court rules.

While it is not a violation of the Utah Rules of Professional

Conduct to sell a lawyer's accounts receivable, the client must be fully informed with respect to the transaction. The client must be offered the same discounted price. The client must consent in writing to the sale and must be informed that the legal fees for post-petition work are not dischargeable. The lawyer must inform the client that the legal financing company will collect the fee and if there were to be a dispute between the finance company and the client, the lawyer would not represent the client.

The fee charged the client (including the finance company discount) must be reasonable. Reasonable fees in consumer bankruptcy are governed by Rule 1.5(a) of the Utah Rules of Professional Conduct.

1. This response is reflective of information given the Ethics Advisory Opinion Committee (the Committee). The Committee was not asked to approve a business model nor does it do so. It is up to the individual lawyers concerned to evaluate their business practices with respect to compliance with the Utah Rules of Professional Conduct, and other applicable law, and the guidance given below.
2. This opinion replaces the prior version of Opinion 2017-06.

### OPINION NUMBER 18-04

Issued September 11, 2018

**ISSUES:** Is it permissible for an attorney to include an indemnification provision in a retainer agreement at the commencement of representation that requires the client to indemnify the attorney and related entities against third party claims that arise from the client's behavior or negligence?

Is it permissible, in response to a malpractice claim brought after the conclusion of the representation, for the attorney to use such an indemnification provision to hold a client responsible for the attorney's malpractice insurance deductible if the client does not prevail on the malpractice claim against the attorney?

**OPINION:** An attorney may include an indemnification provision in a retainer agreement at the commencement of representation that requires the client to indemnify the attorney and related entities against claims that arise from the client's behavior or negligence.

An attorney may not participate in an agreement that limits the attorney's liability for malpractice. Although the proposed application does not limit explicitly limit the attorney's liability for malpractice, it could decrease the likelihood that a client will bring a claim for malpractice, if he or she will be required to pay the attorney's deductible if the claim fails, and thus has the potential to interfere with the administration of justice by having a chilling effect on a potential malpractice suit.

The complete text of these and other ethics opinions are available at: [www.utahbar.org/opc/eaoc-opinion-archives/](http://www.utahbar.org/opc/eaoc-opinion-archives/).

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# Twenty-Ninth Annual Lawyers & Court Personnel Food & Winter Clothing Drive

## Selected Shelters



### First Step House

Established in 1958, First Step House (FSH) has grown into a specialized substance abuse treatment center serving low-income and no-income adult men with affordable and effective treatment programs and services. In January of 2016, FSH opened a Recovery Campus dedicated to meeting the treatment and housing needs of veterans in our community.

The Recovery Campus, located at 440 South 500 East, provides 32 treatment beds and 18 transitional housing units for veterans receiving treatment for substance use and behavioral health disorders.

Their treatment programs include evidence-based therapy, case management, life skills classes, employment support, housing support and placement, individualized financial counseling, and long-term recovery support. They seek to utilize the latest research to continually drive the care that they provide and are distinctive in their unyielding commitment to help people and families become well.

### The Rescue Mission

#### Women & Children in Jeopardy Program

#### Jennie Dudley's Eagle Ranch Ministry

Serving the homeless under the freeway on Sundays and Holidays for many years.

## Drop Date

**December 14, 2018 • 7:30 a.m. to 6:00 p.m.**

Utah Law and Justice Center – rear dock  
645 South 200 East • Salt Lake City, Utah 84111

**Volunteers will meet you as you drive up.**

**If you are unable to drop your donations prior to 6:00 p.m., please leave them on the dock, near the building, as we will be checking again later in the evening and early Saturday morning.**

## Volunteers Needed

Volunteers are needed at each firm to coordinate the distribution of e-mails and flyers to firm members, as a reminder of the drop date and to coordinate the collection for the drop.

If you are interested in helping please call (801) 363-7411 or email:

Leonard W. Burningham  
[lwb@burninglaw.com](mailto:lwb@burninglaw.com)

Branden T. Burningham  
[btb@burninglaw.com](mailto:btb@burninglaw.com)

Bradley C. Burningham  
[bcb@burninglaw.com](mailto:bcb@burninglaw.com)

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## Thank You!

## What is Needed?

### All Types of Food

- oranges, apples & grapefruit
- baby food & formula
- canned juices, meats & vegetables
- crackers
- dry rice, beans & pasta
- peanut butter
- powdered milk
- tuna

*Please note that all donated food must be commercially packaged and should be non-perishable.*

### New & Used Winter & Other Clothing

- boots
- gloves
- coats
- sweaters
- trousers
- hats
- scarves
- suits
- shirts

### New or Used Misc. for Children

- bunkbeds & mattresses
- cribs, blankets & sheets
- children's videos
- books
- stuffed animals

### Personal Care Kits

- toothpaste
- toothbrush
- combs
- soap
- shampoo
- conditioner
- lotion
- tissue
- barrettes
- ponytail holders
- towels
- washcloths





## 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:** <http://www.utahbar.org/?s=ethics+hotline>

**Information about the formal Ethics Advisory Opinion process:** [www.utahbar.org/opc/rules-governing-eaoc/](http://www.utahbar.org/opc/rules-governing-eaoc/).

### SUSPENSION

On August 6, 2018, the Honorable Royal I. Hansen, Third Judicial District, entered an Order of Discipline: Suspension against Sean P. Young, suspending his license to practice law for a period of three years. The court determined that Mr. Young violated Rule 1.1 (Competence), Rule 1.3 (Diligence), Rule 1.4(a) (Communication), Rule 1.4(b) (Communication), Rule 1.15(d) (Safekeeping Property), Rule 1.16(d) (Declining or Terminating Representation), Rule 3.3(a) (Candor Toward the Tribunal), and Rule 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

*In summary:*

#### Immigration Matter:

A client retained Mr. Young to represent her in removal proceedings before the United States Immigration Court and paid for the representation. A few months later, the client married a U.S. Citizen with whom the client was expecting a child. As a result, the client became eligible for an adjustment of immigration status and retained Mr. Young to file the petition. Mr. Young received a payment from the client to prepare the petition including the filing fee, but Mr. Young did not file the petition. A removal hearing was held, but Mr. Young did not appear at the hearing with the client and instead an associate requested a continuance. On the advice of Mr. Young, the client's husband did not attend the hearing. The judge denied

the continuance request and instead granted the client's voluntary departure.

The client's husband paid Mr. Young to file a motion to reopen the case. The client attempted to contact Mr. Young regarding the status of the motion to reopen but Mr. Young did not respond. Several months later, Mr. Young filed the motion to reopen but failed to attach adequate proof to substantiate the client's marriage. In the motion to reopen, Mr. Young indicated to the court that due to financial struggles, the client was unable to file the petition prior to the removal hearing. The immigration court denied the motion to reopen.

