

Utah State Bar Commission
Friday, October 30, 2015
Alta Club, 100 East South Temple
Salt Lake City, Utah

Agenda

1. 9:00 a.m. President's Report: Angelina Tsu

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|-----------------|-----|---|
| <i>02 Mins.</i> | 1.1 | Welcome |
| <i>15 Mins.</i> | 1.2 | OPC Committee Report: Bruce Maak (Tab 1) |
| <i>03 Mins.</i> | 1.3 | Remind about Fall Forum November 19 th -20 th |
| <i>02 Mins.</i> | 1.4 | Bar Review November 12 |
| <i>10 Mins.</i> | 1.5 | Report on Meeting with Chief Justice Durrant |
| <i>03 Mins.</i> | 1.6 | Update on Financial Administrator Position |

2. 9:35 a.m. Action Items

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| <i>05 Mins.</i> | 2.1 | UMBA Scholarship and Awards Banquet Table: Rob Rice |
| <i>05 mins.</i> | 2.2 | Double Dutch Convention App Renewal |
| <i>10 Mins.</i> | 2.3 | Client Security Fund Report: Hon. David Hamilton (Tab 2) |
| <i>15 Mins.</i> | 2.4 | Summer Convention Committee Report: Dickson Burton (Tab 3) |
| <i>05 mins.</i> | 2.5 | Technology CLE Series Report: John Lund, Dickson Burton |
| <i>10 Mins.</i> | 2.6 | Approve Legal Assistance to Former Members of Fundamentalist Communities: Katie Woods, Chris Wharton |
| <i>05 mins.</i> | 2.7 | Approve Mentoring "Breakfast of Champions": Michelle Mumford & Chris Wharton |
| <i>05 Mins.</i> | 2.8 | Approve Bar Scholarship Fund and Fund Raising Gala: Heather Farnsworth |
| <i>10 Mins.</i> | 2.9 | Leadership Academy: Liisa Hancock |
| <i>07 Mins.</i> | 2.10 | Select Professionalism Award Recipient (Tab 4) |
| <i>07 Mins.</i> | 2.11 | Select Community Member Award Recipient (Tab 5) |
| <i>06 Mins.</i> | 2.12 | Select Outstanding Mentor Award Recipient (Tab 6) |
| <i>10 Mins.</i> | 2.13 | Accept Audit Report: Mary Kay Griffin (Tab 7) |

3. 11:15 a.m. Discussion Items

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| <i>10 Mins.</i> | 3.1 | LLLT Task Force Report: Tim Shea |
| <i>05 Mins.</i> | 3.2 | AAA Task Force Report: Rob Rice |
| <i>10 Mins.</i> | 3.3 | Futures Commission Follow Up: John Lund |
| <i>10 Mins.</i> | 3.4 | Overhead Allocations to Sections Policy: Mary Kay Griffin |

11:50 a.m. Adjourn to Lunch with Past Presidents

(Over)

Consent Agenda (Tab 8)

(Approved without discussion by policy if no objection is raised)

1. Approve Minutes of September 18th Commission Meeting
2. Appoint Leslie Manley as NLTP Committee Chair
3. Section Liaisons

Attachments (Tab 9)

1. September Financial Statements
2. Office of Professional Conduct 2014-2015 Annual Report to Utah Supreme Court
3. Utah State Bar Summary of Operations 2014-2015
4. Ethics Advisory Opinions #15-04 & #15-05
5. Judicial Conduct Commission Annual 2014-2015 Annual Report

Calendar

November 19	UMBA Awards Banquet		Grand America
November 19-20	Fall Forum		Grand America
November 24	Executive Committee	12:00 Noon	Ray Quinney & Nebeker
December 4	Commission Meeting	9:00 a.m.	Law & Justice Center

2016

January 2	Election Notices Due
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VISION OF THE UTAH STATE BAR

A just legal system that is understood, valued, and accessible to all.

MISSION OF THE UTAH STATE BAR

Lawyers serving the public and legal profession with excellence,
civility, and integrity.

UTAH STATE BAR STATEMENT ON DIVERSITY AND INCLUSION

The Bar values engaging all persons fully, including persons of different ages, disabilities, economic status, ethnicities, genders, geographic regions, national origins, sexual orientations, practice settings and areas, and races and religions. Inclusion is critical to the success of the Bar, the legal profession and the judicial system.

The Bar shall strive to:

- 1. Increase members' awareness of implicit and explicit biases and their impact on people, the workplace, and the profession;*
- 2. Make Bar services and activities open, available, and accessible to all members;*
- 3. Support the efforts of all members in reaching their highest professional potential;*
- 4. Reach out to all members to welcome them to Bar activities, committees, and sections; and*
- 5. Promote a culture that values all members of the legal profession and the judicial system.*

UTAH STATE BAR AWARDS

<u>AWARD</u>	<u>CHOSEN</u>	<u>PRESENTED</u>
1. Dorathy Merrill Brothers Award Advancement of Women in the Law	January/February	Spring Convention
2. Raymond S. Uno Award Advancement of Minorities in the Law	January/February	Spring Convention
3. Pro Bono Lawyer of the Year	April	Law Day
4. Distinguished Judge of the Year	June	Summer Convention
5. Distinguished Lawyer of the Year	June	Summer Convention
6. Distinguished Section of the Year	June	Summer Convention
7. Distinguished Committee of the Year	June	Summer Convention
8. Outstanding Pro Bono Service	September	Fall Forum
9. Distinguished Community Member	September	Fall Forum
10. Professionalism Award	September	Fall Forum
11. Outstanding Mentor	September	Fall Forum
12. Heart & Hands Award	October	Utah Philanthropy Day
13. Distinguished Service Award		As Needed
14. Special Service Award		As Needed
15. Lifetime Service Award		On Occasion

Points From Charlotte Miller's Bar Commission Leadership Workshop (August 23, 2014)

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

Two most important responsibilities of a Bar Commissioner

Represent the interests of the attorneys we represent; voice for division

Bar activities and initiatives be consistent with the Bar's purpose and mission.

Help fulfill vision by devoting time and intellect

Contribute ideas and work

Serve lawyers of Utah

Help accomplish goals of the commission

Represent my division and my liaison groups

Make the Bar meaningful to lawyers

Speak honestly

Contribute with ideas and feedback

Fiduciary

Forward thinking visionary

Communicate with Bar members

Have programs that assist all attorneys and advance the profession

Protect core functions

Promote access to justice and diversity

Know concerns of membership

Speak for membership

Take action on members' needs

Be conservative with bar dues

Attend the meetings

Use sound judgment

Serve community

Represent the unrepresented

Access to Justice

Work together to assist sections of the Bar

Support Rule of Law and integrity of legal system

Listen and participate

TAB
1

REPORT OF THE BAR COMMISSION COMMITTEE
REVIEWING THE OFFICE OF PROFESSIONAL CONDUCT

September 22, 2015

The Bar Commission appointed a Committee having the following members to address and review the Bar's Office of Professional Conduct ("OPC"): Lawrence E. Stevens, Steven R. Burt (public member), Herm Olsen, Susanne Gustin, Timothy M. Shea, Thomas W. Seiler, and Bruce A. Maak.

INTRODUCTION

The Bar Commission previously created a Committee like ours, which addressed OPC and submitted a report to the Bar Commission dated October 8, 2009.

Our Committee (sometimes the "OPC Committee") did its work between January, 2015 and the date of this Report. The Committee viewed its function as conducting a relatively complete investigation of the OPC's interactions with others in the disciplinary process, its internal functioning, its performance, and its supervision. The OPC is a primary, if not the primary, participant in the administration of attorney discipline in Utah. The Supreme Court prescribes the disciplinary process and is the ultimate decisionmaker in disciplinary matters. The Court has promulgated Rules of Professional Conduct (Ch. 13, Supreme Court Rules of Professional Practice, which prescribe the rules which if broken by attorneys can give rise to discipline), the Rules of Lawyer Discipline and Disability (Ch. 14, Article 5 of Supreme Court Rules of Professional Practice, which prescribe the procedural rules governing the disciplinary process), and the Standards for Imposing Lawyer Sanctions (Rule 14, Article 6 of Supreme Court Rules of Professional Practice, which prescribes the sanctions appropriate for violations of the Rules of Professional Conduct). To place in context OPC's role and performance as a part of the process, a general summary of the disciplinary process follows.

The disciplinary process is initiated by OPC's receipt of an informal complaint from a party or a request for assistance referred by the Consumer Affairs Program. OPC itself can initiate a complaint. OPC conducts an investigation of the complaint to make a preliminary determination of its merit. OPC can dismiss the complaint or proceed further by initiating a Notice of Informal Complaint (NOIC) to the respondent attorney. After the NOIC, a further investigation occurs through which the complainant and respondent supply information to OPC, among other things. At the conclusion of that investigation, OPC conducts an internal meeting to determine whether to dismiss the complaint or present the case to a disciplinary screening panel for decision.

Screening panels are drawn from the membership of the Utah Supreme Court's Ethics and Discipline Committee ("Discipline Committee"), which consists of 35 lay and lawyer members appointed by the Court. The screening panels sit in panels consisting of members of that Discipline Committee. The Discipline Committee has a chair and two vice-chairs who supervise the Discipline Committee and the screening panels.

If OPC determines to present a case at a screening panel hearing, OPC performs two

functions: (i) the secretarial and administrative functions of setting up hearings, coordinating with screening panels, and collecting information and submitting it in usable form with some analysis to the screening panel, complainant, and respondent and (ii) the function of prosecutor. The screening panel can dismiss the complaint, dismiss it with a cautionary note, or impose sanctions of private admonition or public reprimand. OPC prepares the formal writings embodying the screening panel's decision and informs the parties of the outcome. The screening panel in the case of more serious violations can refer the matter to District Court for adjudication. In the latter case, OPC initiates the case and acts as prosecutor in the action. Both OPC and the respondent attorney can appeal to the Chair of the Discipline Committee any determination of the screening panel other than a reference to District Court. An appeal lies from the Chair's decision to the Utah Supreme Court. Likewise, at the conclusion of a formal proceeding before the District Court, an appeal lies to the Utah Supreme Court.

Less serious complaints are sometimes resolved through consensual "diversions" through which the respondent attorney takes action to resolve the disciplinary issue in conjunction with the Diversion Committee. Diversions can be initiated by the respondent attorney, OPC, or a screening panel.

As the foregoing thumbnail sketch of the process makes clear, OPC is a central player in the process, involved at virtually every stage, and is the single party with whom all participants in the process deal. Its role is central and critical to the disciplinary process.

In performing its work, the OPC Committee generally addressed (i) OPC's internal operations, (ii) OPC's interactions with the various other participants in the disciplinary process (Consumer Affairs Program Director, the Diversion Committee, respondents' counsel, and the Discipline Committee), (iii) OPC's performance, (iv) OPC's relationship with the Bar and public, and (v) OPC's supervision. In the sections that follow, the OPC Committee will outline the results of its investigation, the observations of parties who interact with OPC, and various criticisms, suggestions, and compliments. Following those separate subjects, the OPC Committee will offer its view of OPC's performance and the OPC Committee's more important suggestions as to how the disciplinary process, and OPC's role in it, might be improved.

I. OPC'S INTERNAL OPERATIONS AND OBSERVATIONS OF OPC STAFF ATTORNEYS.

A. OPC's Staff and Internal Operations.

The OPC Committee interviewed OPC's Senior Counsel, Billy Walker, on two occasions, and the results of those interviews are interspersed in the various sections of this report as the positions and policies of OPC. The OPC Committee also interviewed all of the staff attorneys employed by OPC -- Todd Wahlquist, Sharadee Fleming, Barbara Townsend, Diane Akiyama, and Adam Bevis. The responsibilities of those attorneys are generally as follows:

Barbara Townsend: Handling reciprocal cases, screening panel hearings, trusteeships, and District Court cases

Diane Akiyama: Intake, NSF matters, reinstatements and readmissions, and screening panel hearings

Adam Bevis: Intake, screening panel hearings, and appeals

Sharadee Fleming: Intake, NSF matters, reinstatements and readmissions, and matters referred by Consumer Assistance Program

Todd Wahlquist: District Court cases, interim suspensions, and appeals

Billy Walker: Interim suspensions, District Court cases, and appeals

The comments of these individual attorneys in the parts that follow were generally uniform. Where not uniform, we have so indicated.

Office Supervision/Management. OPC staff attorneys uniformly indicated that they were appropriately managed and supervised. They expressed no criticisms or suggestions as to how management and their supervision could be improved.

Compensation. All staff attorneys indicated a general satisfaction with their level of compensation.

Staffing Issues. The approximate case load of the OPC staff attorneys is approximately 100-200, which varies depending on the attorney's subject matter responsibility. The staff attorneys expressed no serious concerns about the level of attorney staffing. One attorney indicated that the addition of another staff attorney might be beneficial. Most staff attorneys indicated that the addition of an accountant/investigator to the staff would be beneficial. Another staff attorney indicated that no additional staff, legal or non-legal, was necessary.

Timeliness of Complaint Processing. When asked about how long it should ideally take to process a disciplinary complaint, all staff attorneys indicated that each case is unique but all were willing to give us rough estimates of what might be achievable. In the absence of a stay (which might exist if parallel civil or criminal proceedings were moving ahead), the staff attorneys indicated an "average" case could be processed from a complaint being opened at OPC until a screening panel hearing in six to twelve months. The staff attorneys indicated that the time lapse from filing of a formal complaint in District Court until resolution is largely outside of OPC's control, which appears to be an accurate statement. The timeliness of OPC's case processing is addressed in greater detail below in Section III.A.

What Could be Done to Improve the System? In response to this general inquiry, OPC staff attorneys had surprisingly few suggestions. As noted, one felt that the addition of another staff attorney would be beneficial, and most felt that the addition of an accountant/investigator would be beneficial. All expressed hope that the new data tracking program currently being implemented by OPC will facilitate better case control, ability to accurately report on case management, statistics, and to access important information. Staff attorneys indicated that easier

access to attorneys' bank accounts without the necessity of a subpoena would be helpful in speeding the process of disciplinary complaints involving bank accounts.

B. OPC's New Data System/Tracking Disciplinary Cases.

1. **JustWare:** The Office of Professional Conduct, as well as the rest of the Utah State Bar Staff, received JustWare as a new computer system starting in November 2014. When the Committee spoke with Todd Wahlquist in December 2014, it was his hope that by July of 2015, OPC staff would be completely up to speed with JustWare. JustWare should allow for OPC to track its cases better. Historically, OPC did not have a computerized tracking system. Rather, the OPC staff manually tracked cases. There were apparently times when cases were not moved through the system in an expeditious manner. Historically, OPC has not tracked cases based on:

- a) The Firm the investigated attorney practices with;
- b) The area of law the investigated attorney practiced in;
- c) The clients or types of clients that the investigated attorney represented.

The tracking was done by attorney, only. It is hoped that the adoption of JustWare will allow for additional categories of tracking to be included. It is not known if that has happened.

2. **JustWare Overview:** JustWare is an integrated case, calendar, report, and document management system that is used to automate and track the operations of the Office of Professional Conduct. The software is created and maintained by Journal Technologies subsidiary New Dawn, located in Logan, Utah. Justware was selected due to its ability to replicate existing OPC processes, its ability to be quickly modified to meet new requirements, its custom automated workflow and assignment tools, and its wide adoption by other attorney disciplinary agencies such as the Colorado Attorney Regulation Counsel.

3. **JustWare Environment:** The tool is server based with both software and staff access being provided by a local virtual server. The system and access to it is restricted to OPC staff, the IT administrator, and to New Dawn tech support as needed. The system pulls current attorney business address information from the Bars member database system to ensure that the case file contact information is in synch with both the Bar and the Courts. This data pull is a one way communication. The system is also integrated with a Microsoft Exchange server to provide task, calendar, and logged email communications which can be pushed out to mobile devices without requiring direct access to the application.

User accounts are password protected and are changed every 45 days. Password complexity rules are enforced requiring a minimum of 8 characters and a combination of letters, letter case, numbers and symbols.

The system goes through two backups per day with an encrypted master backup being stored remotely.

4. **JustWare Use:** The system operates off of a combined set of business rules and predefined workflows. As cases are created, resources and party information are assigned to the case which can create staff tasking, trigger staff reminders, or produce reports. Each user is presented with a screen that provides all case information that is related to them. Should a staff person or attorney need to go beyond that, cases and case information is located through the use of an integrated master search engine.

Documents are attached to case files by either uploading or by an integrated document scanner at a staff person's desk. Each modification to a case is logged as is communications sent from the system.

As staff and attorneys work through a case, they provide information through a drop down menu system to ensure that entries are consistent across all cases. This allows for more reliable statistical information and reporting.

5. **JustWare Training:** OPC staff receives regular reviews of JustWare operation from senior OPC staff. JustWare also provides annual training in Logan that will begin this year for OPC.

6. **Status.** JustWare has not been utilized by OPC long enough to enable our Committee to evaluate its efficiency or effects. This should be addressed in the future after OPC has more experience with the system.

II. **OPC'S INTERACTIONS WITH OTHER PARTICIPANTS IN THE DISCIPLINARY PROCESS.**

A. **Consumer Affairs Program.**

Director's Observations. Jeanine Timothy is the Director of the Bar's Consumer Assistance Program ("CAP"). She does not have any suggestions or complaints about the OPC. She does not know everything about how the office is structured and how cases flow through the different staff who handle the cases. However, she feels that the staff and attorneys in OPC are helpful when she asks for help. If she has general questions about an ethical issue, the attorneys make themselves available to her and she is able to discuss any questions she has with them. When she has a question about a particular case with either a CAP file or with a Disciplinary Process Information Office (DPIO) file, the OPC staff are very helpful to respond. Ms. Timothy provided the two following examples:

Example 1: Within the past two months, Ms. Timothy received a "Request for Assistance" from a consumer who was complaining about a district attorney. After the attorney heard a Request for Assistance had been received from this particular consumer, the attorney called and spoke with Sharadee Fleming, an attorney with the OPC. The attorney claimed the consumer had made threats against the attorney and that he was dangerous. Ms. Timothy called the attorney to follow up with additional questions. Ultimately, Ms. Timothy met with the consumer and addressed his concerns about the attorney. The consumer was grateful to be able to

express himself and felt that it was helpful just to “be heard.” It was very helpful to Ms. Timothy to be able to discuss the consumer’s concerns with Ms. Fleming.