Mr. Young did not notify the client that the motion had been denied. After making repeated attempts to contact Mr. Young, the client contacted Immigration and Customs Enforcement and discovered that the motion was denied. The client's husband paid Mr. Young to file an appeal with the Board of Immigration Appeals. The Board issued a notice of briefing schedule. Mr. Young filed a request for an extension of time to file his brief but the Board denied the request. Mr. Young never filed a brief on behalf of the client. The client's husband paid Mr. Young to file a request for a stay of the client's removal. Mr. Young filed the request on the day scheduled for the client's departure. The request was denied. The client retained new counsel and based on Mr. Young's ineffective representation, new counsel was able to reopen the case and ultimately obtain permanent residency.

### Discipline Process Information Office Update

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



801-257-5515 | [DisciplineInfo@UtahBar.org](mailto:DisciplineInfo@UtahBar.org)

for the client. Mr. Young failed to provide an accounting of the work he performed on behalf of the client.

The OPC sent two letters and a Notice of Informal Complaint (NOIC) to Mr. Young requesting his response. Mr. Young did not respond to the OPC.

### **Criminal Matter No. 1**

A man pled guilty to capital murder and was sentenced to death. Some years later, the supreme court allowed the man to withdraw his guilty plea and remanded the matter to the district court. Mr. Young was appointed to assist another attorney in representing the man. The client provided Mr. Young with a detailed list of potential witnesses that he believed would have helpful information in mitigation. Mr. Young was tasked with coordinating the potential testimony of approximately eighteen witnesses, including contacting and interviewing the witnesses, preparing the witnesses to testify at trial and issuing subpoenas. Mr. Young assured his co-counsel and the client that he was conducting his assigned work and that most of the witnesses were not cooperating or would not contact him. Contrary to Mr. Young's representations, he failed to contact, interview or question all but two of the witnesses he was to contact. The witnesses Mr.

Young failed to contact had compelling evidence to present to the jury. Mr. Young's conversations with the two witnesses he did contact were not about the substance of their testimony.

During the trial, Mr. Young inadequately cross-examined some of the State's witnesses against the client, failed to timely object to interference with witness testimony and allowed the jury to hear that the client withdrew the jury's option to consider a sentence of life in prison without parole.

A different attorney was appointed to represent the client in his Capital appeal. That attorney promptly requested the client's file from Mr. Young. Eventually, the attorney had to file a motion to compel Mr. Young to provide the client file. The court granted the motion and ordered Mr. Young to provide the file. Mr. Young eventually provided an incomplete file almost a year after the initial request for the file.

### **Criminal Matter #2**

Mr. Young was appointed to represent a man in a criminal matter. The client called Mr. Young multiple times to request copies of his discovery and his file, but Mr. Young did not respond. The OPC sent two letters and a NOIC to Mr. Young requesting his response. Mr. Young did not respond to the OPC.

### **Criminal Matter #3**

Mr. Young was appointed to represent a man in a criminal matter. Mr. Young failed to meet with the client, failed to gather evidence, including the testimony of two critical expert witnesses and failed to object to the introduction of irrelevant and highly prejudicial evidence. The OPC sent two letters and a NOIC to Mr. Young requesting his response. Mr. Young did not respond to the OPC. Mr. Young, after proper notice also failed to attend the Screening Panel Hearing of the Ethics and Discipline Committee of the Utah Supreme Court.

## **SUSPENSION**

On August 8, 2018, the Honorable Richard McKelvie, Third Judicial District, entered an Order of Discipline: Suspension against Nathan W. Drage, suspending his license to practice law for a period of three years. The court determined that Mr. Drage violated Rule 8.4(b) (Misconduct) of the Rules of Professional Conduct.

### *In summary:*

On August 30, 2017, the United States District Court, District of Utah, convicted Mr. Drage of Conspiracy to Impair and Impede



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the IRS, a Felony; and Willful Failure to File a Return – Tax Year 2004, Willful Failure to File a Return – Tax Year 2005, and Willful Failure to File a Return – Tax Year 2006, Misdemeanors. Mr. Drage was sentenced to twenty-four months probation and restitution. Mr. Drage's alleged co-conspirators were acquitted of the conspiracy charges.

*Aggravating Circumstances:*

Prior record of discipline.

*Mitigating Circumstances:*

Good reputation.

### RECIPROCAL DISCIPLINE

On September 14, 2018, the Honorable Su J. Chon, Third Judicial District Court, entered an Order of Reciprocal Discipline: Probation, against R. Jordan Gardner, giving Mr. Gardner a ninety day probation for his violation of Rule 1.5 (Fees), Rule 1.7 (Conflict of Interest), and Rule 8.4(d) (Misconduct) of the Rules of Professional Conduct.

*In summary:*

On February 21, 2018, the Presiding Disciplinary Judge, State of Arizona, issued a Final Judgement and Order placing Mr. Gardner on probation for ninety days and publicly reprimanded him for his conduct in violation of the Arizona Rules of Professional Conduct.

Mr. Gardner filed a petition for dissolution of a marriage,

identifying himself as attorney for the petitioner (Wife) and indicated that Wife was seeking to divorce Husband. The judge approved a consent decree that appeared to be unusually favorable to Husband because he understood Wife to be represented by Mr. Gardner. The court made its determination after reviewing Mr. Gardner's client intake form that identified Wife as the adverse party and the fee agreement that listed Wife as the adverse party. There was incongruity between the identity of Mr. Gardner's client in court pleadings and the fee agreement and the scope of the representation was not adequately conveyed to Wife.

The court later determined that Mr. Gardner conducted an initial consultation with Husband in what he understood to be an uncontested divorce. At the time both Husband and Wife were affiliated with a church in Colorado City, Arizona. A few days after the initial consultation, Husband called Mr. Gardner and explained that because he was affiliated with the church, he did not want to be identified as the party initiating the divorce. Husband told Mr. Gardner that Wife consented to being identified as the petitioner in the matter. Husband and Wife both appeared in Mr. Gardner's office and signed court documents prepared by Mr. Gardner following discussion between the two. Mr. Gardner prepared the consent decree based upon the discussions. Wife contacted Mr. Gardner and voiced several concerns with the documents that had been prepared. Mr. Gardner met with Wife outside of Husband's presence and further discussed these issues. Later, the consent agreement was executed by the parties. Two years later, Wife filed a motion to

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vacate the consent decree alleging that Mr. Gardner failed to adequately consult with her prior to her signing the decree. The court vacated the consent decree.

### RECIPROCAL DISCIPLINE

On July 31, 2018, the Honorable Laura S. Scott, Third Judicial District Court, entered an Order of Reciprocal Discipline: Probation, against J. Brent Garfield, giving Mr. Garfield a three year probation for his violation of Rule 1.3 (Diligence), Rule 1.4(b) (Communication), Rule 1.15(a) (Safekeeping Property), and Rule 1.16(d) (Declining or Terminating Representation) of the Rules of Professional Conduct.

#### *In summary:*

On June 23, 2017, the Colorado Supreme Court issued an Order Approving Conditional Admission of Misconduct and Imposing Sanctions. Mr. Garfield agreed to a 30-day suspension all stayed provided he successfully complete a three year probationary period with conditions.

Mr. Garfield is a solo-practitioner who was winding down his practice. He was hired by a family friend to represent her in divorce proceedings. The friend paid Mr. Garfield's fee, which she understood to be a flat fee, but they had no written agreement. After he was hired, Mr. Garfield learned he would be called away for eighteen months on a religious mission to a foreign country. Mr. Garfield informed all his clients, including his friend, that he would be called away. Though Mr. Garfield encouraged the friend to retain new counsel, he did not withdraw from her case. According to Mr. Garfield, communication with the client was occasionally difficult and she was reluctant to retain new counsel.

Mr. Garfield continued to work to try and settle her case, but as his departure was approaching he was waiting on her to provide him with a list of settlement terms she would agree to. The

friend provided the list, the same day he began training for the mission trip. Mr. Garfield thought that he would be able to finish wrapping up the case after arriving in his foreign assignment but was unable to establish an internet connection or otherwise attend to the case for approximately six weeks after arriving.

After Mr. Garfield fell out of touch with her, the friend contacted another attorney. The new attorney attempted to contact Mr. Garfield but received an outgoing voicemail informing her that he was on an 18-month sabbatical and she should contact a certain attorney who agreed to field his messages and give clients access to their files in Mr. Garfield's absence. The new attorney contacted that attorney who had no information about the friend's case.

The new attorney checked the case's Record of Actions, which reflected that the case was set for a Permanent Orders hearing. The new attorney also contacted opposing counsel, who informed her that Mr. Garfield had failed to participate in preparing a Joint Trial Management Certificate and had disclosed neither witnesses nor evidence for the upcoming hearing.

Mr. Garfield claims to have informed the friend of the upcoming hearing, though he has no specific memory of their conversation. Mr. Garfield admits to not submitting any prehearing witnesses or exhibit lists because he was distracted by preparing for the mission trip and because he was focused on trying to get the case settled.

Mr. Garfield gave the friend an accounting of her fees, stating that he intended the fee to be a fixed, non-refundable flat fee, but given his early departure from the case, he believed the friend was owed a refund. Mr. Garfield admits that he did not hold the flat fee in his trust account for any portion of his representation.

### **ETHICS FOR LAWYERS: How to Manage Your Practice, Your Money and Your Files. Annual OPC CLE**

**January 23, 2019 | 8:00 am – 12:30 pm.  
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To register visit: [https://services.utahbar.org/Events/  
Event-Info?sessionaltcd=19\\_9094](https://services.utahbar.org/Events/Event-Info?sessionaltcd=19_9094).

### **Join us for the OPC Ethics School**

**March 20, 2019 | 9:00 am – 3:45 pm.**

**Utah Law & Justice Center  
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**5 hrs. Ethics CLE Credit, 1 hr. Prof./Civ.**

**Cost \$245 on or before March 6, 2019,  
\$270 thereafter.**

## RECIPROCAL DISCIPLINE

On August 30, 2018, the Honorable Kara L. Pettit, Third Judicial District Court, entered an Order of Reciprocal Discipline: Suspension, against Kirk A. Guinn, giving Mr. Guinn an eighteen month suspension from the practice of law for his violation of Rule 1.5(a) (Fees), Rule 1.7(a) (Conflict of Interest), Rule 3.3(a) (Candor Toward the Tribunal), and Rule 8.4(d) (Misconduct) of the Rules of Professional Conduct.

### *In summary:*

On May 22, 2017, the Presiding Disciplinary Judge, State of Arizona, issued a Final Judgment and Order in which Mr. Guinn was suspended for eighteen months for his conduct in violation of the Arizona Rules of Professional Conduct.

Mr. Guinn filed a bankruptcy for a client dying from terminal cancer who had liens on his vehicles. Mr. Guinn and his daughter appeared at the client's home and personally drove away the vehicles of the client prior to Mr. Guinn filing the bankruptcy for him. The client died and in that same month, the lienholder received notification from an Indiana towing company, threatening that if the lender failed to pay towing and storage costs, the client's vehicles would be sold. When the lienholder arranged to pay those fees, the lienholder was told the cars had already been sold.

When confronted by the lienholder with the fact that his daughter and he had personally taken the vehicles, Mr. Guinn was asked why the vehicles had been taken to Indiana, he

responded, "it was convenient."

In the client bankruptcy matter, the U.S. Trustee moved for Denial of Prior Fees and Request for Disgorgement. In the motion, it was stated that Mr. Guinn was paid his fee by a third party affiliated with the Indiana towing company. Mr. Guinn did not respond to the motion and failed to appear for a hearing on the motion. The Court ordered Mr. Guinn to appear. At the hearing, Mr. Guinn revealed he had no written agreement with the third party explaining how he would receive his fees but he had advised his client to contract with the third party who would pay Mr. Guinn. The Court ordered Mr. Guinn to list all the bankruptcy cases in which he received payment from the third party or his entities. Mr. Guinn admitted he had a relationship with the third party in twenty-four other cases. The Court ordered he disgorge himself of all fees collected through his involvement with the third party. Mr. Guinn and the Trustee settled these matters.

In a second case, Mr. Guinn represented a client in a bankruptcy matter. The client asked about attorney fees, and Mr. Guinn advised that he could participate in the "vehicle surrender program" that would cover his attorney fees. The client agreed to participate in his program, and Mr. Guinn arranged for a transfer of the client's vehicle to the Indiana towing company. He assured the client he could file bankruptcy in three weeks.

After the three weeks passed, Mr. Guinn's client repeatedly attempted to contact Mr. Guinn with no answer for over a

# ROBERT J. BARRON

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month. The lienholder made demands on the clients. When Mr. Guinn finally responded to his client, he told him he was filing the bankruptcy and to have the lienholder contact him directly. Mr. Guinn then told the lienholder his client had transferred the car out of state. Mr. Guinn told his client that the action taken was not illegal. When the lienholder told the client he could face criminal prosecution, the vehicle was returned to the lienholder without the client's knowledge.

### RECIPROCAL DISCIPLINE

On September 10, 2018, the Honorable Richard E. Mrazik, Third Judicial District Court, entered an Order of Reciprocal Discipline: Public Reprimand, against Joshua R. Trigsted for his violation of Rule 4.2 (Communication with Persons Represented by Counsel) of the Rules of Professional Conduct.

#### *In summary:*

On April 18, 2018, the Oregon Supreme Court issued an Order of Discipline: Public Reprimand with Conditions.

Mr. Trigsted undertook to represent two clients in separate alleged Federal Fair Debt Collection Practices Act claims against a company (Company). An attorney (Company Attorney)

represented the Company and copied the president of the Company (President) and an employee of the Company (Employee) on an email sent to Mr. Trigsted. Mr. Trigsted replied to Company Attorney and copied President and Employee. Over the next several weeks, when Company Attorney emailed Mr. Trigsted and copied President and Employee, Mr. Trigsted replied solely to Company Attorney.