Example 2: Recently, Billy Walker and Todd Wahlquist went to Ms. Timothy’s office to discuss a possible change in the “Request for Assistance” intake process. The discussion was thorough and comfortable. Ms. Timothy appreciated their professional and open manner the three of them were able to fully discuss all aspects of the issue and craft a satisfying solution.

How CAP gets Involved.

- a. The “Requests for Assistance” and letters received from consumers are initially screened by the OPC. All matters which pertain to an attorney who is a repeat ethics offender are maintained by the OPC, as are those claims that appear to be ethical violations by the attorney. The remainder of the “Requests for Assistance” letters are forwarded to CAP.
- b. Referrals to CAP come from many different offices and individuals. They include the following: Judges, District and Juvenile Court clerks, law librarians, County Recorder staff, attorneys, consumers who have had prior interaction with CAP, and Utah State Bar website information.
- c. How CAP cases come to Ms. Timothy are contained in her monthly and fiscal reports. The information for the fiscal year from July 1, 2014, until almost June 30, 2015, is as follows:

CAP files opened with Request for Assistance	
Form received from consumer	25%
CAP files opened with other written	
correspondence from consumer	14%
CAP files opened with phone call from	
consumer	58%
CAP files opened with email from consumer	2%

- d. The number of CAP files opened during the past few years:

2012 – 707 files
2013 – 682 files
2014 – 815 files
2015 to date – 418 files

Appropriateness of CAP Cases. Ms. Timothy believes that the cases she handles are appropriate for CAP.

Ways CAP Assists Consumers.

a. Often, Ms. Timothy contacts the attorney involved in the matter to explain the client's concerns. She asks the attorney to contact his or her client to resolve those concerns.

b. Referral of consumer to Utah State Bar programs such as Fee Dispute Resolution, Tuesday Night Bar, Modest Means, Lawyers Helping Lawyers, and Find a Utah Attorney located on the website.

c. Referral to public programs which include the Third District Court Family Law Clinic, the court's online document prep program, and free legal help offered at the senior centers throughout the state.

CAP does not overlap with diversion.

B. OPC's Interactions with the Diversion Committee.

Rule 14-533 of the Rules Governing the Utah State Bar creates a mechanism through which an attorney charged with less serious misconduct may resolve a claim of misconduct through remedial activity rather than the usual disciplinary process. The reference for diversion may be initiated by a respondent attorney, OPC, or a screening panel. The decision whether to permit diversion lies with the Chair of the Diversion Committee after consultation with OPC.

1. **The Diversion Committee.** Perri Babalis is the Chair of the Diversion Committee, which consists of five people, four of whom are attorneys and one of whom is a public member with professional training in the area of substance abuse and/or stress management. Currently, this public member is a licensed social worker.

2. **Referrals to the Diversion Committee.** The OPC Committee interviewed Perri Babalis, who as noted is the Chair of the Diversion Committee. She indicates that during the past two years, the Diversion Committee has received 4-5 diversion references from OPC, one from a respondent attorney, and none from screening panels. Two of these references were not accepted by the Diversion Committee as being too serious for diversion. She recalls no references during the past two years from a screening panel.

Ms. Babalis indicates that the OPC submits diversions to the Diversion Committee by sending the entire disciplinary file to the Chair of the Diversion Committee. This submission does not include any analysis beyond the contents of the file. OPC is now sending the file digitally, which Ms. Babalis believes is a better approach.

According to Ms. Babalis, staff OPC attorneys seem to have authority to send cases to diversion on their own accord; Ms. Babalis does not need to wait for approval from a senior person, such as Billy Walker, to proceed with a diversion. She also indicates that in her dealings with them, OPC attorneys are very helpful, responsive to questions, and easy to contact.

3. Suggestions Concerning the Diversion Program.

Ms. Babalis suggests that OPC could better organize the disciplinary files before sending them to the Diversion Committee. She also suggests that, if appropriate, more cases should be referred for diversion.

C. OPC's Interactions with Respondent Counsel.

The OPC Committee interviewed several attorneys who frequently represent respondents in disciplinary proceedings involving OPC. After those interviews, the OPC Committee interviewed Billy Walker, Senior Counsel of OPC, and asked that he address the areas of concern expressed by those counsel. What follows is an outline of the observations of those respondents' counsel and the responses thereto of OPC through Billy Walker:

1. **OPC Staff Attorneys.** Respondents' counsel generally observed that OPC staff attorneys are courteous and professional in their dealings, subject to the comments below. Some observed that most OPC attorneys lack "real life" experience as practicing attorneys and would be benefitted by the perspective acquired through such experience.

2. **Communication Issues.** Some respondents' counsel indicated it was difficult to reach OPC attorneys, who won't give out their email address or direct phone number. Billy Walker responded that the direct telephone lines of all OPC staff attorneys are on the Bar website and in the Legal Eagle. The OPC Committee has confirmed the accuracy of this statement. Mr. Walker indicated that OPC often gives out only the OPC "staff" email address because it is OPC's preference that incoming emails be addressed to such staff whose job it is to track and ensure timely responses to those emails. OPC has no prohibition of disclosing individual staff attorney email addresses and such disclosure often occurs, although for the reasons just stated, the preferred email address is the OPC general staff email address.

3. **OPC Staff Attorneys' Authority.** Some respondents' counsel indicated that OPC staff attorneys cannot answer questions or make agreements and have no authority to do hardly anything without obtaining Billy Walker's approval. Billy Walker indicated that except with respect to the settlement of a case, staff attorneys have authority to communicate OPC's position and make decisions without prior approval from or communication with Mr. Walker. He states that OPC has a weekly staff meeting and that each staff attorney is generally aware of what is going on with cases being handled by all of the attorneys. He states that the policy of OPC is that only settlement decisions require consultation with OPC staff and Mr. Walker before a response is given.

4. **Stipulations.** Some respondents' counsel indicated that OPC generally won't stipulate to anything, including facts, admissibility of documents, etc. They state that this is completely foreign to the criminal and civil judicial system and is inappropriate. Billy Walker's response was that stipulations are rarely requested and that his office has no policy against stipulations. He states that OPC generally does not stipulate to facts at the screening panel level because screening panels have independent investigative authority and OPC should

not invade the screening panel's responsibility. In formal proceedings at the District Court level, Mr. Walker indicates that his office stipulates when appropriate to facts, procedures, etc.

5. Negotiation of Settlements. Some respondents' counsel indicated that OPC is unwilling to negotiate deals or compromises in disciplinary proceedings when they reasonably should. Billy Walker indicated that the last OPC audit addressed this issue. He stated that in the last two years, OPC prior to screening panel hearings by settlement stipulation resolved about one-third of the disciplinary proceedings. He states that OPC has no policy against negotiating settlement arrangements other than that OPC should be fully and adequately informed about the case before entering into a settlement. He states that at the District Court level, OPC's policy is not to stipulate to any deal without respondent having filed an Answer. He estimates that about one-third of the formal cases pending filed in the District Court are settled by stipulation. He reiterated that OPC's policy is that there are no settlements or deals without the authority of Billy Walker and the remaining staff as a group citing as a reason the importance of uniformity in OPC decision-making in this regard. A review of OPC's last Annual Report dated August 2014 indicates that of the 47 cases closed with orders of discipline, 16 were resolved by stipulation.

6. OPC's Role at Screening Panels. Some respondents' counsel indicated that OPC typically does not give sufficient analysis of the case at the screening panel level. Mr. Walker responded that the screening panel Memoranda submitted by his office to the respondent and screening panels set forth then-known facts, documents, a brief analysis, and OPC's recommendation. He states that OPC does not advocate for any particular findings or sanction because the screening panel has an ongoing fact-finding role that OPC does not wish to invade and that the investigation performed by OPC generally does not result in sworn testimony, whereas testimony before the screening panel is sworn. He states that the approach taken by OPC at the screening panel level is a product of (i) its dual role of acting as secretary to the Ethics Committee and acting as prosecutor and (ii) the scheme established by the Rules of Lawyer Discipline and Disability, which gives the screening panels continuing investigative authority and contemplates less than a completely adversarial hearing.

7. Continuances. Some respondents' counsel indicated that, while continuances as a professional courtesy are routine in a civil and criminal context, OPC is unreasonable in not granting continuances of screening panel hearings and other proceedings. Mr. Walker indicates that the policy of OPC is to grant continuances if reasonable to do so. He states that in the absence of very good reason, OPC does not favor continuances that are close in time to the screening panel hearing, particularly if materials have been distributed to screening panel members and it is too late to schedule other matters to be heard by that screening panel. He states that if a request for continuance is received promptly after the notice of hearing (which is sent out about 30 days before the hearing), it will generally be allowed. He states that the convenience of screening panels and the efficiency of the scheduling process should be considered in the decision-making process. He also states that the Chair of the Ethics Committee or her designee can overrule OPC's declining to grant a continuance.

8. Service on Respondents' Counsel. Some respondents' counsel indicated

that OPC refuses to serve papers pertaining to the disciplinary process on respondents' counsel, rather than directly on respondents. Mr. Walker indicates that this is not the policy of his office, and he does not believe it to be true.

9. Untimely Delivery of Facts/Documents. Some respondents' counsel indicated that it is disturbingly common for OPC to bring to the attention of a screening panel and respondent materials bearing upon a disciplinary proceeding at the last minute, which results in surprise and an inability fairly to address the information. Mr. Walker indicates that his office never holds back information to surprise respondents but that sometimes complainants bring facts and documents to OPC's attention late in the game, which results in a tardy disclosure to respondents. He noted that under the disciplinary rules, the screening panels have a continuing obligation and duty to investigate and raise issues which sometimes results in issues and facts coming to light later than would be ideal. He notes that *Johnson v. Office of Professional Conduct*, 2014 UT 57, recently decided by the Supreme Court, may ameliorate this problem by deciding that unless disciplinary rule violations are charged prior to the disciplinary hearing, the screening panel cannot properly find violations of those rules.

10. Scope of Screening Panel Decision-Making. Some of respondents' counsel indicated their view that any disciplinary sanction more severe than a private admonition should be decided by a District Court, not a screening panel. This is not a criticism of OPC, since OPC is administering the rules as they are presently written. We include this observation here because it is food for thought.

11. OPC Committee's Observations. We have attempted fairly to present the positions of respondents' counsel and OPC above. Some of the complaints of respondents' counsel can be resolved by the rules themselves, which contemplate an informal, less than totally adversarial hearing, and which grant the screening panels unusual investigative responsibilities in this context and place on OPC divergent responsibilities of acting as secretary to the Ethics Committee and prosecutor. Other differences of opinion may be attributable to the different roles of respondents' counsel, who defend respondents, and OPC, which prosecutes respondents. Those roles inherently entail different perspectives. Not all of the divergent views are resolvable, however, on these grounds. In some cases the differences in views are not resolvable -- one or the other side is wrong.

12. Policy Manual. The OPC Committee learned that OPC has a Policy Manual and requested a copy of the most current version. A copy is included as Ex. A.

D. OPC's Interactions with the Discipline Committee.

The OPC Committee interviewed the Chair of the Discipline Committee, along with two screening panel members -- one a panel Chair and the other not a panel Chair. The Discipline Committee members, in response to the OPC Committee's questions, addressed the following general subject matters:

Secretarial Functions. OPC serves a dual role as secretary to the Discipline Committee

and its own separate prosecutorial function. Here, we address its role as secretary. The Discipline Committee members expressed general satisfaction with OPC's performance of its secretarial function. OPC personnel were easy to contact, timely in their responses, and professional in their dealings. The Discipline Committee had no suggestions for improvement in this general area.

Investigations. OPC performs an investigative function in advance of screening panel hearings. The Discipline Committee expressed that OPC generally does a good job of its investigations but that in some cases the investigations could be more detailed and in greater depth. The Discipline Committee expressed that this was probably a function of inadequate staffing to facilitate the level of uniform detailed, deep investigation that would be ideal. The Discipline Committee members indicated that the OPC would be benefitted by the employment of an investigator if funds were available for that purpose.

Screening Panel Hearings. In advance of the screening panel hearings, OPC prepares a screening panel Memorandum which is circulated to the respondent and panel members in advance of the hearing. This function entails both secretarial and prosecutorial functions -- the Memorandum sets forth the pertinent documents, facts, and potential ethical Rule violations and also makes recommendations as to suggested or possible outcomes of the screening panel hearing depending upon the screening panel's findings. The screening panel Memorandum is essentially the only written material supplied to the screening panel to assist it in its decision making function. The Discipline Committee members indicated that the OPC generally does a good job of laying out the facts and facilitating access to the documents and facts in the screening panel Memorandum. One criticism advanced by a Discipline Committee member as a "nitpicking suggestion" was that OPC should attempt to beef up its analysis section of the screening panel Memorandum to include more legal analysis and, when appropriate, applicable caselaw. The Discipline Committee members expressed that OPC should attempt to circulate the screening panel Memorandum at least one week and preferably two weeks in advance of the screening panel hearing. In a followup interview, Billy Walker indicated that OPC's policy is to get the screening panel Memoranda to the screening panel two weeks before and not later than one week before the screening panel hearing. The screening panel Memorandum is now circulated electronically unless parties request delivery of a hard copy. The policy now is to supply all written materials except the screening panel Memorandum to the panel with a calendar notice 30 days in advance of the hearing and the screening panel Memorandum between one and two weeks before the screening panel hearing.

Some but not all of the Discipline Committee members expressed the view that OPC should ask more questions and be more "active" at the screening panel hearing. They reason that because OPC is very familiar with the case and acts as prosecutor, a higher level of participation is indicated. In a followup interview, Billy Walker expressed OPC's position in this regard. He stated that the screening panel has an independent investigative role along with a duty to investigate and find facts and that the applicable Rules of Lawyer Discipline and Disability are intended to create an administrative hearing that is not too adversarial (for example, respondents have no right of cross examination). For these reasons, OPC has chosen to strike the balance as it has. Mr. Walker indicates that the screening panel Memorandum advances OPC's analysis and

recommendation but does not ask for a specific outcome. The Rules of Lawyer Discipline and Disability do not contemplate a criminal trial-like hearing before the screening panel, and those Rules do not prescribe any specific role for OPC that is at odds either with what OPC now does or a role that is more strongly prosecutorial.

Timeliness of Disciplinary Resolutions. The Discipline Committee members indicated that during the startup of OPC's new database system (addressed above in Section I.B), OPC slowed down in moving cases through the system and that there were delays in processing complaints. The time consumed in OPC's processing disciplinary complaints is addressed in greater detail in Section III.A.

Staffing Issues. The Discipline Committee members expressed concern at the turnover of 3± staff members in the recent past at OPC, all but one of whom were non-attorneys. Our Committee did not interview non-attorney staff members. The attorney staff members that were interviewed expressed uniform satisfaction with their employment arrangement. See Section I.A above.

Security. During our interviews, one person mentioned an incident in which the personal safety of participants at a screening panel hearing was a concern. Although we cannot speak for the judiciary, the courts are likely to be willing to accommodate a screening panel hearing in a courtroom at the Matheson Courthouse. The courthouse is only a few blocks from the Law and Justice Center, the normal place for hearings, and the perimeter security is designed to prevent someone from bringing a weapon inside. The presence of several bailiffs means the response time to a duress alarm is only seconds. Mr. Walker advises us that this option has been used in the past. Of course a hearing cannot be scheduled at the Matheson Courthouse unless there is advance notice of a security concern. We encourage Mr. Walker to continue to work with court administrators to schedule hearings at the courthouse when needed to prevent violence or threats of violence.

III. OPC'S PERFORMANCE.

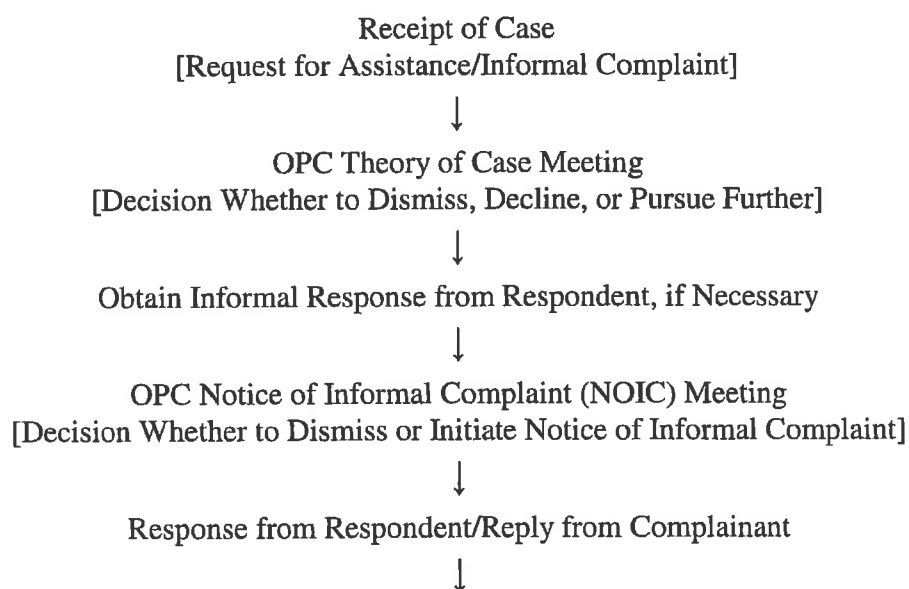
OPC typically processes somewhere between 1,000-2,000 cases per year, some of which are dismissed, some of which are presented to screening panels, some of which result in diversions, some of which result in stipulated discipline, some of which result in the prosecution of formal cases before District Courts, and some of which involve appeals to the Utah Supreme Court. Given the volume of cases and the uniqueness of each, it is practically impossible to critique in any meaningful sense OPC's job performance in the area of determining whether OPC gets it right in each case and whether OPC appropriately deals with each case on its merits. The Committee chose to examine three areas of OPC's performance, which are addressed below.