In response to a demand letter Mr. Trigsted sent to the Company on one claim, President notified Mr. Trigsted that Company Attorney represented them on both claims and asked Mr. Trigsted to direct all communication to Company Attorney. After acknowledging notice of the representation, Mr. Trigsted "replied all" to an email from Company Attorney, copying President on that communication.

### PUBLIC REPRIMAND

On August 27, 2018, the Chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Jeffrey C. Howe for violating Rule 1.1 (Competence), Rule 1.2(a) (Scope of Representation), and Rule 1.4(a) (Communication) of the Rules of Professional Conduct.

#### *In summary:*

A client retained Mr. Howe to represent her in bankruptcy proceedings. The day before the creditor meeting, the client received an email from Mr. Howe indicating that she should sign the attached documents and bring them with her to the hearing. The attached documents were not her documents, so the client refused to attend the hearing. Because the client was not at the hearing, Mr. Howe offered to re-file the bankruptcy petition but did not explain the consequences of a dismissal of a bankruptcy case. Mr. Howe filed a second petition for bankruptcy on behalf of the client but did so without the client's authorization. The client did not attend the meeting of creditors due to her attendance at a memorial service. The client did not speak with Mr. Howe again after notifying him that she would not attend the meeting of creditors. Mr. Howe filed a third petition for bankruptcy on behalf of the client. The client was not aware that Mr. Howe had filed the petition and he did not have her authorization to file it. The client's credit was detrimentally impacted as a result of the filings. Mr. Howe returned the full amount of the client's retainer.

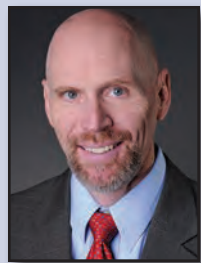
#### *Aggravating Circumstances:*

Prior record of discipline.

#### *Mitigating Circumstances:*

Medical issues.

## Facing a Bar Complaint?



**TODD WAHLQUIST**

Has spent nearly a decade involved in the attorney discipline process.

Former Deputy  
Senior Counsel,  
Office of Professional  
Conduct

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## *International Business in Utah: Brief Overview and Considerations for Utah Attorneys*

by Jordan E. Toone

Recent efforts by political, business, and civic leaders to promote international business in Utah – such as approval of the Salt Lake Inland Port initiative, the \$3.3 billion expansion and modernization of the Salt Lake International Airport, and the reorganization of Salt Lake City's Foreign Trade Zone #30 under the "Alternative Site Framework" – have brought the topic of international business in Utah to the forefront of public awareness. Utah attorneys – both transactional attorneys and litigators – have played and will continue to play an important role in shaping the public policy debates over how best to attract foreign investment and enable Utah business to compete in the global marketplace. As international business continues to expand in the Utah market, Utah attorneys must also continue to stay at the forefront of legal and market developments relevant to the cross-border transactional and international dispute resolution needs of their clients.

This article (I) provides a brief overview of the state of international business in Utah, highlighting recent international trade and foreign investment statistics relevant to the Utah market, (II) highlights key governmental, civic and business organizations in Utah that provide valuable resources and assistance to Utah businesses seeking to engage in international trade and to foreign investors seeking to enter the Utah market, (III) provides a brief overview of recent governmental initiatives designed to promote international business in Utah, and (IV) provides some general concluding observations with respect to the role of Utah attorneys in the continued growth of international business in Utah.

### STATISTICS

#### International Trade

Data from the U.S. Department of Commerce, International Trade Administration, indicated that in 2017 Utah companies exported roughly \$11.6 billion in goods, putting Utah sixteenth among states for exports as a percentage of GDP. *State Export Data*, <http://tse.export.gov/tse/MapDisplay.aspx> (last visited Aug. 2, 2018). Although Utah's exports have decreased by roughly 5% since 2014, Utah exports doubled between 2005 and 2015. *Id.* Business Roundtable estimates that Utah's goods exports grew nearly three times faster than Utah's GDP between 2003 and 2013. *How Utah's Economy Benefits from International Trade & Investment*,

[https://tradepartnership.com/wp-content/uploads/2015/01/UT\\_TRADE\\_2013.pdf](https://tradepartnership.com/wp-content/uploads/2015/01/UT_TRADE_2013.pdf) (last visited Aug. 2, 2018). The top five export markets for Utah companies in 2017 were the United Kingdom (roughly 20% of the dollar value of Utah exports), Hong Kong (13.97%), Canada (10.39%), China (6.33%), and Mexico (5.90%). The top five categories of Utah exports in 2017 were primary metals (approximately 33.52% of the dollar value of Utah exports), computer electronics and products (15.92%), chemicals (9.83%), transportation equipment (8.14%), and processed foods (7.86%). According to the International Trade Administration, exports by Utah companies supported 51,267 jobs in the United States in 2016, representing an increase in roughly 12,000 jobs since 2006. Between 2004 and 2013, jobs related to international trade grew 2.2 times faster than total employment in Utah. Business Roundtable. It is estimated that approximately 374,963 Utah jobs – more than one in five jobs in Utah – is tied currently, directly or indirectly, to international trade. In 1992, only roughly one in ten jobs in Utah was tied to international trade.

The International Trade Administration estimates that 3,466 Utah companies exported goods in 2015, of which 2,917 (roughly 84% of all Utah exporters) were small and medium-sized businesses (SMEs). *International Trade Administration*. Of the 51,267 jobs supported by goods exports from Utah in 2016, 97% of such jobs were supported by exports involving manufactured goods. In addition, as noted by Governor Herbert in his recent Annual Economic Summit address in April of this year, since 2008, Utah's value-added exports have grown 75%.

Bilateral and multilateral free trade agreements have played an important role in the expansion of international trade in Utah.

*JORDAN E. TOONE is a corporate attorney and shareholder in the Business and Finance Groups at Parr Brown Gee & Loveless. Jordan focuses his practice on domestic and cross-border M&A, debt finance and general corporate and business matters.*



Since 2007, exports from Utah to FTA markets have risen by 75%. In 2017, 27% of Utah exports were to countries that were parties to free trade agreements with the United States. It is unclear at this point the extent to which current political discussions in the United States regarding tariffs and trade imbalances will impact international trade in Utah.

### Foreign Investment

In addition to international trade, Utah has seen an increase in foreign direct investment (FDI). The U.S. Department of Commerce, Bureau of Economic Analysis, estimates that FDI in Utah in 2017 directly supported 42,200 jobs in Utah. *Foreign Direct Investment in the United States (FDIUS)*, <https://www.bea.gov/international/di1fdiop.htm> (last visited Aug. 2, 2018). Although scholars have debated the extent to which FDI directly promotes economic growth, there are several factors that indicate that FDI in Utah has had a positive correlation with economic growth. For example, the Utah Division of Workforce Services has noted that in 2016, foreign-owned companies in Salt Lake County paid 32% higher wages than domestic companies.