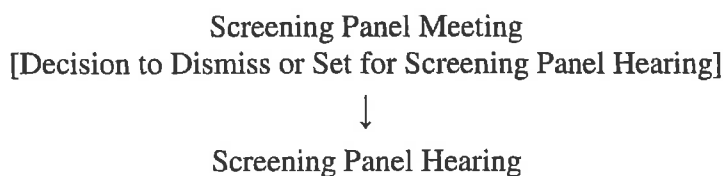
A. Timeliness of OPC's Processing of Cases.

One issue addressed by the OPC Committee was the amount of time taken to resolve disciplinary complaints. This, of course, is an important factor both from the standpoint of the public, the respondent, and the Bar. Addressing it is complicated by these factors: First, OPC

processes on average over a thousand complaints per year, only a small fraction of which result in screening panel hearings or discipline. Second, the disciplinary process is one that has multiple phases, and addressing averages in this context becomes difficult. Third, each case is unique, and it is difficult to generalize about how long it takes to process the “typical” case. Finally, because of the volume of cases addressed by OPC, accumulating meaningful information is time consuming. The latter problem will hopefully be ameliorated by OPC’s acquisition and utilization of a new data management system, which should in the future facilitate more accurate case tracking and the ability easily to generate information about the time taken to process cases through various phases of the disciplinary process. Nevertheless, we have to start somewhere. The OPC Committee asked OPC to supply information about the time consumed, on average, in processing disciplinary complaints through various phases of the process. That information follows after an explanation of the process.

The disciplinary process is initiated through either a request for assistance through the Consumer Affairs Program (“CAP”) or an Informal Complaint received from some party. On OPC’s receipt of either, it conducts an investigation to determine what rules may have been violated, to locate relevant documents and testimony, and to generally ascertain the facts. When that process is complete, OPC either determines to dismiss or decline to prosecute or to pursue the matter further. In the latter case, OPC may secure additional information and/or obtain an informal response from the respondent. When that additional investigatory process is complete, OPC conducts a “Notice of Informal Complaint” meeting (“NOIC Meeting”) at which it is decided whether to dismiss or to initiate a Notice of Informal Complaint to the respondent. The latter results in further interactions between OPC and the respondent to secure information and, in some cases, a screening panel hearing at which the screening panel may dismiss, impose various sanctions, or refer the matter to District Court for prosecution. A generalized and simplified time line would be as follows:





OPC has promulgated “target average time frames” for processing claims within the procedures described above. Those are as follows:

From Receipt of Case to Theory of Case Meeting -- 5 months
From Theory of Case Meeting to NOIC Meeting -- 4 months
From NOIC Meeting to Screening Panel Meeting -- 3 months

The “Screening Panel Meeting” is a meeting of OPC attorneys -- it is not the hearing before the screening panel. As noted below, the duration of time between a Screening Panel Meeting and the screening panel hearing is variable based upon factors somewhat outside the control of OPC.

As will be seen, the average time from the Screening Panel Meeting to the screening panel hearing is in the range of two to six months. Thus, using OPC’s target times from Receipt of Case to the Screening Panel Meeting (totaling a year) and the average time from the Screening Panel Meeting to decision gives us a rough estimated time from receipt of the case to actual screening panel decision of between a year and a quarter and a year and a half.

Before addressing how long it actually took to perform these functions, one might question whether OPC’s target times for its functions are excessive. Given that OPC, not the OPC Committee, has had experience with these matters and has estimated these as reasonable targets, coupled with the fact that the periods are not on their face patently excessive, we do not further question these target times.

As to actual times, here is the data that OPC supplied to us:

<u>For the Period September 2012 to June 2013:</u>	Average time from receipt of case to Screening Panel Meeting (decision to proceed to screening panel hearing)	227 days
	Average time from Screening Panel Meeting (decision to proceed to screening panel) to screening panel hearing	54 days
	<u>Total Average time from receipt of case to screening panel hearing</u>	281 days
<u>For the Period September 2014 to April 2015:</u>	Average time from receipt of case to Screening Panel Meeting (decision to proceed to screening panel hearing)	285 days

Average time from Screening Panel Meeting (decision to proceed to screening panel) to screening panel hearing	123 days
<u>Total Average time from receipt of case to screening panel hearing</u>	<u>410 days</u>

OPC indicates that the second category (for the year 2014-15) to date is the average of case processing days based on a random sampling of 10 cases (the first 10 cases in each month chronologically) that were closed in each of the months of July, August, September, and October of 2014 from their opening date.

The Committee asked OPC the following three questions in response to this information, to which OPC gave the indicated responses:

1. Is there any explanation for the significant differences in average case processing days between 2012-13 and 2014-15?

OPC indicated that the best comparison between the two time frames is the time between opening a case and the decision to take a case to the screening panel because the period of time between the Screening Panel Meeting (at which a decision to proceed to screening panel hearing is decided) and the screening panel hearing itself involves factors not under the control of OPC -- screening panel members' availability, calendars of the parties, whether a given month's dates are already full and the case must be bumped, whether parties seek and obtain continuances, etc. OPC indicates that the difference in the two periods examined of 227 and 285 days between receipt of a case and Screening Panel Meeting is explainable by the following factors: (i) Between August 2013 and March 2014, OPC had significant support staff changes, (ii) in the same period, a staff attorney took maternity leave time of about five months, (iii) active caseload increased in the 2014-15 period in comparison to 2012-13, and (iv) in the latter period, OPC changed its investigative policy by requesting informal responses from the respondent prior to the initiation of a notice of informal complaint, which extended the time period but probably resulted in fewer cases proceeding to notice of informal complaint.

2. What would OPC deem to be an acceptable number of case processing days or range of same?

In response to this question, OPC indicated that the target dates indicated at the outset of this section were appropriate targets but that they are only targets and each case is unique and can vary from those time frames.

3. What can be done to facilitate reasonably speedier case processing times?

OPC indicated that if its average case processing days are within the suggested time frames noted above, importance should not be placed on speedier case processing times

but rather should be placed on having an efficient case processing system that produces competent and thorough investigations to determine which cases should be dismissed and which cases should be prosecuted. OPC indicates that the availability of human resources is a factor in handling its responsibilities in a timely manner but that it has what it needs at present.

The OPC Committee believes that, for the reasons indicated above, OPC's target time frames are, although not ideal¹, reasonable and that its actual performance for the two periods examined above are consistent with those time frames. The time periods between decision to proceed to a screening panel hearing and the actual screening panel hearing (which varied between 54 and 123 days) are, in the former case, surely reasonable, and in the latter case, on the outside range of reasonable. To shorten up the latter time periods would seemingly require an adjustment to the manner in which screening panels do their business -- increasing the number of screening panels through a reduction in the number of people required to attend a screening panel hearing (which would require a change in the rules), more stringent requirements to allow continuances, etc. Our conclusion is that, at least as far as the averages given to us by OPC are concerned, this aspect of OPC's performance does not require attention.

B. Does OPC Evenhandedly Address the Discipline of Lawyers from Large Firms, Small Firms, Criminal Lawyers, Civil Lawyers, Bankruptcy Lawyers, etc.?

Members of the OPC Committee expressed a concern of some of them and of others who have communicated similar concerns that OPC does not evenhandedly address disciplinary complaints against lawyers from large firms, small firms, criminal lawyers, civil lawyers, bankruptcy lawyers, etc. The data contained in OPC's Annual Reports does not tie the respondent attorney to any particular area of practice, to whether he/she is a member of a large or small firm, or to other demographic information. It is therefore impossible to respond intelligently to such anecdotal concerns. But in the experience of many OPC Committee members, it seems clear that there are many attorneys who have the strong impression, whether well founded or not, that civil attorneys in large law firms are not treated as strictly in the disciplinary system as, for example, (i) criminal defense attorneys, (ii) bankruptcy attorneys, (iii) sole practitioners, and (iv) practitioners from small firms. One could argue that there is an objectively higher likelihood of disciplinary complaints being filed against criminal defense attorneys (because they are likely to have more unhappy clients), divorce attorneys (ditto), and attorneys who perform services for an uncommonly low charge (e.g., bankruptcies for \$300, divorces for \$500, etc.). One could also argue that larger law firms tend to be clubby and their members are unlikely to initiate disciplinary complaints against one another because of the social and professional ramifications. But irrespective of these baseless, hypothetical observations, the fact is that there is no reliable data available to determine whether these persistent anecdotal observations have a basis in fact. Rule 14-515 of the Rules governing the Utah State Bar make confidential virtually everything in the lawyer disciplinary arena until the filing of a formal complaint in District Court where the issuance of a public reprimand. This substantially

¹As noted above in Section I.A., OPC's staff attorneys expressed the view that a typical disciplinary matter could be processed from Informal Complaint to screening panel hearing in six to twelve months -- less than the "target" time frames advanced by OPC.

insurmountable barrier precludes access to the information that would enable an accurate response. As discussed below in the section that follows, the OPC Committee believes it appropriate that consideration be given to an exception to the confidentiality rule permitting examination of disciplinary records by limited parties for the purpose of auditing OPC's performance, collecting statistical data, and other legitimate purposes while otherwise protecting the confidentiality of such information. Irrespective of whether such a rule is adopted or implemented, the OPC Committee suggests that OPC, going forward, should begin collecting at least the following information on the opening of a disciplinary file with respect to any attorney: (i) Practice area, (ii) professional position of the attorney (government employee, house counsel, private practice), (iii) sole practitioner, member of firm of less than 5, member of firm of less than 10, etc., and (iv) years in practice. These input factors (and perhaps others as well), when used in conjunction with the OPC's new data tracking system, should enable OPC in the future, consistent with the transparency goals described below, to publish to the public accurate statistical data about the subjects of the disciplinary process, who initiates complaints against them, and the outcome of disciplinary proceedings against them. Such public availability of information would go a long way to replacing the current speculation that is so prevalent with hard, fact-based data.

C. Does OPC Initiate and Properly Prosecute Disciplinary Cases Against Lawyers Identified in Published Opinions of Utah's Appellate Courts as having Acted Ethically Inappropriately?

A disciplinary proceeding may be initiated "by any person, OPC counsel or the [Discipline] Committee" Absent initiation of a disciplinary proceeding, nothing happens. OPC has indicated that it, on its own, initiates disciplinary proceedings against lawyers identified in public media as having potentially transgressed the Rules of Professional Conduct.² We here address the issue whether OPC has properly pursued disciplinary action against lawyers identified in appellate decisions as having acted in such a way as to potentially violate the Rules of Professional Conduct.

The OPC Committee addressed the following specific judicial decisions as examples:

Wilson v. IHC, 289 P.3d 369, 2012 UT 43. In this case, the Utah Supreme Court in its noted Opinion made multiple statements highly critical of IHC's counsel's persistent violation of an Order in Limine preventing references to the collateral source evidence and having *ex parte* meetings. In *Wilson*, the Court's comments included the following: "IHC's trial tactics violated the In Limine Order, misled the trial court, and substantially prejudiced the jury"; "IHC adopted a trial strategy of circumventing the Trial Court's In Limine Order by presenting forbidden collateral source evidence to the jury"; "[T]he introduction of collateral source evidence was neither isolated nor inadvertent; rather, IHC's counsel in turn 'made persistent and studied attempts' to bring it to the attention of the jury"; IHC's references "did not arise from either

²It is fair at this point to observe that lawyers, themselves, have an ethical obligation to report professional misconduct under some circumstances [Rule 8.4, Rules of Professional Conduct] and judges also have that obligation [Rule 2.15, Code of Judicial Conduct].

mistake or inadvertence”; and “we conclude that it was improper for IHC to meet *ex parte* with Dr. Boyer without first notifying and obtaining consent from the Wilsons”; “by doing so, IHC’s counsel breached his duty to refrain from conducting improper *ex parte* meetings and by encouraging disclosure of confidential information.”

Tiscareno, et al. v. Frazier, United States District Court for the District of Utah, Central Division, Case No. 2:07-CV00336. Memorandum Decision dated November 19, 2014, Judge Clark Waddoups, in his Memorandum Decision noted “very disturbing lawyering,” persistent issues of discovery disputes, noted that “IHC and its counsel knew that these representations were false based on documents in their possession . . . ,” and that “IHC and its counsel’s strategic failure to advise the plaintiffs of the State Contract, severely prejudiced plaintiffs”

Barrientos v. Jones, 2012 UT 33. There, the Court again addressed violations of an Order in Limine. The Court stated that IHC’s counsel’s behavior “was indefensible” and that “she pursued this course of conduct undeterred by the Court’s orders that unequivocally forbade her chosen course of action. We condemn [counsel’s] conduct.”

The OPC Committee or its members sought to learn from OPC whether disciplinary files had been opened with regard to the attorneys involved in the above cases and, if so, the status and/or disposition of those disciplinary proceedings.

The OPC Committee’s efforts in this regard consisted of verbal communications with OPC and written requests for information. With the exception of the limited data set forth below, OPC refused to give the Committee access to the files or to supply the requested information based upon its interpretation of Rule 14-515 of the Rules Governing the Utah State Bar, which in substance render disciplinary proceedings confidential. Various members of the OPC Committee felt and feel strongly that OPC’s interpretation was incorrect and that OPC was required to supply the information. Other members of the OPC Committee had the opposite view or the view that whether OPC was required to supply the information and documents under Rule 14-515 was ambiguous and OPC was not out of line in pursuing the conservative course of not disclosing the information. The bottom line is that the OPC Committee, for this reason, was unable to have access to the information that would enable it to address the subject under inquiry.

The OPC’s limited response to the OPC Committee’s request for information and documents is summarized as follows: An investigation has been opened regarding three of the counsel at issue and OPC would not comment on the fourth counsel. One counsel’s investigation is set for a screening panel hearing, one counsel’s investigation is in abeyance, and one counsel’s investigation was dismissed based on completion of a diversion. The counsel whose disciplinary proceedings were dismissed based upon completion of a diversion is the attorney to which reference above is made in the *Barrientos* case. Based upon this limited information, the OPC Committee is unable to determine when disciplinary proceedings were initiated against the counsel in question, current status of the disciplinary proceedings (other than as noted above), why counsel’s seemingly serious misbehavior was resolved through a diversion, etc.

The OPC pursued the procedure under Rule 14-515, which OPC said was required (and

which various OPC Committee members disagree with) to secure disclosure of the information by making a request for information and having OPC seek permission from the responding counsel. All but one of those counsel refused access to their disciplinary file and the one imposed conditions on the access. The OPC Committee concluded that one file was not a statistically relevant sample for our purposes and that pursuit of the remaining files judicially would be time consuming and not certain to result in disclosure of all the files and so abandoned its further pursuit of this subject.

As was the case with the subjects addressed under the preceding heading, the lack of access to disciplinary files maintained by OPC based upon its interpretation of Rule 14-515 preclude a meaningful review of the subjects here addressed. For the same reasons as are generally outlined above, the OPC Committee recommends a change/clarification to the rule that will permit limited access to disciplinary files for legitimate purposes of evaluating OPC's performance and the performance of the lawyer discipline machinery. That proposed change is addressed under Conclusions and Recommendations below.

IV. OPC'S RELATIONSHIP WITH THE BAR AND PUBLIC.

OPC Transparency.

OPC should provide to the public as much information as possible. Doing so will improve the accountability and the image of the office. We commend OPC for the information it does provide, and we encourage them to do more.

We have only anecdotal evidence of respondents and complainants not being informed of the progress of a case. Anecdotal evidence cannot support global conclusions, but neither can it be disregarded. At least in several instances respondents or complainants were left with an impression of OPC and the discipline process that was less than it needed to be. Keeping the participants informed of what to expect shows simple courtesy as well as serving OPC's self-interest.

Public discipline of lawyers is reported in the Utah Bar Journal, but limiting transparency to those outcomes hides the lion's share of what OPC does. Less well known, OPC publishes its annual reports from 2001 to the most recently completed fiscal year on the bar's website (<http://www.utahbar.org/opc/opc-history-of-annual-reports/>, last visited July 21, 2015). The categories from year to year are comparable and the information does not vary much:

- staff composition;
- attorney misconduct case process and procedure;
- statistics;
- progress and goals on cases;
- the Consumer Assistance Program (CAP);
- goals for the coming year; and
- the most recent report added "other items for consideration."

Staff composition. OPC has added one assistant counsel in that time and has changed two administrative assistant positions into paralegal positions. Otherwise the office today is much as it was in 2001.

Attorney misconduct case process and procedure. The reports summarize the discipline process, which is regulated by rules of the Supreme Court. The reports also describe the Consumer Assistance Program, which is not regulated.

Statistics. The numbers reported each year include the number of cases processed and how they were disposed. Table 1 is an excerpt of the reports and does not include all categories.

Table 1. Cases processed and dispositions.

Fiscal Year	Cases Processed	Voted Formal by Screening Panel	Order of Discipline Entered	Diversion Approved	Informal Complaints Dismissed	Request for Assistance Closed	Percent of "Complaint Dismissed" or "Request for Assistance Closed"
2001	1704	36	59	38	455	681	67%
2002	1750	41	144	15	353	580	53%
2003	1751	38	134	9	367	542	52%
2004	1765	39	64	8	730	322	60%
2005	1707	37	94	25	308	508	48%
2006	1768	25	106	3	266	933	68%
2007	1465	23	56	8	219	773	68%
2008	1287	25	65	4	234	635	68%
2009	1504	27	53	4	212	900	74%
2010	1428	22	57	1	236	774	71%
2011	1373	31	35	13	207	633	61%
2012	1401	19	69	2	278	652	66%
2013	1315	23	47	7	234	526	58%
2014	1217	16	33	3	246	467	59%
Total	21435	402	1016	140	4345	8926	62%

The annual reports appear to include in the orders of discipline orders entered by any means -- stipulation, screening panel or District Court -- so there is almost certainly some overlap between the number of cases voted formal by a screening panel and the number of orders entered.

The OPC Review Report from 2009 included the perception that "OPC tends to not screen out all of the cases that are not serious or in which complainant's allegations lack any credibility, or that otherwise do not warrant prosecution." And that OPC does not have prosecution priorities, so "factually simpler cases, that involve less serious ethical violations, may be more likely to be prosecuted than more complex cases." This may be legitimate. From a separate, confidential report of the Ethics and Discipline Committee, of the 177 cases prosecuted before a screening panel during 2011 to 2014, 48 or about 27% were either dismissed or dismissed with a caution.

The annual reports do not distinguish between informal complaints and requests for assistance in a way that is easy to understand. The Consumer Assistance Program is designed to help clients resolve problems with their lawyers. The requests are screened to determine whether the lawyer's alleged conduct rises to the level of misconduct, which is appropriate, but by far the majority of request closures are in the "decline to prosecute" category. In 2014, for example, only one case is reported to have been closed by sending it to the Consumer Assistance Program. One would hope that, in an ombudsman program, such an overwhelming number of pleas for help would not be dismissed with merely the conclusion that the lawyer's conduct is not a violation of the Rules of Professional Conduct.

Elsewhere in this report, we represent, based on information from the Consumer Assistance Program, that CAP opened 815 files in 2014. OPC reports 465 cases opened for that year. Although not as stark as for 2014, the CAP and OPC reports are also significantly different for 2012 and 2013, the only years for which we have information from CAP.

We have no data from other jurisdictions to compare these numbers to, so it is difficult to say whether the number of dispositions in any of the categories is too high or too low. It does seem, however, that an average of only 10 diversions per year over the last 14 years -- and only 5 diversions per year over the last 5 years -- fails to adequately use that resource. Punishment may be appropriate in many cases, but ultimately the desired outcome should be to change behavior, and diversion with appropriate conditions seems to be missing from the mix.

The annual reports also disclose the source of the cases. Table 2 is an excerpt of the reports and does not include all categories.

Table 2. Source of the information for a case (in percentages).

Fiscal Year	Opposing Counsel	Lawyer Other than Opposing Counsel	Current or Former Client	Opposing Party	Financial Institution	OPC	Judge
2001	13.0	NR*	61.0	7.8	NR	NR	3.4
2002	14.0	9.1	26.8	NR	NR	11.1	3.4
2003	5.2	1.1	32.1	9.2	13.7	12.5	3.7
2004	8.8	5.0	55.4	3.0	4.5	2.8	0.9

Fiscal Year	Opposing Counsel	Lawyer Other than Opposing Counsel	Current or Former Client	Opposing Party	Financial Institution	OPC	Judge
2005	7.3	1.7	55.8	5.0	3.5	1.2	0.5
2006	1.6	4.1	52.0	16.4	3.6	6.5	0.5
2007	3.2	1.8	54.4	20.4	7.4	1.7	1.0
2008	3.4	1.1	53.2	20.2	8.7	1.7	0.7
2009	4.9	3.9	48.5	11.6	10.0	0.6	0.9
2010	3.7	2.9	46.0	20.0	16.4	0.3	2.5
2011	2.5	2.9	62.5	11.5	11.3	1.8	1.8
2012	3.5	3.3	70.6	6.0	9.5	1.3	1.2
2013	3.3	2.0	66.1	7.4	13.5	2.8	1.7
2014	2.7	2.8	68.9	7.2	9.6	2.2	0.8
Average	5.5	3.2	53.8	11.2	9.3	3.6	1.6

* Not reported.

OPC might disclose much more information without disclosing confidential information. The annual reports disclose the nature of the complainant but not the nature of the respondent: big firm, solo practitioner, new lawyer, experienced lawyer, prosecutor, criminal defense, family law, transaction, litigation -- there is no way to tell. The annual reports do not include any information about the time needed to dispose of a case or to get from one point in the process to another. Elsewhere in this report, we describe time data provided to us for the purpose of our research. This kind of information should be routinely reported to the public. In the absence of time standards, individuals should have the information needed to form an opinion about whether investigations and dispositions occur timely.

Other than the frequency of violations of each of the rules found to have been violated, the reports offer no analysis of the violations. Would it help new lawyers to know the 5 most common mistakes by new lawyers? The 5 most common mistakes by experienced lawyers?

The conflicting reports show there is significant uncertainty about the scope of the Consumer Assistance Program. Better reporting of the number of people helped by the Consumer Assistance Program, the nature of their requests, and how the requests were resolved would show the public that they have a way to ask for help with a lawyer rather than just a way to complain. It would also show lawyers how to avoid problems.

More information about investigations that show no ethical violation, about diversions, and about informal sanctions would remove much of the mystery shrouding OPC and the discipline process.

The new software application being used by OPC is said to be capable of significantly more detailed reports than before. Program measures can be shared with everyone without compromising anyone. More transparency will work only to the benefit of lawyers and the public -- and OPC.

Goals for the coming year. The annual reports also describe OPC's goals for the coming year. The overriding goal described in the most recent report is to "continue to develop the OPC case processing system to ensure that the majority of resources are utilized to more quickly prosecute those cases where it is appropriate to file formal complaints with the District Court." This is a goal about which reasonable people can disagree. Prosecuting formal complaints of the most serious misconduct is indeed important and takes much more time per case than other dispositions. But the number of formal complaints is a small fraction of what OPC does so whether it merits the majority of resources is open to question. With better information about how much time is required of OPC attorneys and staff at each stage of the proceedings, OPC could develop a formula for resource allocation.

V. SUPERVISION OF OPC.

We have been asked to consider appropriate supervision for OPC senior counsel, but the request came to our attention rather late, and we have been unable to do the research -- principally investigation of other states' policies -- necessary to make other than rudimentary recommendations.

Rule 14-504 says only "The Board [of Bar Commissioners] shall appoint a lawyer admitted to practice in Utah to serve as senior counsel." Although unstated, presumably the Board can dismiss senior counsel. Senior counsel and the Board's executive director annually develop a budget for OPC and submit it to the Board for approval. If senior counsel is not satisfied with the Board's budget, he can petition the Supreme Court to modify it.

Aside from these few provisions, the rules do not describe any relationship between senior counsel and the Board or between senior counsel and the executive director. It appears that senior counsel does not have a boss in the traditional sense.

It is common for senior officials, such as OPC senior counsel, to have very little supervision. Senior officials exercise considerable discretion based on their own best judgment, and they should not be over-regulated. The policies and performance of senior officials need to satisfy the appointing authority. Absent adverse action by the appointing authority, presumably they do.

There are not many options for more immediate supervision. Although the Board is vested with hiring and firing authority, the Board would not be effective in a traditional supervisory role. It is too large and its primary responsibility too broad. The Board could expressly delegate a supervisory role to its executive committee. The executive committee is at least smaller than the full Board, and it is authorized by rule to act on behalf of the Board. Presumably its decisions can be overturned by the Board. Its current membership and charge

may or may not be appropriate for OPC oversight.

The Board could also expressly delegate responsibility to the executive director. Although the incumbent executive director has enjoyed a long tenure, the appointment is limited by rule to one year. It may be difficult for a position like senior counsel, with its significant authority and discretion, to be supervised by an officer who is, in essence, a short-term employee.

A third option is to establish a committee expressly for the purpose developing and monitoring OPC policies and performance in accord with those policies. Organizationally, the committee could be housed within the administration of the bar for the purpose of support. How much independence the committee would have is a matter for discussion by the Board. The committee might act entirely independently of the Board, up to and including the authority to evaluate, hire and fire OPC senior counsel. The committee could consider and resolve complaints about OPC. There might be a blend of responsibility between the committee and the Board. Membership on the committee is also a matter for discussion. The committee might have designated members or a designated number of members, or again a blend of the two.

If these options do not satisfy, the Board should appoint a study group to examine and recommend additional options.

CONCLUSIONS AND RECOMMENDATIONS

Interspersed in the foregoing report are observations, suggestions, compliments, and criticisms of OPC. Our purpose in this section of the report is to highlight those areas that we believe are significantly important or reasonably require further action to improve the system and OPC's performance.

1. **OPC's Overall Performance.** OPC's overall performance, including its supervision and management, is satisfactory. The data suggest that OPC is processing every year a large volume of disciplinary complaints in a reasonable period of time, which is what it is supposed to do. The comments that follow are areas where OPC might consider changing its policies and approach or where the Bar may consider changing things that will enable OPC better to do its job.

2. **OPC Salary and Staffing Issues.** OPC staff attorney salaries are adequate. The number of disciplinary complaints initiated has been in decline over the last several years. OPC's attorney staffs were unanimous in their view that there are sufficient attorneys now at OPC to perform its functions appropriately. Some OPC attorneys and some Discipline Committee members suggested that the employment of an investigator might be considered, but declining caseload does not support this course at present.

3. **OPC Interactions with Respondents' Counsel.** Section I.C. above indicates some friction between OPC and respondents' counsel, which should be addressed. Some friction is, under the circumstances, expected. OPC should be informed of respondents' counsel's

concerns and give consideration to addressing those concerns going forward. That is not to say that OPC is wrong or the respondents' counsel are correct in any of the issue areas; it is only to say that it would be wise to inform OPC of these matters so that they can be given appropriate consideration.

4. **OPC Interactions with Respondents.** OPC should consider engaging in more communications with respondents concerning the status of the complaint and investigation and estimated or projected time frame for future significant events. OPC should strive to process complaints to a conclusion as expeditiously as feasible consistent with appropriate processing.

5. **Screening Panel Hearings.** Both respondents' counsel and the Discipline Committee members indicated a suggestion that OPC beef up the analysis section of the Screening Panel Memorandum. The Discipline Committee members indicated a desire that OPC be more "active" at screening panel hearings. Both suggestions implicate the appropriate role for OPC before the Screening Panel. Respondents, at least when competent to do so themselves or when represented by competent counsel, present a screening panel with an advocate's view of the evidence. OPC should consider shifting its emphasis a bit more in the direction of prosecutorial advocacy in the view of the Discipline Committee (which consists generally of all of the members of the Screening Panels). Such advocacy might well serve to sharpen and clarify the issues and facilitate better decision making by Screening Panels. The OPC Committee believes that OPC can accomplish this shift without improperly compromising the Screening Panels' own investigative and fact-finding charge. Parties' concerns about the timeliness of the circulation of Screening Panel Memoranda may have already been resolved, but if not, OPC should strive to have the Screening Panel Memorandum in the hands of the Screening Panel members, complainant, and respondent at least 10 days before the Screening Panel hearing.

6. **Transparency Issues.** OPC should consider the suggestions outlined above under Section IV to improve better informing the public about the disciplinary process and OPC's involvement in it. The OPC Committee suggests that OPC begin to collect demographic information on respondents, including practice area, employment arrangement (e.g., government, house counsel, private practice), firm size if applicable, years in practice, etc. This data should be included in OPC's annual report to reflect the demographic contours of respondents who receive complaints and receive discipline.

7. **Access to OPC Records.** We were unable to pursue an avenue of inquiry because we were denied access to the necessary records. We believe that a committee appointed to review OPC operations can be trusted to maintain the confidentiality of private records. OPC senior counsel said that he could not disclose the requested records because the committee did not qualify for any of the exceptions under Rule 14-515.

Rule 14-515 establishes the confidentiality of disciplinary proceedings and information. It is needlessly confusing, and, as interpreted by OPC senior counsel, creates conditions for access that are virtually impossible to meet.

If the OPC Committee does not qualify under paragraph (a)(2) ("there is a need to notify

another person or organization ... in order to protect the public, the administration of justice, or the legal profession”), then it would seemingly meet the conditions of paragraph (e)(1) (“the request for information is made by the Board, any Bar committee or the executive director, and is required in the furtherance of their duties”). However, for a request to qualify under (e)(1), it must also meet the conditions of paragraph (g) (“the request is made in furtherance of an ongoing investigation into misconduct by the respondent; the information is essential to that investigation; and disclosure of the existence of the investigation to the respondent would seriously prejudice that investigation”).

Since neither the board nor the executive director has the authority to investigate lawyer misconduct, and the only committee to have that authority is a committee of the supreme court not the Bar, the conditions in paragraph (g) are impossible to meet, rendering null all requests under paragraph (e). Consequently the requesting authority must obtain a release from the respondent or a court order. Requiring a release when by definition the information is “required in the furtherance” of the board’s, the committee’s or the executive director’s duties is poor policy. The important and necessary work of these officials should not be stymied by a lawyer’s refusal to permit access to essential records.

We recommend that Rule 14-515 be rewritten to provide access to confidential records to select officials under certain conditions. Attached as Ex. B are proposed revisions to Rule 14-515 that address these concerns and an explanation of the logic behind the changes.

8. **Diversions.** Since 2001, there have been approximately 10 diversions per year in the discipline process, and during the past three years, an average of about four per year. That suggests to the OPC Committee that either diversions should be employed more frequently when appropriate or that the machinery in place to administer diversions may not be warranted because of the relatively few cases in which diversion makes sense.

9. **CAP.** CAP is an effective and economical mechanism to address, resolve, or filter complaints about attorneys. OPC and CAP are working well together.

10. **ABA Audit.** Some have suggested that the Bar or Utah Supreme Court utilize the ABA’s auditing services that are available to individual state Bar Associations with respect to disciplinary machinery. The OPC Committee has concluded that such an audit, if appropriate, would be a waste of time unless the auditors have access to OPC files, which is not the case at present. If such access becomes available, the wisdom of such an audit can be addressed.

Dated: _____, 2015.

The Utah State Bar's Office of Professional Conduct
Policies and Procedures

August 1, 2015

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ADDENDUM

Internal flow charts and graphs showing OPC processes and the use of various form letters.

I. OVERVIEW

The following guidelines for operation of the Office of Professional Conduct ("OPC") are intended to provide a flexible set of operating guidelines for Assistant Counsel. Consistent with the Rules of Lawyer Discipline and Disability ("RLDD"), these guidelines are not intended, nor do they constitute a set of inflexible policies or procedures. The policies and procedures described herein are guidelines only, and can be changed at any time for any reason consistent with the RLDD. To the extent that any conflict arises between these operating guidelines and the RLDD, the RLDD control.

In July of 1993 the Supreme Court of Utah implemented sweeping changes in the rules governing bar discipline and thereby altered the procedures of the OPC. As enunciated by the Utah Supreme Court in Rule 1 of the RLDD, "The purpose of lawyer disciplinary and disability proceedings is to ensure and maintain the high standard of professional conduct required of those who undertake the discharge of professional responsibilities as lawyers and to protect the public and the administration of justice from those who have demonstrated by their conduct that they are unable or unlikely to properly discharge their professional responsibilities".

The OPC is responsible for evaluating complaints made against members of the Utah Bar. This includes initial investigation of the complaints as well as presentation of the informal complaints to the Screening Panels. If the Screening Panels determine that a matter should be pursued formally, the OPC represents the Bar in the prosecution of the matters in the District Courts of the state.

Additionally, the OPC handles many other types of proceedings involving the discipline of attorneys in the bar. For example, the OPC takes any emergent action that may be necessary to protect the public by applying to the district court for interim suspensions. The OPC also prosecutes matters where attorneys have criminal convictions and matters where attorneys admitted to practice in a sister state have been disciplined by the Bar in that state. The OPC initiates proceedings where an attorney has been judicially declared incompetent or is involuntarily committed on the grounds of incompetence and may request the appointment of a trustee to protect clients' interests in certain situations. The OPC represents the Bar in reinstatement proceedings. The OPC fields ethics questions from members of the bar and furnishes informal responses to these questions. These functions will be further addressed in these operating guidelines.

POLICY - K(1)

INVESTIGATION OF COMPLAINTS BY OPC

A. Consumer Assistance Program

Nearly all information received by the OPC is initially reviewed to see if the issues raised can better be handled by the Utah State Bar's Consumer Assistance Program ("CAP") prior to a file being opened in the OPC. Generally, the OPC does not consider sending to CAP cases involving repeat offenders or felonies, unauthorized practice of law issues, and those matters referred by judges or other disciplinary agencies. Those cases not referred to CAP generally proceed as outlined below.

B. Receipt of Information

The disciplinary process is initiated by receipt of information or a complaint concerning a Utah lawyer. The OPC tracks all information and informal complaints receives.

1. Informal Complaints

Pursuant to rule 14-510(a)(2) of the RLDD the OPC only considers information to be an "informal complaint" if it is made in writing, is signed by the complainant, contains a verification attesting to the accuracy of the information, and is notarized.

2. Requests for Assistance

If information concerning an attorney is received that is not notarized and verified, it is considered a Request for Assistance. Requests for Assistance are tracked and investigated in the same manner as a notarized complaint.

3. Telephonic Complaints

The OPC does not investigate oral complaints. Complainants who call on the telephone are given the option of submitting the information via the OPC's online form found on the Bar's website, or of having a form sent to them in the mail.

C. Prioritization of Cases

The OPC seeks to prosecute cases consistent with the purposes of lawyer disciplinary and disability proceedings as defined by the Utah Supreme Court. Namely, to maintain the high standard of professional conduct of lawyers and to protect the public and the administration of justice. Generally, no single case or types of cases are prioritized over other cases or types of cases unless necessary to satisfy the purposes noted above. Cases are randomly assigned to investigation attorneys and the individual attorneys are left to allocate their time and resources as they see fit, with the progression of cases

monitored by the weekly attorney meeting described below.