According to the International Trade Administration, the top five sources of FDI in Utah in terms of number of employees employed by foreign-owned companies are the United Kingdom (19.19% of total employees employed in Utah by foreign-owned companies), France (12.56%), Germany (10.66%), Switzerland (8.77%), and Japan (7.11%). *International Trade Administration*. According to the U.S. Bureau of Economic Analysis, the top five sources of FDI in Utah in terms of number of announced greenfield projects in Utah are the United Kingdom (19% of announced greenfield projects), Sweden (14%), Germany (10%), Canada (10%), and Italy (8%). *U.S. Bureau of Economic Analysis*.

## ORGANIZATIONS AND RESOURCES

The growth in international trade and foreign investment in Utah during the past decade can be attributed in part to the efforts of Utah's governmental, civic, and business leaders, and strong intra-organizational partnerships. Below is a summary of key governmental entities and private organizations that work to promote international trade and attract foreign investment in Utah.

### World Trade Center Utah (WTC Utah) ([wtcutah.com](http://wtcutah.com))

WTC Utah was established in 2006 by then-Governor Jon Huntsman, Jr. with the assistance of the Governor's Office of Economic Development and its then-Executive Director, Jason Perry. WTC Utah acts as the statewide voice of international business in Utah. In 2017, the Utah Governor's Office of Economic Development (GOED) contracted with WTC Utah to oversee Utah's international business promotion activities. WTC Utah is a certified member of the World Trade Centers Association, a network of over 300 World Trade Centers in over 100 countries throughout the world focused

on promoting international trade and foreign investment.

WTC Utah provides globally minded Utah companies with international business- and trade-related resources, including international market research, industry-based export reports, online export education trainings, and other trade resources for Utah business seeking to expand into foreign markets. WTC Utah hosts regular networking and informational events related to international trade for Utah business, including the Utah Global Forum, arguably the state's premier international business event, bringing together hundreds of business, government, and civic leaders involved in international business. Together with its partner organizations, WTC Utah organizes trade missions to various countries throughout the world. These trade missions are designed to enable Utah businesses to promote their products in trade-specific trade shows and to establish meaningful contacts in foreign markets. WTC Utah also partners with other organizations to provide various grants designed to provide financial assistance to small businesses in Utah seeking to sell their products in foreign markets, including the STEP Grant and the Export Acceleration Grant.

WTC Utah has announced a goal for Utah to double its exports over the next decade.

### The Utah Governor's Office of Economic Development (GOED) ([business.utah.gov](http://business.utah.gov))

The mandate of GOED is to, among other things, foster the creation and growth of Utah businesses. As noted above, GOED contracted with WTC Utah in 2017 to oversee Utah's international business promotion activities. GOED's International Diplomacy program, under the leadership of Director of Diplomacy and Protocol, Franz Kolb, functions as the official diplomatic arm of the State of Utah, hosting diplomatic visits from countries throughout the world. The International Diplomacy program leverages diplomatic relationships throughout the world to assist Utah businesses in their attempts to expand into foreign markets and to recruit foreign investors into the Utah market. As noted above, in partnership with WTC Utah, GOED also leads delegations comprised of Utah businesses and executives on various trade missions throughout the world.

### U.S. Commercial Service Utah ([www.export.gov/utah](http://www.export.gov/utah))

The U.S. Commercial Service is the lead trade promotion agency of the U.S. government, serving as a global network of international trade professionals in the United States and throughout the world. U.S. Commercial Service Utah provides Utah businesses with resources and connections designed to facilitate their entry into foreign markets and the removal of barriers to accessing foreign markets (e.g., procuring foreign government approvals). U.S. Commercial Service Utah provides SMEs and successful Utah businesses with trade counseling, market research, network development, and business matchmaking with trade and business professionals throughout the world.

### Economic Development Corporation of Utah (EDC Utah) ([edcutah.org](http://edcutah.org))

Established in 1987, EDC Utah is a nonprofit organization whose mission is to “attract and grow competitive, high-value companies and spur the expansion of local Utah businesses.” <https://edcutah.org/about-us> (last visited Aug. 2, 2018). Tracing its roots to the Salt Lake Chamber of Commerce, EDC Utah is a collaborative effort between the public and private sectors in Utah to facilitate the growth of Utah businesses and to attract foreign investment in Utah. EDC Utah’s Global Strategy & Outreach (GS&O) team hosts recruiting missions, trade shows, and other informational events throughout the United States and overseas in an effort to recruit foreign business to invest in the Utah market. EDC Utah coordinates with other public and private organizations in Utah to accomplish its mission, and provides a valuable resource in the State’s efforts to recruit foreign businesses to Utah.

### World Trade Association of Utah (WTA Utah) ([www.wtaofutah.org](http://www.wtaofutah.org))

WTA Utah is a non-profit with a mission to promote international trade and commerce in Utah. To that end, WTA Utah hosts monthly events, including luncheons, seminars, and workshops, on topics related to international business. WTA Utah offers Utah professionals a valuable resource to connect with other like-minded international business professionals in Utah and to stay current on relevant issues facing Utah businesses engaged in international commerce.

### Local Government and Civic Organizations

Local governmental, business, and civic organizations have played an active role in Utah’s efforts to promote international business in Utah, including Salt Lake City, Salt Lake County, the Salt Lake Chamber of Commerce, Utah Technology Council, and Utah Science and Technology Research Initiative (USTAR).

For example, in 2017, Salt Lake County, in partnership with strategic partners and stakeholders, adopted the Global Trade & Investment Plan, a data-driven development plan designed to promote international trade and increase foreign investment in the Salt Lake metro region. Further details on the Salt Lake County Global Trade and Investment Plan are set forth below.

## INITIATIVES

Governmental, business, and civic leaders in Utah have overseen several recent initiatives to promote and facilitate international business in Utah. Three of these initiatives – the Salt Lake Inland Port, the reorganizations of Salt Lake City’s Foreign Trade Zone #30 under the Alternative Site Framework, and the Salt Lake County Global Trade & Investment Plan – are briefly examined below.

### Salt Lake Inland Port

Building on efforts of Utah business and governmental leaders dating back several decades, and following months of sometimes contentious negotiations, state and local governmental leaders struck a compromise in July of this year, approved during a recent special session of the Utah Legislature, to proceed with the planning and development of an inland port in the Northwest Quadrant in Salt Lake City. Despite the controversial start to the Inland Port Authority board meetings, and the threat of legal action regarding the constitutionality of the Inland Port Authority itself, the Inland Port is already being billed as the largest economic development project in the history of the state. The impact on the state economy, according to experts, could be significant. *See, e.g.,* Natalie Gochnour, Kem C. Gardner Policy Institute, *Salt Lake Inland Port Market Assessment*, August 2016 available at <http://gardner.utah.edu/wp-content/uploads/2016/10/IP-Brief-FINAL.pdf>; Cambridge Systematics, Inc., *Utah Inland Port – Feasibility Analysis*, Dec. 29, 2017, available at <http://wtcutah.com/wp-content/uploads/2018/01/Inland-Port.pdf>.

An inland port is a logistics hub of multimodal transportation assets located at a non-maritime location. Inland ports are typically designed around rail intermodal facilities, ideally with easy access to road, rail, and air transportation networks, and facilities. Inland, or “dry,” ports have been built in various inland locations throughout the country such as Kansas City, Missouri; Dallas, Texas; and Memphis, Tennessee. Inland ports serve as shipping hubs where cargo containers are processed, stored, and transferred. Inland ports can also enable goods to be processed and altered through value-added systems as such goods move through the global supply chain. When combined with a free trade zone (see below), inland ports can reduce the time and costs associated with international trade, while also having a potentially significant impact on the local economy.

The Inland Port Authority has just recently commenced its board meetings. The success of the Inland Port and its impact on the local economy remain to be seen, but, as noted above, there are several indications that the Inland Port will be an important contributor to Utah’s continued economic growth.

### Free Trade Zone No. 30

The U.S. foreign trade zones (FTZ) program began following the passage of the Foreign-Trade Zones Act of 1934 (19 U.S.C. 81a-81u). (Interestingly, the Foreign-Trade Zones Act of 1934 was passed in part to mitigate the negative economic effects of the protectionist Smoot-Hawley Tariffs, named in part after Senator Red Smoot, a United States Senator from Utah.) FTZs are special geographic zones within the United States that are considered “outside” the commerce of the United States. FTZs operate under the jurisdiction and supervision of U.S. Customs and Border Protection (CBP). Goods imported from foreign markets into an FTZ are considered “outside” the



United States for customs duty purposes. FTZs enable companies to import foreign goods directly to an inland port, where such goods can be stored, cleaned, assembled, manipulated, relabeled, repackaged, repaired, stored, manufactured, and/or processed, and the customary CBP entry procedures, including levying of import duties and excise taxes, are deferred unless and until such foreign goods are transferred from the FTZ into the U.S. consumer market. In addition, in the event that goods in an FTZ are re-exported to a foreign market or transferred to another FTZ, no customs duties are assessed on such goods. FTZs and inland ports, together, facilitate efficiency in global supply chains and reduce the costs of international trade.

Salt Lake City has had an FTZ since the 1970s. Foreign Trade Zone No. 30 in Utah (the Salt Lake FTZ) was granted to Salt Lake City Corporation and is located on a site near the Salt Lake International Airport and the Union Pacific Intermodal Terminal. Until recently, Utah's FTZ was under the traditional site framework. Under the traditional site framework, Utah companies had to either be located within the area specially designated as the Foreign Trade Zone (the magnet site), or such companies had to create what is known as a "subzone." Under U.S. law, subzones can be created within a sixty-mile radius of the actual magnet site; however, there is a limit to the number and size of subzones approved under the traditional site framework.

In March of this year, the Department of Commerce announced its approval of Salt Lake City Corporation's application to reorganize the Salt Lake FTZ under the Alternative Site Framework (ASF). The ASF extends the benefits of the Salt Lake FTZ to any company within a sixty-mile radius of the Salt Lake FTZ (an area that encompasses all or portions of Salt Lake, Utah, Davis, Weber, Morgan, Box Elder, Summit, and Tooele Counties), subject only to a 2,000-acre statutory limit. In addition, the ASF enables Utah businesses located within the Salt Lake FTZ to secure FTZ status for warehousing and distribution operations within roughly thirty days of applying. Under the traditional site framework, approvals took up to one year.

EDC Utah has noted an increase in interest amongst Utah companies in the Salt Lake FTZ. Theresa Foxley, *Fox Files 'FTZ #30 – An example in partnership'*, <https://utahpolicy.com/index.php/features/featured-articles/16415-fox-files-ftz-30-an-example-in-partnership> (last visited Aug. 2, 2018). However, the benefits of the ASF are likely limited to companies exporting over \$1 million per year. UTAH BUSINESS, *Salt Lake's Foreign-Trade Zone #30 Makes Joining Easier for Utah Businesses*, <https://utahbusiness.com/salt-lakes-foreign-trade-zone-30-makes-joining-easier-for-utah-businesses/> (last visited Aug. 2, 2018). In any event, the ASF, together with the Inland Port, should provide significant incentives for Utah and foreign businesses to conduct international trade in Utah.

## Global Cities Initiative / Global Trade & Investment Plan

As indicated above, in 2017, Salt Lake County published the Global Trade & Investment Plan to foster international trade and foreign investment in Salt Lake County. Salt Lake County is responsible for 69% of Utah's goods exports. The Global Trade & Investment Plan was developed in connection with the Global Cities Initiative, a joint project of the Brookings Institution and JP Morgan Chase, to assist business and civic leaders in promoting international business in their respective metropolitan areas. The goal of the Global Trade & Investment Plan, according to Salt Lake County, is to "[d]evelop a well-balanced economy that establishes Salt Lake County as both a premier destination for global businesses and a globally-fluent hub of innovation that creates an economic environment comprised of an expansive infrastructure, a diverse and educated workforce, and an active engagement with the global economy." *Global Trade & Investment Plan*, available at <http://slco.org/uploadedFiles/depot/frd/fEconDev/SLCoPresentation3.31.2017.pdf> (last visited Aug. 2, 2018).

Relying on findings from an extensive market assessment, the Global Trade & Investment Plan sets forth nine key findings that are organized into three interconnected categories: exporting, FDI, and talent recruitment. The Global Trade & Investment Plan sets forth the objectives, strategies and tactics to be employed by governmental, business and civic leaders to give effect to the objectives set forth in the Global Trade & Investment Plan. According to Stuart Clason, Division Director of Salt Lake County Regional Economic Development.

## CONSIDERATIONS FOR UTAH ATTORNEYS AND CONCLUDING OBSERVATIONS

The continued expansion of international trade and foreign investment requires Utah attorneys capable of informing public debate on the legal framework and related policy considerations relevant to foreign investment and international trade in Utah. The continued expansion of international business in Utah also depends on the ongoing and, in some cases, increased ability of Utah attorneys to assist clients in navigating the risks and legal nuances concomitant to international business. In addition to providing clients engaged in international business with traditional corporate, commercial, and dispute resolution expertise, law firms, and Utah attorneys advising clients engaged in international business must continue to stay up to date on the various areas of the law relevant to international business, including, as applicable:

- international tax and structuring, including customs duties, taxes, tariffs and excise taxes;
- bilateral and multilateral free trade agreements, including the World Trade Organization (WTO), North American Free Trade Agreement (NAFTA) and Trans-Pacific Partnership (TPP), as may be amended from time to time;

- transfer pricing;
- Foreign Corrupt Practices Act and related anti-bribery laws;
- intellectual property and international law (including Trade Related Aspects of Intellectual Property Rights (TRIPS), Paris Convention for the Protection of Industrial Property, Patent Cooperation Treaty (PCT), and the Madrid Protocol);
- U.S. international trade regulations, including export controls (i.e., Export Administration Regulations (EAR), International Traffic in Arms Regulations (ITAR) and Office of Foreign Assets Control (OFAC)), anti-boycott regulations and import regulations;
- competition law (e.g., EU Competition Law);
- privacy laws (e.g., the European Union General Data Protection Regulation (GDPR));
- international contract considerations, including choice of law, conflict of laws, jurisdiction and enforcement, force majeure, termination and currency;
- dispute resolution (e.g., the New York Convention, International Chamber of Commerce (ICC) and UNCITRAL rules and procedures);
- international sale of goods principles, including the United

Nations Convention of Contracts for the International Sale of Goods (CISG) (the international equivalent of the Uniform Commercial Code) and International Commercial Terms (INCOTERMS);

- anti-money laundering; and
- cultural considerations relevant to contract negotiation and dispute resolution.