D. Central Intake

The processing Informal Complaints and Requests for Assistance that have gone through the CAP Review process proceed as follows:

1. Initial Receipt

When the intake secretary opening the file designates a Utah attorney as the Respondent in the OPC database, the database automatically fills in information drawn from the Bar's database for that attorney including: the bar number, admission date, discipline history, birth date, address and telephone number. This information is also printed out and placed in the hard file. The secretary also checks the old OPC database for a list of cases that were opened prior to July 1, 2014, in which the Respondent may have been involved but that did not result in discipline.

The complainant's name, address and telephone number and the date the complaint was received are also entered into the OPC computer database and written on the front of the file in the spaces provided.

The file is then given a case number and assigned to an OPC Investigation Attorney for investigation. Currently, Senior Counsel has assigned one Investigation Paralegal and two Assistant Counsel to handle the investigation of Requests for Assistance, and one Investigation Paralegal and one Assistant Counsel to investigate Informal Complaints.

2. Preliminary Investigation

The Investigation Paralegal prepares a letter to the Respondent and Complainant informing them the OPC has received the information. The Investigation Paralegal then conducts a preliminary investigation to ascertain whether the Informal Complaint or Request for Assistance is sufficiently clear as to its allegations and is supported by the evidence submitted. If not, the Investigation Paralegal seeks additional facts from the Complainant, which must be submitted in writing and signed by the Complainant. Preliminary investigations may also include obtaining information through phone calls to the Complainant or the Respondent, and seeking information from other sources such as witnesses and court records. All telephone conversations and messages are memorialized in the database.

After the Investigation Paralegal has collected all available evidence related to the allegations the file is given to the Investigation Attorney for review and analysis. The Investigation Attorney makes one of the following preliminary determinations:

- a) Further investigation is required, which can be done by either the paralegal or the attorney;

- b) There does not appear to be a violation of the Rules of Professional Conduct and the matter should be closed;
- c) The Respondent should be asked to provide an informal response to the allegations.

3. OPC Attorneys' Meeting.

The Investigation Attorney brings a Request for Assistance to the weekly OPC Attorneys' Meeting to discuss and/or recommend one of the following actions:

- a) The Complainant should be asked to notarize the information;
- b) The case should proceed with OPC as the Complainant;
- c) Exercise prosecutorial discretion by declining to prosecute for any of the reasons set forth in the Guidelines for Dismissals, Declinations, and Diversions;
- d) Settlement in accordance with the Standards for Imposing Lawyer Sanctions ("Standards");
- e) Resolution by Diversion (see below).

The Investigation Attorney brings a notarized Informal Complaint to the weekly OPC Attorneys' Meeting to discuss and/or recommend one of the following actions:

- a) The informal complaint should be dismissed for any of the reasons set forth in the Guidelines for Dismissals, Declinations, and Diversions;
Note that Dismissal letters must include language informing Complainants that they may appeal.
- b) A Notice of Informal Complaint ("NOIC") should be served on the Respondent;
- c) The case should be set for a Screening Panel Hearing (following service of the NOIC and a response from the Respondent);
 - The case will then be assigned to a Prosecuting Attorney who will handle the Screening Panel Hearing.
- d) Propose to resolve the matter by referring it to a diversion program;
 - Contact the Respondent by letter or by telephone. Make the offer and set a finite duration for accepting. Prepare the Diversion Agreement and have the Respondent sign it. Notify the Complainant that the Informal Complaint has been resolved through diversion. [Form (A)(21)] Keep the file open until the terms of the Diversion Agreement have been complied with.

- e) Settlement (other than diversion) in accordance with the Standards.

4. Transfer of Cases

After a Request for Assistance has been notarized, either by the Complainant or the OPC, the case is transferred to the Investigation paralegal and attorney assigned to handle Informal Complaints.

5. Guidelines for Dismissals, Declinations and Diversions.

Rule 14-504 of the Rules of Lawyer Discipline and Disability provides that the OPC shall, for each matter brought to its attention over which it has jurisdiction, "dismiss; decline to prosecute; refer non-frivolous and substantial informal complaints to the [Ethics and Discipline] Committee for hearing; or petition for transfer to disability status." Thus, if the OPC decides to dismiss them, or declines to prosecute, matters may be disposed of without being presented to a Screening Panel (in the case of Informal Complaints) or the District Court (in interim suspension and disability proceedings). The following outlines the circumstances under which each of these is appropriate, and briefly discusses how these relate to the diversion program.

A. Dismissals

Rule 14-510(a)(7), RLDD, provides that informal complaints which, upon consideration of all factors, are determined by OPC counsel to be frivolous, unsupported by facts or which do not raise the possibility of any unprofessional conduct, may be dismissed without hearing by a screening panel. Generally, the OPC will obtain an informal response to the allegations from the Respondent prior to any dismissal.

The following are reasons that support a dismissal:

1. The Informal Complaint hasn't stated any facts that would support a finding of professional misconduct. For example, the Informal Complaint states that the Respondent is incompetent, but does not make factual allegations that would illustrate this conclusion.
2. Even if the factual allegations made by the Complainant are assumed to be true, the allegations do not constitute a violation of the Rules of Professional Conduct. Examples would include:
 - a) Each attorney has his or her own style, strategies, and techniques. Attorneys often have different opinions as to the appropriate course of a case and how to handle it effectively, and the OPC cannot substitute its judgment for that of the attorney. The fact that a matter could have been handled differently does not mean that the attorney's conduct was unethical or incompetent.

- b) Attorneys sometimes make mistakes that do not rise to the level of ethical concerns.
 - c) Attorneys sometimes use aggressive tactics that do not rise to the level of ethical concerns. This type of complaint is sometimes made by an opposing party, and often includes allegations that the Respondent was rude.
 - d) The allegations concern a fee dispute, but the fee is not excessive.
3. The evidence is insufficient to establish by a preponderance that the Respondent violated the Rules of Professional Conduct. (i.e. the allegations made by the Complainant are not credible; the allegations made by the Complainant were denied by the Respondent, and the OPC cannot give more weight to either one; the Respondent adequately explained the allegations made by the Complainant).

Pursuant to rule 14-510(a)(7) of the RLDD, the complainant may appeal a dismissal of an informal complaint by OPC counsel to the Committee chair within 15 days after notification of the dismissal is mailed. Thus, the dismissal letter must state the reasons, and the Complainant must be notified of the right to appeal. The OPC sends the Respondent a copy of the dismissal letter.

Note that the OPC has no express power under the RLDD to dismiss a matter with a caution. Pursuant to Rule 14-510(b)(6)(A), RLDD, a Screening Panel may issue a letter of caution, which "shall serve as a guide for the future conduct of the respondent," whereupon the Informal Complaint shall be dismissed. Nevertheless, a letter of caution is a useful tool for educating Respondents and the OPC may use them in situations when a dismissal would be appropriate.

B. Declinations to Prosecute

Sometimes the alleged facts might constitute a violation of the Rules of Professional Conduct, but the OPC nevertheless exercises its prosecutorial discretion by declining to prosecute the Informal Complaint. This is an option identified under Rule 14-504(b)(3), RLDD. Additionally, the OPC's authority to take this course even though there might be a rule violation is supported by the language in another section of the same rule permitting the OPC to refer to the Screening Panels "*substantial* informal complaints." Implicit in this language is the concept that the OPC has discretion to decline referring to the Screening Panel technical violations of the Rules that are insubstantial.

The following are reasons for the OPC to exercise its prosecutorial discretion to decline to prosecute:

- 1. Matters that should be addressed in another forum. These include but are not limited to ineffective assistance of counsel claims in criminal matters and

malpractice claims in civil matters, as well as matters in which there is a question as to whether there is a nexus between the allegations and the attorney's duties as an attorney. Examples of the latter are situations in which an attorney is an administrative law judge, a mediator, or a corporate manager. Because these positions do not necessarily require the person to be an attorney, the better forum for redressing the complaint is elsewhere (e.g. appeals to the appropriate authority of the administrative law judge's or mediator's decision, personnel review board actions, and the like). Another example might be debt collection matters unrelated to the attorney's practice.

2. The Respondent has taken immediate action to remedy conduct that is a low-level technical violation of the Rules of Professional Conduct. Examples include a Respondent who returns a client's file after termination of the representation, a Respondent who withdraws from a case in which a conflict has developed, and a Respondent who provides without charge the legal services necessary to correct a previous error where there is no harm to the client. In such cases, it may be appropriate to send a letter cautioning the Respondent to refrain from future conduct of a similar nature.

The OPC may decline to prosecute a Request for Assistance or an Informal Complaint at any stage prior to a Screening Panel hearing.

Because the Respondent may have violated a Rule of Professional Conduct, a declination to prosecute is not necessarily a final resolution. Thus, a letter informing the Complainant of the OPC's exercise of prosecutorial discretion uses language stating that the matter will be closed; not "dismissed" in this context.

Further, in cases involving allegations that should be brought before another tribunal, the letter includes language to the effect that if the court finds that the attorney has committed misconduct, the Complainant may bring this to our attention, and we will review our decision to close the matter.

A factor in declination to prosecute decisions is the effort to conserve and maximize the use of resources. Once matters are addressed and adjudicated in an appropriate forum, when necessary the OPC can use the record developed in that forum to address professional conduct issues. Further, in cases where there are low level technical violations that can be resolved with an agreed-upon remedy and caution, this is the best resolution in the "public interest, the respondent's interest, and the complainant's interest" pursuant to Rule 14-510(a)(4), RLDD.

C. Diversions

Diversion is an alternative to discipline that is entered into by agreement in attorney discipline cases. Pursuant to Rule 14-533 of the RLDD, the Utah Supreme Court created a Diversion Committee; if the attorney consents to a Diversion Agreement that is subsequently approved by the Diversion Committee, either a Screening Panel or the OPC may dismiss cases involving minor violations of the Rules of Professional Conduct. The specific types of cases that are not appropriate for diversion are: when the attorney is accused of misappropriating client funds; the attorney's behavior will, or

is likely to, result in substantial prejudice to a client or other person absent adequate provisions for restitution; the attorney has previously been sanctioned in the immediately preceding three years; the current misconduct is of the same type for which the attorney has previously been sanctioned; the misconduct involved dishonesty, deceit, fraud, or misrepresentation; the misconduct constitutes a substantial threat of irreparable harm to the public; the misconduct is a felony; a misdemeanor that reflects adversely on the respondent's honesty, trustworthiness, or fitness as a lawyer; or, the attorney has engaged in a pattern of similar misconduct.

To be eligible for diversion, the presumptive sanction must not be more severe than a public reprimand or private admonition. Further, all involved must make an assessment of whether or not participation in diversion is likely to improve the attorney's future behavior, whether aggravating or mitigating factors exist, and whether diversion already has been attempted.

The Diversion Committee has to review and approve every diversion contract. Possible program areas of diversion are as follows: Fee Arbitration; Mediation; Law Office Management Assistance; Psychological And Behavioral Counseling; Monitoring; Restitution; Continuing Legal Education Programs, including Ethics School; and, any other program or corrective course of action agreed to by the responding attorney necessary to address an attorney's conduct.

The OPC notifies an attorney of the diversion option when a case is received. A Complainant is notified of any proposed decision to refer an attorney to diversion and that Complainant may comment, however a decision to divert is not appealable by a Complainant.

Upon entrance to the diversion contract, the complaint against the attorney is stayed pending completion of diversion. If diversion is successful, the complaint is dismissed, and all information regarding the attorney is kept confidential. Further, successful completion of diversion is a bar to disciplinary prosecution based on the same allegations. However, a material breach of the diversion contract is cause for terminating the agreement and subjects the lawyer to appropriate discipline as if diversion had never been an option. As noted below, a screening panel may also refer a complaint to the Diversion Committee.

E. Screening Panel Hearings

If a matter cannot be resolved in accordance with rule 14-510(a)(5), or if good cause otherwise exists, the OPC will refer a matter to a Screening Panel of the Utah Supreme Court's Ethics and Discipline Committee.

After it has been determined that a matter should be referred to a screening panel for hearing, the case is randomly assigned to one of the three Assistant Counsel whose duties include attending the hearings. The attorney handling the hearing will be responsible for drafting the summary of the investigation and the OPC's recommendation that will be given to the panel members.

The matter is then assigned to the next available slot in the Screening Panel's calendar. If there are multiple cases involving the same Respondent, the OPC may schedule those matters on the same day before the same panel.

It is the goal of the OPC to provide its summary and recommendations to the screening panels at least one week prior to the hearing. This is done via a cloud service. The materials are also provided to the Respondent and the Complainant via the cloud. Arrangements can be made if members of the panel or the parties wish to have a hard copy of the file.

In matters where the screening panel recommends discipline, the attorney assigned to the case at that time is responsible for preparing and finalizing the Findings of Fact and Conclusions of Law as well as the final order of discipline.

If a screening panel votes that a matter should be referred to the district court the case is randomly assigned to one of three attorneys whose duties include handling formal cases. Those three attorneys are supported by two formal paralegals.

POLICY - K(2)

CONFIDENTIALITY OF OPC FILES (other investigative bodies)

Rule 14-515 provides, in part, that:

(a) Confidentiality. Prior to the filing of a formal complaint or the issuance of a public reprimand pursuant to Rule 14-510 in a discipline matter, the proceeding is confidential, except that the pendency, subject matter, and status of an investigation may be disclosed by OPC counsel if the proceeding is based upon allegations that have been disseminated through the mass media, or include either the conviction of a crime or reciprocal discipline. The proceedings shall not be deemed confidential to the extent:

...

(a)(2) there is a need to notify another person or organization, including the Bar's Lawyer's Fund for Client Protection, in order to protect the public, the administration of justice, or the legal profession;

...

In order to maintain a respondent's right to confidentiality, while at the same time fulfilling the OPC's role in protecting the public, the administration of justice, and the legal system, the OPC has instituted the following procedure with regard to disclosure of information to other investigative bodies:

Upon receipt of a written request establishing good cause, the OPC may disclose information regarding pending and closed cases to entities authorized to investigate and prosecute conduct that may be a violation of civil statutes, criminal statutes, administrative rules, or professional rules.

Generally, "good cause" will be found where the third party has an open investigation against the respondent (or in some cases the respondent's firm) based on allegations that are of the same nature as those giving rise to the OPC's investigation.

In the event information regarding a case is disclosed, a copy of all disclosed information and all correspondence between the OPC and the third party shall be kept on the left side of the case file.

This policy applies only to information disclosed pursuant to 14-515(a), and not to confidential information disclosed pursuant to 14-515(f).

POLICY - K(3)

**RETENTION OF MISCELLANEOUS
CORRESPONDENCE RECEIVED BY OPC**

Rule 14-503(b)(1) imposes on the OPC the duty to, "screen all information coming to the attention of the OPC to determine whether it is within the jurisdiction of the OPC in that it relates to misconduct by a lawyer or to the incapacity of a lawyer."

At times the OPC receives written correspondence or other information from individuals that does not fall within the jurisdiction of the OPC. If, based on the information provided, the OPC is not able to identify a specific attorney involved, or discern what is being requested, or otherwise determine that the information is within the jurisdiction of the OPC, the following retention policy shall apply.

The material shall be kept for a period of one (1) year from the date it is received by the OPC. As is reasonably practicable, the material shall be reviewed to see if it relates to any information provided to the OPC subsequent to receiving the original material. If it is determined to be related to an open matter, the material shall be placed in the appropriate file with an indication of how and when it was received by the OPC. If, after one year, the material is determined not to be related to any open matters, the material shall be destroyed. No record of such materials need be maintained.

POLICY – K(4)

ETHICS HOTLINE

The Office of Professional Conduct ("OPC") offers an Ethics Hotline to provide attorneys licensed in Utah with informal guidance on ethics questions. Attorneys may submit ethics questions via the Ethics Hotline page on the Bar's website or by calling and leaving a message. Hotline callers must leave a message indicating their name, Utah State Bar number, and a description of the nature of the question.

Hotline calls are entered in the OPC database then assigned on a rotating basis to OPC staff attorneys. If the question came in via email, the original email is saved in the database. If the question came over the phone, the transcribed call is saved into the database. Unless the caller has stated that there is an emergency requiring an immediate response, the assigned attorney typically returns the call within 24 business hours. Emergency calls are answered as promptly as possible.

The OPC attorneys who respond to Ethics Hotline calls can only offer their opinion concerning the caller's own contemplated conduct. Callers whose question concerns the conduct of another attorney are informed that the OPC attorney cannot opine on the propriety of such conduct, and told how to file an informal complaint if the caller deems it warranted. Callers whose question concerns their own past conduct are asked whether they wish to self-report violations of the Rules of Professional Conduct, and informed how to do that if this is their intent.

The OPC attorney's response to Ethics Hotline calls is the attorney's informal opinion, based on a reading of the Rules of Professional Conduct. Callers are urged to read the rules and exercise their own judgment. In appropriate cases, callers are informed that formal written opinions can be requested from the Ethics Advisory Opinion Committee, and instructed concerning the means for requesting such an opinion. Where helpful, the OPC attorneys direct callers to other sources of information, and transmits or sends the caller copies of relevant portions of the Annotated Model Rules of Professional Conduct.

The attorney who responded to the question records in the database the date and time the call was returned and also a synopsis of the advice given. Although calls are confidential, this information may be used to in the event that the OPC receives an informal complaint about the caller concerning the same subject matter and the caller raises the Ethics Hotline communication as a defense.

A caller is told:

This is an informal opinion of our office, based upon a reading of the Rules of Professional Conduct.

You should read the rules and exercise own judgment.

Formal opinions can be requested from the Utah State Bar's Ethics Advisory Opinion Committee.

The OPC considers all conversations on the Ethics Hotline strictly confidential however, neither the District Courts of this state nor the Utah Supreme Court has made a determination of this confidentiality.

The Utah State Bar's Ethics Advisory Opinions can be found on the Bar's website at www.utahbar.org.

POLICY - K(5)

WHEN SHOULD A CALLER BE REFERRED TO OPC

1. If there is a call for either good standing or the disciplinary status of an attorney, do not give out any information; refer the caller to the OPC. If the caller merely requests the attorney's address or phone number, or the year the attorney was admitted, do not refer the caller to the OPC unless the caller continues asking questions about the attorney. You may give the caller the attorney's business address and telephone number.
2. The OPC cannot answer legal questions; if the caller has a legal question refer them to Tuesday Night Bar. Explain to non-attorney callers that the OPC answers ethics questions from attorneys only. If the caller is an attorney and states that it is an ethics question, refer the call to the OPC.
3. If the caller is a non-attorney who wants to know if a Bar complaint is valid, tell the caller that you cannot answer that, but you will take their name and address to mail a complaint form to them. If the caller is an attorney, refer the call to the OPC. If the caller (whether attorney or non-attorney) wants to know what has happened to a complaint they filed, find out whether the complaint was filed with the Consumer Assistance Program, or with the OPC. Leave the message for the appropriate department or person. If the caller does not remember communicating with anyone in particular; take the caller's name and phone number and the name of the attorney against whom the complaint was filed, and leave a message for the OPC. If the caller asks about the status of a complaint filed by someone else, tell the caller you cannot give any information regarding complaints. If that does not end the conversation, refer the caller to the OPC.
4. If a caller wants a complaint form, do not refer the call to the OPC, but take the caller's name and address and leave it in the OPC's box. Explain to the caller that the form will be mailed in a couple of days and that the Consumer Assistant will contact them.
5. If a call comes in for anyone in the OPC office, direct the call to the Intake Secretary. If she is not available, direct the call to her voice mail.
6. If you receive deliveries or mail for the OPC, date-stamp and initial them, then promptly notify one of the OPC staff of their arrival. With respect to hand-deliveries, if you are unable to reach one of the staff, notify the attorney to whom the delivery is addressed.
7. If someone drops in to see an OPC attorney, ask their name, who they are here to see, and the nature of the business. Communicate this information to one of

the OPC staff. If you are unable to do so, contact the OPC attorney to whom the visitor wishes to speak.

8. All Initial Complaint and Request for Assistance forms are available at the front desk. The OPC will not copy the form for the person; if they wish to keep copies, they must go to a copy center.
9. The OPC does not distribute copies of the rules. Refer callers who request copies of the Rules of Professional Conduct, the Rules of Lawyer Discipline and Disability, or the Standards for Imposing Lawyer Sanctions to the Utah Court Rules volume of the Code, which is available at the University of Utah Law Library, the library at any District Court, and in bookstores. These rules are also available on the Utah State Bar's website.
10. If the caller has a complaint about an OPC attorney refer the caller to OPC Senior Counsel. If the complaint concerns OPC Senior Counsel, refer the caller to the Executive Director of the Bar.
11. If the caller is complaining about someone who is not an attorney, this may be an unauthorized practice of law problem. Refer the caller to General Counsel for the Bar

POLICY - K(6)

**E-MAIL RESPONSES
TO SUBSTANTIVE QUESTIONS**

The Office of Professional Conduct does not in general communicate on substantive issues through e-mail where the communication does not involve an active OPC case (i.e. ethics hotline responses, questions from the public).

Communications related to active OPC cases may be done through email. Each communication should be entered as an event in the OPC database and the email itself should be saved in the database.

POLICY – K(7)

SERVING NOTICES OF HEARING ON RESPONDENT ATTORNEYS

When a Screening Panel Hearing is scheduled, the Notice of Hearing will be sent to the Respondent at the "Preferred Address w/Bar" as indicated in the OPC database. If, during the course of the OPC's investigation, the Respondent has indicated a desire to receive correspondence at a different address, or by email, the Notice of Hearing should be sent to the "Preferred Address w/Bar" as well as the alternate address provided by the Respondent.

POLICY – K(8)

USE OF RESPONDENTS' HOME ADDRESSES

Background Information

The Rules of Lawyer Discipline and Disability ("RLDD") provide that "The Bar shall maintain and have ready access to current information relating to members of the Bar including:

- (a) full name;
- (b) date of birth;
- (c) current law office and home addresses and telephone numbers;
- (d) date of admission in the state;
- (e) date of any transfer to or from inactive status;
- (f) all specialties in which certified;
- (g) other jurisdictions in which the lawyer is admitted and date of admission; and
- (h) nature, date, and place of any discipline imposed and any reinstatements.

The Bar collects address information from its members when they are admitted. It confirms this information on the annual licensing form; attorneys are given the opportunity to change the form if the information isn't correct. Otherwise, the Bar depends upon attorneys to notify it of changes by submitting a written form.

The Address Change Form indicates that attorneys must provide street addresses for their businesses and their residences. It states that "The address of your business is public information. The address of your residence is confidential and will not be disclosed to the public if it is different from the business address." If an attorney's home address is also the attorney's place of business, "it is public information as your place of business." Attorneys may designate where they would like to receive mail, including post office boxes.

For some actions, the OPC should use the attorney's designated mailing address as it is listed in the Utah State Bar's database. For example:

"The Executive Director shall give notice of [an attorney's] removal from the rolls to such non-complying member *at the designated mailing address* on record at the Bar" Rule 8(b), RLDD.

"OPC counsel shall cause to be served a Notice of Informal Complaint by regular mail upon the respondent *at the address reflected in the records of the Bar.*" Rule 10(a)(4), RLDD.

With respect to a notice that someone has requested nonpublic information about the attorney, "the respondent shall be notified in writing *at the respondent's last known designated mailing address* as shown by Bar records of

that information . . . " Rule 15(f), RLDD.

Other rules merely provide for "notice." See, for example, Rule 10(b)(2), Rule 10(b)(5)(D), Rule 10(b)(5)(E), and Rule 10(c), 22(b). In those instances, the designated mailing address is also the appropriate place to send the notice.

The RLDD also provide direction for cases that have reached litigation: "Except as otherwise provided in these rules, the Utah Rules of Civil Procedure, . . . apply in formal discipline actions and disability actions." Rule 17(a), RLDD.

Pursuant to Rule 4 of the Rules of Civil Procedure, service of a summons and/or Complaint ordinarily must be effected through personal service unless the recipient signs a document indicating receipt. The rule provides that personal service shall be made by delivering a copy to the individual personally, "or by leaving a copy at the individual's dwelling house or usual place of abode with some person of suitable age and discretion there residing" Rule 4(d), Utah R. Civ. Pro.

Papers other than the Complaint and summons may be served on the party or the party's attorney "by delivering a copy or by mailing a copy to the last known address" Rule 5(b)(1), Utah R. Civ. Pro. Delivering a copy means handing it to the person, "or leaving it at the person's office with a clerk or person in charge thereof; or if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is close or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, . . ." Rule 5(b)(1)(A).

Policy

In light of these rules, and taking into account the Utah State Bar's assurance to its members that home addresses are "private" unless the attorney's residence is also the attorney's place of business, the OPC adopts the following policies:

1. Home addresses are never disclosed to callers seeking information about where to locate an attorney unless the attorney's business address is the same as the attorney's residential address.
2. Papers and notices to respondents in cases that have not yet progressed to litigation shall be served at the respondent's designated mailing address, even if this is the respondent's home address.
3. If the respondent instructs the OPC in writing to use a different address, that address may be used in lieu of the address designated for mailing in the Bar's database. If the instruction is given verbally but not in writing, the OPC may use that address, but also must use the address designated in the membership database.

4. Prior to submission of a case to a Screening Panel, if papers mailed to a respondent at the designated mailing address are returned as undeliverable because the address is no longer valid, a respondent's home address may be used even though copies of the document may eventually be part of a public record.
 - a) Even if papers mailed to a respondent at the designated mailing address are not returned as undeliverable as set forth in paragraph 4 above and a respondent does not respond within the timeframe set for response to a Notice of Initial Complaint, the OPC will send a letter to a respondent's home address informing her of the Notice of Informal Complaint. All subsequent documents will be sent to the residential address.
 - b) However, notwithstanding that the document may eventually be part of a public record, the OPC will attempt to curtail the disclosure of the respondent's home address whenever possible and appropriate by not copying complainants and third parties on the documents and/or redacting the home address from the documents as part of the administrative record.
 - c) Ordinarily, the OPC will also attempt to telephone the respondent to obtain new address information and inform the respondent that such changes must be made in writing to the Utah State Bar.
5. When a case proceeds to District Court, the OPC ordinarily will attempt to secure service upon the respondent at the respondent's business address. If the respondent no longer maintains a business address, personal service may be made at the person's residence, even though this information will be part of the public record.

POLICY - K(9)

TIME FOR PUBLISHING DISCIPLINE IN THE UTAH BAR JOURNAL

Pursuant to rule 14-510(f)(1), when a Screening Panel recommends that a Respondent be admonished or publicly reprimanded, the discipline is automatically stayed if there is an appeal to the Supreme Court. In those cases, the OPC will not publish notice of the discipline pending resolution by the Supreme Court.

If the Respondent does not seek review by the Supreme Court of a Screening Panel recommendation, the OPC will publish notice of the discipline once the time for requesting review has passed.

Any public discipline entered against a Respondent by a District Court may be appealed to the Utah Supreme Court by filing a Notice of Appeal within 30 days of the date upon which the judgment was entered. Unless such a judgment is entered pursuant to a stipulation of the OPC with the respondent, the OPC will not publish notice of the discipline until the 30 days for filing the Notice of Appeal have elapsed.

If the District Court grants a Respondent's request to stay the discipline pending an appeal, the OPC will not publish notice of the discipline pending resolution by the Supreme Court.

In cases where an appeal of a district court order of discipline has been filed, either by the respondent or the OPC, and where the Respondent has not moved to stay the discipline, upon expiration of the time in which a stay may be requested, the OPC will publish the "result" of the case, but not the rule violations or a description of the conduct. In other words, the notice will only contain the date of the order, the court in which the order was entered, the discipline that was imposed, the effective date of the discipline, and the fact an appeal has been filed.

In cases where an appeal of a district court order of discipline has been filed, the OPC will publish notice of the rule violations and the conduct constituting the rule violations, along with the result, only after the Supreme Court has issued its written decision on the matter.

POLICY – K(10)

Requests for Screening Panel Records

In cases where a Screening Panel has recommend discipline (admonition or public reprimand) the Screening Panel Decision Sheets and video/audio recordings will be provided to the Respondent or the Respondent's counsel only upon written request.

In cases where a Screening Panel has voted that a formal case should be filed in district court, the Decision Sheets and video/audio recordings should be identified in the Initial Disclosures, and should be produced if requested in discovery.

Transcripts of Screening Panel hearings will not be provided by the OPC. Respondents may make their own arrangements for transcripts to be made from the video/audio recordings.

The OPC charges \$15.00 per video recording (generally this will be provided on a USB flash drive).

The OPC will not produce any of the foregoing materials to the Complainant or to witnesses except pursuant to court order or express written waiver by the Respondent.

POLICY - K(11)

FILE RETENTION SCHEDULE

Cases where no discipline imposed..... 7 years from the date of closure
Cases where discipline imposed Permanent Archives
Miscellaneous..... See Policy K(3)
Screening Panel Recordings..... 1 year from date of closure
Chron files 2 years
Ethics call logs 7 years

POLICY – K(12)

DIVERSION

Determination by OPC Counsel.

During the investigation or at the conclusion thereof, the OPC Counsel may determine that the matter should be diverted as an alternative to discipline.

Diversion

(a) Possible terms. OPC Counsel may offer diversion to the attorney, the terms of which may include: mediation with client, fee arbitration, law office management assistance, evaluation and treatment for substance abuse, psychological evaluation and treatment, medical evaluation and treatment, monitoring of the attorney's practice or accounting procedures, continuing legal education, ethics school, the multistate professional responsibility examination, restitution, pro bono work, or any other program agreed to by the attorney and OPC counsel.

(b) Participation in the Program. An attorney may participate in an approved diversion program in cases where there is little likelihood that the attorney will harm the public during the period of participation, where the OPC Counsel can adequately supervise the conditions of diversion, and where participation in the program is likely to benefit the attorney and accomplish the goals of the program. A matter generally will not be diverted under this Rule when:

- (1) The presumptive form of discipline in the matter is likely to be greater than public reprimand;
- (2) The misconduct involves misappropriation of funds or property of a client or a third party;
- (3) The misconduct involves a serious crime, a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, theft, or the sale, distribution, or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses;
- (4) The misconduct resulted in or is likely to result in actual injury (loss of money, legal rights, or valuable property rights) to a client or other person, unless restitution is made a condition of diversion;
- (5) The attorney has been publicly disciplined in the last three years;

- (6) The matter is of the same nature as misconduct for which the attorney has been disciplined or cautioned in the last five years;
- (7) The misconduct involves dishonesty, deceit, fraud, or misrepresentation; or
- (8) The misconduct is part of a pattern of similar misconduct that cannot be addressed by diversion (i.e., diversion is unlikely to be a deterrent for future misconduct).

An agreement between the OPC and a Respondent to place a matter in diversion will be governed by the provisions of rule 14-533 of the RLDD.

POLICY – K(13)

SETTLEMENTS

In an effort to conserve resources, the OPC will attempt to settle cases when appropriate. However, once a screening panel has determined that a formal complaint should be filed against an attorney, the OPC will not engage in settlement discussions until after a Complaint has been filed and the Respondent has filed an Answer. Furthermore, the OPC will not compromise cases. Any settlement will be based on rule violations the OPC can prove by a preponderance of the evidence, and the agreed upon sanction must be in line with the Standards for Imposing Lawyer Sanctions. In order to ensure consistency among cases, settlements may be offered after the case and the proposed terms of the settlement have been discussed in the OPC Attorney Meeting.

POLICY – K(14)

DEALING WITH THE MEDIA

On occasion, there may be events or cases that will be of significant interest to the public such that the OPC may be contacted by the press. Inquiries from the press of a general nature, (i.e. the activities of the OPC, the attorney discipline process) should be referred to the Bar's Communications Director.

Inquiries from the press regarding a specific case should be given to Senior Counsel. If Senior Counsel is unavailable for an extended period of time, the inquiry may be given to Deputy Senior Counsel. Unless specially approved, no other member of the OPC staff is to communicate directly with the media on a pending disciplinary matter.

POLICY – K(15)

SUMMARY OF OPC'S INVESTIGATION AND RECOMMENDATIONS (SPAM)

In order to assist the screening panel in its investigation of the allegations against an attorney, the OPC will prepare a Screening Panel Memo summarizing its investigation and recommendations.

After the OPC attorneys meet and determine a case should be referred to the screening panel for hearing, the matter will be set on the next available date and the case will be transferred from the Investigation Attorney to a Prosecuting Attorney. If Respondent is represented by counsel, support staff shall coordinate the date of the screening panel hearing with said counsel.

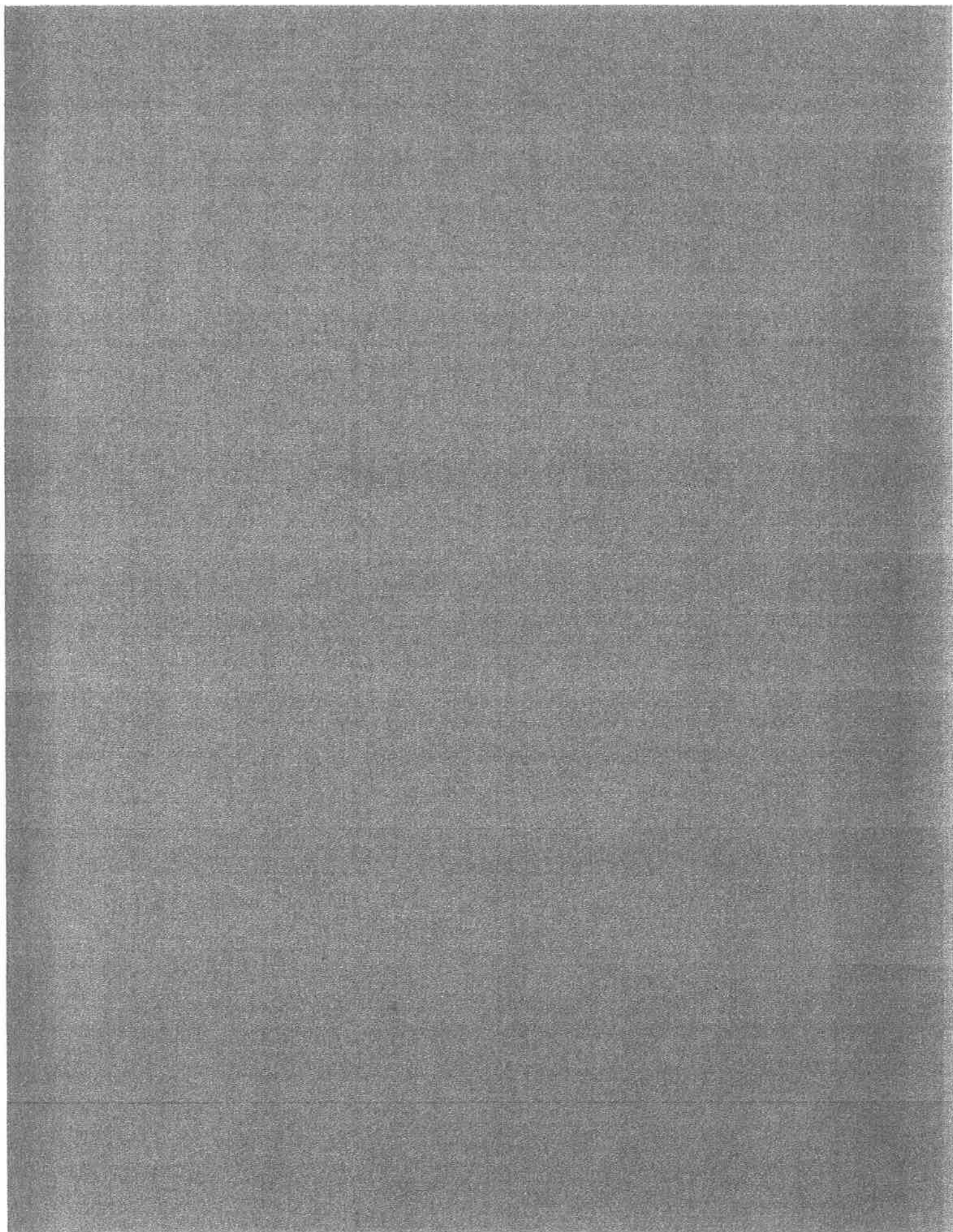
Support staff shall send the Calendar Notice at least thirty-three (33) days before the screening panel hearing date. A bates stamped copy of the file (not including the SPAM) will also be sent to the panel members at that time via the cloud.