Utah attorneys can also provide useful guidance to clients with respect to the various Utah-specific resources available to them in their international business activities, some of which are highlighted above.

Data from various state and federal agencies, together with anecdotal indicators from the author's own experience assisting clients with their international business needs, suggest that international trade and foreign investment will continue to increase in Utah. Utah governmental, business, and civic leaders have adopted several initiatives that are designed to both assist Utah companies seeking to compete in the global market place and to attract foreign investors seeking to enter the Utah market. Combined with Utah's strong economic growth, the available data and recent initiatives outlined herein suggest a continued – if not increased – need for skilled Utah attorneys capable of advising Utah and foreign clients on complex international business transactions.

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## *Message from the Paralegal Division*

*by Greg Wayment*

On behalf of the Paralegal Division, I would like to introduce the 2018–2019 Board of Directors. We are pleased to announce the chair for the upcoming year is Candace Gleed. We also have three new members joining the Board of Directors and wish to extend a warm welcome to them. This year's Board of Directors are:

**Chair – Candace A. Gleed.** Candace is a litigation paralegal at the firm of Eisenberg, Gilchrist & Cutt (EGC), working primarily on plaintiff's personal injury and medical malpractice cases. Prior to joining EGC, Candace was somewhat of a Paralegal Traveler and experienced various practice areas in the past twenty-four years, including insurance defense, criminal law, administrative law, and the legislative process as the paralegal to Utah's very own Porn Czar. Candace is the mother of four children and two grandchildren. She enjoys volunteering, especially for organizations involving the elderly, disabled, or at-risk youth and for domestic violence shelters. She can often be found frequenting local concerts or Broadway at the Eccles or being exercised by her two new puppies, Reggie and Rosie.

**Chair-Elect – Sarah Stronk.** As a paralegal at Dorsey & Whitney, Sarah supports attorneys in the Corporate, Mergers & Acquisitions, and Capital Markets groups with private and public business and financing transactions. Sarah was on the Dean's list at Salt Lake Community College, where she earned her Paralegal Studies degree. She also earned her Bachelor of Science degree in Political Science from the University of Utah. She is currently Co-Chair of the Paralegal Division of the Utah State Bar CLE Committee and serves first responders in collaboration with the Wills for Heroes Foundation. Sarah first began working as a paralegal in 2009 and is a strong advocate for the profession.

**Finance Officer – Cheryl Miller.** Cheryl received her paralegal certificate in 1992. From 1992–2000 she worked as a paralegal underwriter for attorney's errors and omissions insurance. In 2000, she began underwriting medical malpractice and excess insurance for large hospital systems across the United States. Cheryl joined the law firm of Eisenberg

Gilchrist and Cutt in 2012. Cheryl is still at EGC, working as a litigation paralegal on plaintiff's personal injury cases. She lives in Holladay with her yellow lab Eli and enjoys gardening and entertaining.

**Secretary – Erin Stauffer.** Erin is a paralegal with the law firm of Snell & Wilmer and has a B.S. in Paralegal Studies and a M.A. in Adult Education and Training. Erin began working in the legal field in 1989, and her career has covered a broad spectrum of legal practices. Erin is a member of NALA, earning her CP in 2004, and has since earned additional advanced certifications. She serves on the Community Involvement Committee at Snell & Wilmer and belongs to the National Paralegal Honor Society of Lambda Epsilon Chi.

**Region I Director – Tonya Wright.** Tonya is a litigation paralegal at Peck Hadfield Baxter & Moore, in Logan, Utah. Tonya works on a wide variety of litigation cases, including personal injury, insurance disputes, contract disputes, sexual abuse, employment claims, family disputes, and malpractice claims. She worked as a deputy court clerk in the First Judicial District and Juvenile Courts from 2006–2011, where she gained experience working in the civil, criminal, domestic, and juvenile desks. Tonya is currently studying to take Part II of the Certified Paralegal exam through NALA. Tonya has two adult children, and she resides in Weston, Idaho, with her husband, four dogs, and nine horses.

**Region II Director – Shaleese McPhee.** Shaleese is a paralegal at the Salt Lake County District Attorney's Office on the Major Crimes Unit. She has been with the office since April of 2015. Shaleese completed her Bachelor of Science in Paralegal Studies from Utah Valley University in 2011. Since that time, she has worked as a paralegal in criminal law, family law, and probate law. Shaleese served in the Utah Army National Guard from 2011–2017. Shaleese loves her life and the daily adventures that it brings. Keep it interesting, and keep it true.

**Region III Director – Stefanie Ray.** Stefanie graduated from Utah Valley University in 1994 and has twenty-four years of legal



experience. Stefanie is the Senior Paralegal and Manager at d TERRA International, LLC. She manages their trademarks in over thirty-six countries as well as provides litigation support, contract management, and processing of garnishments and liens. Prior to working at d TERRA, Stefanie was a personal injury paralegal for Abbott & Walker in Provo, Utah, for over fourteen years. She is the mother of three children and enjoys the rural life in Santaquin, Utah.

**Region IV Director – Deborah Caleyory, CP.** Deb works in the St. George office of Durham Jones & Pinegar. She prepared curriculum and provided instruction for paralegal programs for Dixie State College and the Utah Chapter of the American Paralegal Association. In 1996, Deb was a charter member of the Paralegal Division of the Utah State Bar and has maintained an active role in the division since its inception. Deb served as Chair of the Paralegal Division during 2001 and, in 2008, was honored by Utah's legal community by being selected as Utah's Distinguished Paralegal of the Year.

**Region V Director – Terri Hines.** Terri began working in the legal field as a prosecutorial assistant in 2001 for the Moab City Prosecutor and, in 2003, began working for the Grand County Attorney's Office. In 2005, she became the office manager and still holds this position. Terri also participates with the Grand County CJC MDT. Terri enjoys time with family on the LaSal Mountains, travel, and reading. She has been married to her husband Art for thirty-one years and is the mother of three children that provide the best enjoyment to her life.