The Prosecuting Attorney will be responsible for completing the screening panel memo. The screening panel memo should be provided to the panel, along with the merged bates stamped electronic version of the file 7-14 days prior to the hearing.

The following is a list of the elements that will generally be included in the memo and the person responsible for completing each section:

1. **Facts.** Generally, this section should only include those facts that are not disputed by either party. Each fact will include a reference, by name and bates stamp number, to a supporting document in the file. The Fact section may be taken from the NOIC and will be completed by the Investigation Paralegal.
2. **Witnesses.** This section will include a list of the witnesses contacted by the Investigation Attorney who have information that may be relevant to the screening panel's investigation. Each designation should include a brief statement that will assist the panel in understanding how the witness is connected to the case and the relevance of their testimony. It should also include a statement as to whether the witness will be appearing at the screening panel hearing or if the panel should refer to a memo in the file that memorializes their conversation with the intake attorney. The Witness section will be completed by the Investigation Paralegal.

3. **Summary of the Allegations.** This section will contain a brief narrative summary of the allegations contained in the initial complaint, as well as those uncovered in the course of the OPC's investigation. The Summary of Allegations section will be completed by the Investigation Paralegal.
4. **Summary of the Response.** This section will contain a brief narrative summary of the response to the allegations. This summary should include all responses submitted during the course of the OPC's investigation. The Summary of the Response will be completed by the Investigation Paralegal.
5. **Issues and Questions.** This section will include a numbered list of significant questions that were not resolved through the investigation process or the NOIC and that will assist the screening panel in identifying the relevant issues. The Issues and Questions will be completed by the Prosecuting Attorney.
6. **OPC's Recommendations.** This section will include a narrative discussion of OPC's view of the case as well as identifying the rules violated and OPC's recommendations for sanctions. The OPC's Recommendations will be completed by the Prosecuting Attorney.
7. **Index.** This section will identify, by name and bates stamp number, all documents included in the file. The Index will be completed by the Investigation Paralegal.



Rule 14-515. Access to disciplinary information.

(a) Confidentiality. Before the filing of a formal complaint or the issuance of a public reprimand, the proceeding is confidential and the records are private. OPC counsel may disclose the pendency, subject matter, and status of an investigation if the proceeding is based upon allegations that have been disseminated through the public media, or include the prosecution or conviction of a crime or reciprocal public discipline. Upon the filing of a formal complaint, a petition for reinstatement, or a motion or petition for interim suspension, the proceedings and records are public. The district court may, upon motion and for good cause, enter an order prohibiting the disclosure of specific information to protect the interest of a complainant, witness, third party, or respondent.

(b) Proceedings alleging disability. Proceedings for transfer to or from disability status are confidential. All orders transferring a respondent to or from disability status are public.

(c) Access to records. Upon request, OPC counsel will disclose private records to:

(c)(1) a public official investigating or prosecuting criminal activity by the respondent;

(c)(2) a committee or an auditor appointed by the Supreme Court or the Board to review OPC operations;

(c)(3) the Board, a Bar committee or the executive director if the records are essential to the performance of their duties;

(c)(4) any person authorized access in a writing signed by the respondent;

(c)(5) an appropriate person or organization, including the Lawyer's Fund for Client Protection, in order to protect the public, the administration of justice, or the legal profession;

(c)(6) the Professionalism Counseling Board if a referral is made to the Professionalism Counseling Board;

(c)(7) if the information is required in a subsequent lawyer sanctions hearing;

(c)(8) if the information is essential to an ongoing OPC investigation into misconduct by the respondent.

(d) No further disclosure. Except as authorized by other statutes or rules, persons receiving private records under paragraph (c) will not disclose the records to anyone else.

(e) Reasonable suspicion of a crime. OPC counsel must notify and provide access to private records to the appropriate investigating or prosecuting authority if there is reasonable suspicion to believe that a crime has been committed.

(f) Duty of participants. All participants in a proceeding under these rules must conduct themselves so as to maintain confidentiality.

EXHIBIT "B"

NOTES TO AMENDMENTS

The amendments maintain the basic policy that proceedings are private before a formal complaint and public afterwards. The exceptions are in paragraph (c). None of the exceptions requires notice to the respondent.

Paragraphs (c)(4) through (c)(8) collect and sometimes modify all of the current exceptions. The last 2 are more than a little confusing, but that's because we cannot figure out what is intended in the current rule.

Paragraphs (c)(1) through (c)(3) are new. Paragraph (c)(1) provides private records to investigators or prosecutors. That is a particular application of (c)(5), which is existing policy. Paragraph (c)(2) would provide the records to OPC Committees, to any future review committee, and to ABA auditors. Paragraph (c)(3) would provide necessary records to the Bar commission, bar committees, and the executive director.

Paragraph (d) prohibits further disclosure, and paragraph (e) requires OPC to notify the appropriate authorities if it discovers evidence of a crime.

TAB
2

September 30, 2015

Board of Bar Commissioners
Attention: Angelina Tsu, Bar President
Utah State Bar
645 South 200 East, Suite 310
Salt Lake City, Utah 84111-3834

Re: ***Fund for Client Protection
Meeting of September 11, 2015***

Dear President Tsu:

The following is a report of the meeting of the Fund for Client Protection a/k/a Client Security Fund which was held September 11, 2015 at the Law and Justice Center. The members of the Committee that were present are Committee Chair David Hamilton, Linda Barclay Mount, Steve Farr, Miles Jensen, Smith Monson, John Palmer and Pamela Urry. Also present were Barbara Townsend from the Office of Professional Conduct and Staff Liaison Christine Critchley. The Committee considered various claims and makes the following factual analysis and recommendations:

A.	Claimants:	Roger and Katherine Latimer
	Involved Attorney:	Phillip Danielson
	Disciplinary Status:	Disability

FACTS: N/A

RECOMMENDATION: This claim will be deferred while the Claimants obtain further information.

B.	Claimants:	Darryl and Valera Pinkhard
	Involved Attorney:	Phillip Danielson
	Disciplinary Status:	Disability

FACTS: Attorney (Danielson Law Group) was hired to undertake a loan modification for a home in foreclosure and paid \$3,959. Payments were made incrementally over several months. During that time, Claimants would send multiple sets of documents and converse with office staff exclusively. No work was done.

RECOMMENDATION: The Committee recommends Claimants receive \$3,959.

C.	Claimant:	Wayne Hardy
	Involved Attorney:	Phillip Danielson
	Disciplinary Status:	Disability

FACTS: Attorney was hired to undertake a loan modification. No work was done. Claimant indicated he had paid more than \$4,000, but was only able to prove payments of \$2,935.

RECOMMENDATION: The Committee recommends Claimant receive \$2,935.

D. **Claimant:** **Ryan Henderson**
 Involved Attorney: **Phillip Danielson**
 Disciplinary Status: **Disability**

FACTS: Claimant sought loan modification assistance through Attorney with no work being done. In an interesting series of transactions, Claimant paid \$6,735.50 through ACH transactions that showed the money going to CC Brown Law LLC, McCall Law Group, McCall and Danielson and Danielson

RECOMMENDATION: The Committee recommends Claimant receive \$6,735.50

E. **Claimants:** **Barbara and William Authenrieth**
 Involved Attorney: **Phillip Danielson**
 Disciplinary Status: **Disability**

FACTS: Claimants engaged Attorney to undertake a loan modification and paid \$4,895. No services were provided

RECOMMENDATION: The Committee recommends Claimants receive \$4,895.

F. **Claimant:** **Cheryl Brown**
 Involved Attorney: **Phillip Danielson**
 Disciplinary Status: **Disability**

FACTS: Claimant hired Attorney's group to seek a loan modification and paid \$3,815. No work was done. Claimant discussed the long-term impact of the dishonest conduct, indicating she had "not been able to catch up". The North Carolina Attorney General became involved with this case.

RECOMMENDATION: The Committee recommends Claimant receive \$3,815.

G. **Claimant:** **Dorothy Shuping**
 Involved Attorney: **Bret Bryce and Ronald Fielding**
 Disciplinary Status: **Public Reprimand**

FACTS: Claimant stated she was promised a 50% reduction of her monthly loan payment amount through a loan modification. She paid \$3,500.50 and was ultimately provided a trial loan that required \$75 per month more than her original obligation. The final product came

through Innovative Equity Partners who took over from Fielding. The Committee was advised of a Screening Panel conclusion that no meaningful work was done by Fielding. Fielding dropped off a written statement that provided little information.

RECOMMENDATION: The Committee recommends Claimant receive \$3,500.50

H. **Claimant:** **Steven Bassett**
 Involved Attorney: **Curtis Wenger**
 Disciplinary Status: **Deceased**

FACTS: Attorney was hired to defend against an OSC for alimony arrears and to petition for a modification. Claimant claimed to have paid more than \$11,000 in fees; however, supporting records were only available for \$9,405.

Court records indicate Attorney filed various pleadings and undertook other efforts. Claimant was not accurately advised of a hearing date and did not attend. Attorney further claimed to have done additional work that could not be substantiated. Attorney died with the case still active.

RECOMMENDATION: The Committee recommends Claimant receive \$2,500 for “unearned fees”.

I. **Claimant:** **Tanner Scadden**
 Involved Attorney: **J.D. Poorman**
 Disciplinary Status: **Deceased**

FACTS: Attorney was paid \$5,000 to represent Claimant in a protective order matter and related divorce. Attorney attended the protective order hearing and negotiated a resolution. The divorce case was resolved at a mediation that took nearly four hours. Attorney died prior to completion of the case.

RECOMMENDATION: The Committee recommends Claimant receive \$2,500 for “unearned fees”.

J. **Claimant:** **Toni J. Huber**
 Involved Attorney: **Huy Ngoc Vu**
 Disciplinary Status: **Suspended**

FACTS: Claimant paid Attorney \$800 to assist with completion of a QDRO. The Committee was provided evidence of a Subpoena issued by Attorney to the former husband’s employer. Apparently, the retirement funds were withdrawn by the ex-husband. Attorney came up missing with no additional information available to Claimant.

RECOMMENDATION: The Committee recommends Claimant receive \$300 for “unearned fees”.

September 30, 2015

Page 4

K. Claimant: Colin Horstman
Involved Attorney: James F. Nichols
Disciplinary Status: Resigned with Discipline Pending

FACTS: Claimant did not appear and the matter was not considered.

L. Claimant: Robert Walton
Involved Attorney: Jonathan Grimes
Disciplinary Status: Suspended

FACTS: Claimant appeared for the hearing and the Committee had a telephonic conference with Attorney. There is a factual dispute as to the purpose and scope of the engagement, what services were performed and the fee arrangement. Court records show an appearance by Attorney and it is undisputed that conversations occurred between Attorney and the prosecutor with some discovery exchanged. Ultimately, Attorney withdrew from the case noting disputes between client and counsel on tactics and finances.

RECOMMENDATION: The Committee recommends the claim be denied as a fee dispute, not dishonest conduct

The Committee has made recommendations that \$31,140 be paid out as compensation for the above-referenced claims. With these payments, the funds balance would be approximately \$ _____. Please contact me with any comments or questions.

Sincerely,

FUND FOR CLIENT PROTECTION

/s/ David R. Hamilton

David R. Hamilton
Committee Chair

DRH/erc

cc: Committee Members in Attendance

TAB
3

**REPORT OF THE
SUMMER CONVENTION REVIEW COMMITTEE
OCTOBER 2015**

Charge to the Summer Convention Review Committee from the Bar President:

“to evaluate the effectiveness of the [Summer] Convention and to consider what the Bar’s long term plans should be for the Summer Convention for the years 2018 and beyond, considering the Convention goals, attendance, cost, and other factors. Please recommend any improvements to Convention planning and execution.”

To address and respond to the charge stated above, starting in Fall 2014, the Committee conducted a review and investigation of the goals of the Convention, how they are being met, and past performance in terms of attendance and cost to the Bar. Specifically, the Committee considered the following information which is also attached hereto as part of the Appendices to this Report:

- 1) Results of past Summer Conventions, Spring Conventions and Fall Forum meetings in terms of attendance and costs to the Bar (Appendix 1)
- 2) Recent survey results of Convention attendees (Appendix 2)
- 3) 2011 Dan Jones survey results of all Bar membership relating to the Conventions (Appendix 3)
- 4) Information regarding potential Convention venues in Park City, Utah (Appendix 4)
- 5) Convention practices of other Western States Bars (Appendix 5).

Additionally, the Committee conducted a unique, focus group-type discussion with the Chairs and Presidents of all Utah State Bar sections and affinity groups, addressing the value of the Summer Convention and the reasons membership did or did not attend. The Committee also met on several occasions with the Utah Bar CLE Advisory Committee, which had a specific charge in 2014-15 of helping to increase attendance at the 2015 Summer Convention in Sun Valley. These meetings provided valuable information concerning the motivations, draws and purposes Bar members have or perceive in deciding whether to attend the Summer Conventions.

Finally, this Committee considered the results of the most recent Summer Convention in July 2015 which, after two years in Snowmass, Colorado (where the Convention was not successful in terms of attendance and cost to the Bar), returned to Sun Valley, Idaho. This Committee recently received the final accounting from that Convention as to attendance and costs, which results are included in this Report.¹

¹ This Report was initially intended to be presented to the Commission in July 2015, but during the course of the Review the Commission instructed this Committee to delay finalizing this Report until the attendance and costs of the 2015 Summer Convention were available. The 2015 Summer Convention attendance and costs are listed in Appendix 1.

Findings and Recommendations

FINDINGS:

1. The Summer Convention has a long tradition with the Utah State Bar and has succeeded in meeting several important needs. Those needs could be summarized as specific goals of the Summer Convention as follows:
 - Serving as the annual business meeting of the Bar²
 - Providing unique and generally high quality CLE
 - Providing social and networking opportunities for Bar members and their families
 - Grooming and mentoring of future Bar leaders
 - Fostering and preserving a tradition of Bar membership, Bar leadership and Judges socializing with and learning from each other, while promoting collegiality, professional respect and common purpose among the members of the Bar
 - Remaining, along with the other major conventions of the Bar, financially self-sustaining so that the Convention is not supported by the Bar membership at large, most of whom do not attend the Convention
2. Recent years have shown a trend of decreasing attendance at the Summer Convention, particularly in relation to the increasing number of Bar members, resulting from several factors including, at least:
 - Downturns in the economy
 - Reductions in reimbursements from law firms, particularly to young lawyers
 - Increased young lawyers practicing in solo or small firms
 - Cultural views and/or attitudes of various groups of lawyers, including younger lawyers, towards the practice of law and the role of the Bar, including the need or desirability of participating in Bar events
 - Increased local, web-based and specialized CLE offerings, including from third-party CLE providers, Fall Forum and Section-sponsored CLE events
 - Changes from traditional Summer Convention venues
3. The Sun Valley Resort has, over the years, increased its costs to the Bar and has demonstrated little flexibility in negotiating lower costs to the Bar and its members.

² Rule 14-103(j) of the Supreme Court's Rules Governing the Utah State Bar provides that "[t]here shall be an annual meeting of the Bar, presided over by the president of the Bar, open to all members in good standing, and held at such time and place as the Board may designate, for the discussion of the affairs of the Bar and the administration of justice."

4. In spite of somewhat decreased attendance and difficulty in reaching profitability to the Bar, the Summer Convention has lost significant sums only during the two events in 2013 and 2014 in Snowmass, Colorado, when losses exceeded \$100,000 each year. In other years, the costs to the Bar have ranged, in the past ten years, between losses of \$32,250 (Newport 2006) and profits of \$18,236 (Sun Valley 2009). These numbers are consistent with Conventions going back to 1990. Further, when looked at together, the three major conventions have consistently broken even or resulted in positive revenues for the Bar, with the notable exception of the two years the Summer Convention was held in Snowmass.
5. Each of the three conventions seems to address a distinct audience, summarized as follows:
 - The Summer Convention is recognized as the Bar's "Annual" Convention, as the business of the Bar takes place, including swearing in of the new President, President-Elect and Bar Commissioners, reports from the Bar, the Courts and the Law Schools, etc. Many attendees have been coming with their families for many years and include a large number of State and Federal Court Judges. However, because of the cost and the distance from the Wasatch Front, many attendees are from larger Salt Lake City law firms. Many are also older members of the Bar. Among some solo and small firm lawyers, the Summer Convention is perceived to be intended for an elite group of Bar members.
 - The Spring Convention in St. George remains well-attended and financially viable, and has its own attendance group that does not appear to be impacted by any changes to the Summer Convention. Attendees are perceived to be a wider cross-section of Bar members including younger lawyers and more solo and small firm practitioners than attend the Summer Convention.
 - The Fall Forum has become the most successful Convention in terms of attendance and profitability. It does not, however, have a focus on networking and sociability among Bar members as the goal of most attendees is to gain inexpensive CLE hours. As a result, it has historically and primarily met the CLE goal (among those identified above), but not the others. It is believed that the largest number of solo and small firm practitioners attend this Convention.³
6. The Utah State Bar appears to be unique among state bar organizations in having three major convention-sized events, and for holding one of them out-of-state. Some states do not hold annual conventions at all. (See, Appendix 5).