**Director at Large – Paula Christensen, CP.** Paula has worked in the legal field for over thirty-seven years and has been a litigation paralegal at Christensen & Jensen since 2001. She received her Associate Degree from BYU Idaho and attained her Certified Paralegal designation from NALA in 2010. Paula was honored to be named Utah Paralegal of the Year in 2013. Paula often volunteers for Wills for Heroes and Serving Our Seniors. Paula enjoys hiking, reading, and spending time with her family. She is the mother of four children and six grandchildren.

**Director at Large – J. Robyn Dotterer, CP.** Robyn has worked as a paralegal for over twenty-five years and has been with Strong & Hanni for eighteen years. She works primarily in the areas of insurance defense in personal injury, insurance bad faith, and legal malpractice. Robyn achieved her CP in 1994 and is a Past President of UPA. She has served on the Paralegal Division Board in several different capacities, including serving as co-chair of the Community Service Committee and YLD Liaison for several years. Robyn was honored as Paralegal of the Year in 2014. Robyn has been married to her husband Duane for forty-three years and lives in Sandy, Utah.

**Director at Large – Jennifer Luft.** Jennifer has been working in the legal field since 1994 and graduated with her Bachelor's Degree in Paralegal Studies at UVU in 2002. She has worked at Christensen & Jensen, PC since 2007 and as a litigation paralegal since 2012. She currently works in insurance defense and has also worked in family law and medical malpractice. She is the mother of three children and enjoys painting with watercolors and running when stressed.

**Director at Large – Kristie Miller.** Kristie has been working as a paralegal for over twenty-two years. She received her Bachelor's Degree in Criminal Justice/Paralegal Studies and her Certificate in Paralegal Studies from California State University, San Bernardino. Kristie has worked in the areas of family law, bankruptcy, banking and finance, and risk management. Kristie has worked for over ten years in criminal prosecution, first with the Attorney General's Office and most recently with Salt Lake District Attorney's Office. Kristie is a mother of three, and she enjoys yoga and most outdoor activities.

**Ex-Officio – Lorraine Wardle.** Lorraine has been in the legal field for more than twenty-five years. She is a paralegal at the firm of Trystan Smith & Associates, Claims Litigation Counsel for State Farm Insurance. She has been involved with the boards of both paralegal associations in Utah for many years. Lorraine lives in West Jordan with her husband and two golden retrievers and spends any spare time she has with her grandchildren, as well as camping, biking, and gardening.

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**1 hr. Ethics**

**Death in the ICU: Legal and Ethical Issues at the End of Life – Health Law Section CLE Lunch.** The health law section of the Utah State Bar and the S.J. Quinney College of Law Center for Law and Biomedical Sciences will jointly present a one-hour CLE lecture designed for the health legal practitioner by law professor Teneille R. Brown, who will discuss medical futility, informed consent, surrogacy, and the need to discuss goals of care before a crisis arises. S.J. Quinney Law School, 332 South 1400 East, Salt Lake City. Free parking for CLE registrants. \$25 for Bar members. Lunch provided. Register online by November 9.

**November 14 | 9:00 am – 1:15 pm**

**4 hrs. CLE, 1 hr. Prof./Civ.**

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**December 6, 2018 | 4:00–6:00 pm**

**2 hrs. CLE**

**Litigation 101 Series – Pretrial Practice and Trial Strategy.** \$25 for YLD Section members, \$50 for all others. Register at: [https://services.utahbar.org/Events/Event-Info?sessionaltcd=19\\_9080B](https://services.utahbar.org/Events/Event-Info?sessionaltcd=19_9080B).

**January 10, 2019 | 4:00–6:00 pm**

**2 hrs. CLE**

**Litigation 101 Series – Direct & Cross Examination.** \$25 for YLD Section members, \$50 for all others. Register at: [https://services.utahbar.org/Events/Event-Info?sessionaltcd=19\\_9080C](https://services.utahbar.org/Events/Event-Info?sessionaltcd=19_9080C).

**January 23, 2019 | 8:00 am – 12:30 pm**

**4 hrs. Ethics**

**Ethics for Lawyers: How to Manage Your Practice, Your Money and Your Files. Annual OPC CLE.** \$150. To register visit: [https://services.utahbar.org/Events/Event-Info?sessionaltcd=19\\_9094](https://services.utahbar.org/Events/Event-Info?sessionaltcd=19_9094).

**February 7, 2019 | 4:00–6:00 pm**

**2 hrs. CLE**

**Litigation 101 Series – Opening Statements.** \$25 for YLD Section members, \$50 for all others. Register at: [https://services.utahbar.org/Events/Event-Info?sessionaltcd=19\\_9080D](https://services.utahbar.org/Events/Event-Info?sessionaltcd=19_9080D).

**February 22, 2019 | 8:30–9:30 am**

**IP Summit.** Hilton Hotel, 255 South West Temple, Salt Lake City. Save the date! More information to come.

**March 7–9, 2019**

**Spring Convention in St. George.** Dixie Convention Center, 1835 S. Convention Center Dr., St. George. Save the date! More information coming soon!

**March 14, 2019 | 4:00–6:00 pm**

**2 hrs. CLE**

**Litigation 101 Series – Closing Arguments.** \$25 for YLD Section members, \$50 for all others. Register at: [https://services.utahbar.org/Events/Event-Info?sessionaltcd=19\\_9080E](https://services.utahbar.org/Events/Event-Info?sessionaltcd=19_9080E).

**March 20, 2019 | 9 am – 3:45 pm**

**5 hrs. Ethics, 1 hr. Prof./Civ.**

**OPC Ethics School.** \$245 on or before March 6, 2019, \$270 thereafter.

**April 4, 2019 | 4:00–6:00 pm**

**2 hrs. CLE**

**Litigation 101 Series – Ethics & Civility.** \$25 for YLD Section members, \$50 for all others. Register at: [https://services.utahbar.org/Events/Event-Info?sessionaltcd=19\\_9080F](https://services.utahbar.org/Events/Event-Info?sessionaltcd=19_9080F).

# 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.

## JOBS/POSITIONS AVAILABLE

**Skoubye Nielson, & Johansen LLC**, a twelve-attorney law firm located in Salt Lake County, Utah, is seeking a litigation associate with 4–6 years of experience to join our growing practice. The ideal candidate must have overall litigation case management experience, including drafting motions, handling discovery requests, taking depositions, and experience in court proceedings. Excellent reasoning and writing skills are a must. Utah Bar admission is required. If qualified and interested, please submit a resume and writing sample to Jeff Skoubye at [Jeff@snjlegal.com](mailto:Jeff@snjlegal.com).

**Large Salt Lake City law firm, seeks JD (LLM preferred) with 0–3 years of experience to join its high-profile tax section.** Please send resume and inquiries to confidential ad box #601 at [barjournal@utahbar.org](mailto:barjournal@utahbar.org).

## OFFICE SPACE/SHARING

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

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

## SERVICES

**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.

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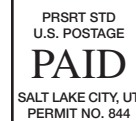
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