³ The Committee notes that Fall Forum 2015 is experimenting with a two-day format and increased networking opportunities. The results of this experiment might conceivably impact Summer Conventions in the future, or the interactions of the three conventions.

7. Viable venues for a Summer Convention away from the Wasatch Front are limited. The 2013 and 2014 Conventions did not succeed financially, primarily because of low attendance (*See*, Appendix 1). There are probably multiple factors for that low attendance but two frequently cited reasons are distance (it is 1.5 to 2 hours further away from the Wasatch Front than Sun Valley), and unfamiliarity. There is an established tradition of going to Sun Valley (with periodic exceptions to Southern California), and many of those regular attendees chose not to go to Colorado, in spite of lower lodging and other costs than Sun Valley. Thus, the Bar should be exceedingly cautious in scheduling future Summer Conventions at locations unfamiliar to the Bar membership. Investigation into Park City venues also revealed limited options with essentially no single venue that could provide sufficient rooms, and apparently only one (the Chateaux) with meeting space that could presently accommodate even 400 in a single room.

RECOMMENDATIONS:

1. Continue with Sun Valley/California Rotation.

So long as attendance levels support a near break-even model (consistent with the financial results of the past ten years of conventions – excluding the Snowmass conventions), the Committee recommends continuing to have the Summer Convention in Sun Valley, with a rotation every 4-5 years in California. This practice, which has been in place for most of the past twenty-five years (with the notable exception of the Snowmass conventions), has largely met the goals of the Convention as set forth above.

The Committee also makes the following additional recommendations regarding the Summer Convention:

Continue efforts to increase attendance of Young Lawyers such as those recently adopted, including use of technology (the Convention app, social media, sponsoring young lawyer-focused social events, and encouraging firms to send young lawyers

- Continue to encourage Judges' attendance at the Summer Convention, by providing complimentary registration
- Consider increased efforts to involve larger Sections in providing specialized CLE at the Summer Convention

2. Plan for Possible Alternatives as Attendance and Financial Results Change.

Importantly, the Committee recognizes that factors such as changes in the practice of law, demographics and economics (as discussed in the Findings above) may eventually result in low enough attendance and high enough costs that the Sun Valley location will become less feasible. At such time, the Committee suggests other options be considered, including the following:

- a. Eliminate the Summer Convention entirely. The Bar could then hold its required “annual business meeting” during the Fall Forum, the Spring Convention or as a stand-alone business meeting of the Bar.
- b. Move the Fall Forum to the summer in Salt Lake City and make it the “annual business meeting” of the Bar. Optionally, the Fall Forum could be replaced with an annual “Fall Convention” away from the Wasatch Front as a “replacement” for more social aspects of the Summer Convention. A few additional points were noted regarding a possible move of the Fall Forum:
 - A Fall Forum-turned-Summer Convention, in Salt Lake City, could become the Bar’s annual business meeting, but also continue its successful focus on CLE.
 - A new Salt Lake City-based Summer Convention could also be moved from July to late June to coincide with the Bar’s June 30 CLE reporting deadline, and the Bar could consider allowing some CLE to count for both reporting periods – or for either at the member’s election.
 - A new “Fall Convention” away from the Wasatch Front (not to be confused with the present Fall Forum, which would move to the summer as indicated) could help replace some of the social and networking aspects of the present Summer Convention. By being a destination convention, attendees can mingle and socialize outside of meetings. It could be scheduled in connection with the annual UEA Convention to allow families to attend. It would likely be a smaller event, allowing for venues in Park City to be considered. A Fall Convention could also take advantage of “shoulder season” discounts. It should be noted that a new Fall Convention would likely attract many of the larger firm and senior lawyers, and fewer younger attorneys, solo and small firm lawyers, as it would necessarily be more expensive than the present Fall Forum.

Respectfully submitted,

Summer Convention Review Committee, October 2015

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James D. Gilson
Angelina Tsu
Heather Farnsworth
Curtis M. Jensen
Aida Neimarlija
Jonathan O. Hafen

APPENDIX 1

Results of Past Summer Conventions
Results of Past Spring Conventions
Results of Past Fall Forum Meetings

SPRING CONVENTION YEAR/ST. GEORGE	PROFIT/LOSS	TOTAL REGISTERED	COMP REGISTRANTS
1988		215	
1989		244	36
1990		157	13
1991		421	40
1992		286	55
1993		468	48
1994		455	72
1995		429	63
1997		461	70
1997		501	76
1998		501	60
1999		472	65
2000		435	40
2001		499	39
2002		406	31
2003		434	32
2004		470	61
2005		420	55
2006	\$5,154	426	64
2007	\$4,576	443	63
2008	\$27,441	492	87
2009	\$19,025	431	66
2010	\$20,027	430	43
2011	\$20,124	449	80
2012	\$3,673	420	69
2013	\$27,606	430	87
2014	\$36,899	480	88
2015	\$21,728	431	79

SUMMER CONVENTION YEAR/(RESORT/HOTEL)	PROFIT/LOSS	TOTAL REGISTERED	COMP REGISTRANTS
1985 (Sun Valley)		188	12
1986 (Sun Valley)		282	0
1987 (Salt Lake City)		226	25
1988 (San Diego) Hotel Del Coronado		352	24
1989 (Sun Valley)		307	30
1990 (Colorado) Beaver Creek	\$32,728	408	45
1991 (Sun Valley)	\$20,392	534	66
1992 (Sun Valley)	\$15,711	488	87
1993 (Sun Valley)	\$17,480	605	73
1994 (Sun Valley)	-\$12,033	514	44
1995 (San Diego) Hotel Del Coronado	\$30,498	455	57
1997 (Sun Valley)	-\$10,346	526	71
1997 (Sun Valley)	\$21,612	527	53
1998 (Sun Valley)	\$18,932	541	42
1999 (Sun Valley)	-\$18,674	568	8
2000 (San Diego) Hotel Del Coronado	\$21,515	479	49
2001 (Sun Valley)	-\$10,202	542	18
2002 (Sun Valley)		327	39
2003 (Sun Valley)	-\$4,356	496	33
2004 (Sun Valley)	-\$2,262	350	57
2005 (Sun Valley)	\$3,210	438	29
2006 (Newport Beach) Newport Beach Marriott	-\$32,250	367	3
2007 (Sun Valley)	\$3,707	450	53
2008 (Sun Valley)	\$10,097	419	67
2009 (Sun Valley)	\$18,236	424	38
2010 (Sun Valley)	\$12,086	359	34
2011 (San Diego) Manchester Grand Hyatt	-\$11,692	381	65
2012 (Sun Valley)	-\$31,196	385	79
2013 (Snowmass)	-\$101,418	329	90
2014 (Snowmass)	-\$118,693	281	103
2015 (Sun Valley)	-\$11,790	409	80

FALL FORUM YEAR/SALT LAKE CITY (HOTEL)	PROFIT/LOSS	TOTAL REGISTERED	COMP REGISTRANTS
2003 (University Park Marriott)		388	
2004 (University Park Marriott)		242	84
2005 (Little America)	\$15,886	506	33
2006 (Little America)	\$7,697	525	70
2007 (Little America)	\$14,103	589	80
2008 (Little America)	\$15,829	540	60
2009 (Downtown Marriott)	\$26,154	726	46
2010 (Salt Palace)	-\$3,237	514	48
2011 (Little America)	\$2,205	575	67
2012 (Little America)	\$4,708	479	120
2013 (Little America)	-\$12,299	369	67
2014 (Little America)	\$13,750	473	84

APPENDIX 2

Recent Survey Results of Convention Attendees

The editor does an excellent job of selecting articles that deal with current issues in a usable and accurate manner.
The monthly (printed) edition ends up in the restroom and over the course of the month is read in its entirety. Otherwise it would not be read -- probably.
There is far too much focus on pet-topics of persons in power in the state bar. For example, ethics and civility have been crammed down my throat so much I am choking. I would prefer to see more articles aimed at practical matters such as trial advocacy, knowledge of the rules of civil procedure and rules of evidence, and so forth.
There should be much more substantive information, and articles regarding professional topics. there are a lot of attorneys who, if asked, would provide articles on relevant subjects. And, it needs to be more timely with the classifieds and calendars etc, it seems outdated by the time it gets to print.
Unkown
Yes, stories of where members did something for Utah which waa on a pro bono basis, and the results.

Q89 - Which of the following would increase the likelihood that you will attend one or more of the above programs]
Much closer venues
\$\$\$\$\$\$\$\$\$
A job would help me have the money to attend.
allow for scholarships
annual meeting is too far away.
Better presentations
better quality
charge less
Charge less
Charge less
closer to wasatch front
cost
Cost
Cost
cost
Cost adjustments
Cost and time availability
cost less
Cost of Annual Convention is not affordable for solos and is geared more toward large firms - offer a discount to solo practitioners so they may participate
Could not afford the time or money to travel to attend.
Decrease cost
Decrease cost to go

Decrease cost.
Decrease the price for non-profit practitioners. There is no way I or my organization would pay for them.
Discount for Govt attorneys and relevant to Govt attorneys
Discounts for government employees
Discounts for govt employees who have to pay for their own CLE
Do it on a weekend
Do not hold Utah state bar events outside of the state of Utah!
Employer would cover cost
Encourage the AAG's office to utilize the training and pay for it rather than furnish our training
Expense of registration especially for guests
Government would pay for it
have events during non-business hours
have in slc
Have more business types presentations. Too much litigation presently.
Have practical seminars not dominated by the large law firms.
Have the conventions in-state
have them along Wasatch Front
Hold annual meeting in the state
Hold them where I don't have to travel to attend -- like the Fall Forum.
I am poor I can't afford them. If you were to make them cheaper I would go
I attend already
I attend the fall forum
I do attend regularly those I checked so this doesn't really apply to me
I do attend.
I find the content and the expense prohibitive to make me want to attend.
I go when my firm suggests me to go.
I will retire next year.
I would be more likely to attend if held in SLC.
If I could afford to go somewhere for that I would go
If I move to Utah
If I returned to the practice.
If in Salt Lake
I'm just starting out--I can't afford ANY extras. Hopefully someday I'll make more money, and would happily attend.
i'm unlikely to attend outside of wasatch front
in SLC
Include Criminal and Administrative Law
Inexpensive
keep the annual meeting in Sun Valley

Keep them in Utah and make them inexpensive
Law Firm would support
Less cost
less expensive
Less expensive
less expensivwe
less money
lower cost
lower cost
lower cost
Lower costs
Lower the cost
Lower the cost
Lower the Cost
lower the cost
Lower the cost.
lower the price
make CLE optional
Make CLEs less expensive
make it cheaper
Make it free
make it less expensive
Make it possible to attend one or more classes
Make St George a little more fun and not so OLD. Have at least 1 family event. Lower the cost for those of us who have to pay out of pocket.
make the programs much less expensive
Make them affordable.
make them more affordable
More emphasis on criminal law
More substantive content tracks
More training in the crimnal field
N/A
n/a
Needs to be near an international airport
negotiate for affordability, particularly the price of accomodations
Not have to travel
Offer a tiered-approach to registration costs
Offer webinars
Park City events
prefer Sun Valley

price
provide CLE credit for first year attorneys
Provide scholarships that attorneys could apply for to be able to attend.
reduce cost
reduce cost
Reduce Cost
Reduce cost
reduce cost and travel requirements
reduce price
Reduce the cost
reduce the cost.
Reduce the costs
Reduced cost for part-timers!
See above
see above
Stay off of holidays like the 4th of July
Too expensive for most public defenders
Try for 6 months between Annual and Mid-year
try Moab

Q90 - Please share any suggestions for changes or improvements to the Annual Meeting, Spring Convention or Fall Forum
Please share any suggestions for changes or improvements to the Annual Meeting, Spring Convention or Fall Forum..
There needs to be a forum on attorneys that are polygamists who practice law and represent the polygamist entities which must include the ethics of such conduct, why such attorneys as polygamists can practice law when such conduct is illegal and whether we must report them as a matter of bar ethics.
As I mentioned above, the cost is prohibitive for my organization. I would go if my attendance could be sponsored.
Better advertising of the specific content of the program might cause me to attend.
By "attractive" I mean in the state of Utah. As a government employee, I don't feel it is a wise use of taxpayer dollars to spend a week for travel, etc. (and our budgets aren't exactly fabulous right now). At least in Salt Lake, I can stay at a relative's. While I love Sun Valley (being from Idaho originally), the expense is quite simply excessive.
Cancel them.
Decrease costs to the bar members and do not use ANY of the bar fees to pay for the events.
Do not attend the Fall Forum because is it usually too narrowly focused.
Don't give up on the Sun Valley event. It is by far the best networking, social, integrating event I've ever attended, anywhere. That is the Utah State Bar, as far as I'm concerned.
Don't go when it is in California

Fall Forum is great. The Conventions seem to be attended mostly by old men who want to golf while getting in their CLE hours. If that is your market, then keep it going. If you want the younger generation to join in, make it more family friendly and/or convenient.
Fall forum was informative but need larger rooms for the various groups
For what they are they are fine, and when I was on my own, I did attend Fall Forum as a great way to get CLE, now that I get CLE through my office, its too much (extra money) for the extra info and training not required to meet my CLE goals.
Frankly, the education I receive at the Spring Convention is mediocre. The presenters need to be more specific rather than general. I do like the panel forums where specific practice tips are discussed.
Generally attendance would be improved by selecting locations within the State of Utah -- particularly in the northern part of the State in the Spring, Summer and Fall.
Get Richard Dibblee to play tennis so he can take a whipping
have in slc
Have more highly specialized or advanced CLE presentations, and by professional presenters.
Have some real practioners, both from firms and solo practioners talk about their own experiences, not hypotheticals. We need to know real solutions, not law school exam answers.
have them in SLC
Hold it locally and increase the quality of substantive course offerings
I am a newly practicing attorney after completing a 2-year judicial clerkship. Any CLE which takes several days or several hundred dollars is quite simply out of the question. I don't have that kind of time or money right now, and if I don't spend that time at work, I will not be able to overcome the money problem. I also have a young family and church and civic responsibilities. Several days of out-of-state travel are extremely difficult to put together.
I am just too busy and too poor right now as a new associate to make it to any of the events. Keep in mind when you consider the cost of these events that only 25% of new attorneys (2011) have jobs and that firms in Utah, because of this, can pay rates that are over 30% less than what they were even a year or two ago while increasing hourly requirements. The costs of the new mentoring program does not help, especially with firms such as mine refusing to pay for any fees. I am lucky enough to have a job at least. My friend is currently working for free for a firm at 180 billables per month and they're considering offering him a job in the \$50,000 range. He often gets home at midnight. When I see things like this in conjunction with the bar president's article about how young attorneys do not have any work ethic, it is somewhat aggravating. In summary, there isn't much you can do, short of magically fixing the economy or ceasing efforts to antagonize and alienate new bar members through exorbitant fees and articles that effectively discourage the hiring of new attorneys.
I do not consider bar events to be substitutes for family vacation. I have to work on vacation enough as it is. Adding bar events on top of that makes it pointless for me to bring my family to any such event. I can get my CLE covered within a few miles of my office. The topics covered at the bar events are not really relevant to what I do (notwithstanding the "transactional" track). As a result, I do not take the extra time travel to those events.
I enjoy the Bar Meetings and the locations although I have never attended in California. I'm fine if you leave it at Sun Vally all the time. However, if I were to make a suggestion, I would omit the "acting" out problems and issues. They are silly and not helpful to me, e.g. acting out the depositions, acting out the mediations. I enjoy national (or local)

speakers on important topics who have established a great reputation for presenting. If the presentation is not good, it's more difficult to learn.
I find it difficult to take additional time off in July to attend the convention, as there are already 2 holidays that month. This difficulty is compounded due to the fact that significant travel is required. I don't view these events as vacations for my family. I view them as time away from my family and job, which is difficult to justify often.
I find most of the courses do not offer content useful for criminal law practice
I find the Federal Bar annual Boyce Seminar and the IP Summit more informative to my IP litigation practice. They also have the advantage of being held in town in one day. I prefer to get my CLE in town in one day and not mess up my vacation time with CLE meetings.
I have enjoyed the meetings I've attended (2010 St. George and Sun Valley, 2011 San Diego). I have no suggestions for changes or improvements.
I have found many of the breakout sessions by local practitioners poorly done and unhelpful, even if the topic sounded good. Look for more dynamic speakers.
I have found the conventions to be of value. I do not practice. I work as a business executive. I do not know how many others fit that category so I don't know if it would be worthwhile to have some of the classes directed toward the running of a business; ie. labor law, employment law, financial reporting, etc. I attend the Spring Convention regularly because my schedule fits at that time of year. I attend the Annual Convention when I can fit it into my schedule. The Fall Forum just never seems to fit.
I have never understood why the annual convention is held out-of-state. As a government attorney, we are severely limited in budget and travel. If we are not a presenter, we have to pay all the expenses ourselves, and this is a huge disincentive. Also, there are more specialized natural resources CLEs that are more pertinent to my practice.
I have no desire to network, or "rub elbows" with the legal elite. But that is the only thing these events sponsor. Hold events that do not perpetuate the bloated egos of the "legal elite" and I might consider it.
I have not had the opportunity to attend any of the events as I am a new attorney as of 10/31/2011.
I hope to attend soon. I really haven't had the opportunity yet based on cost and short time as member of bar.
I just do not see the point of traveling outside the State of Utah for Utah Bar related activities especially during a down economy when that money could be spent supporting business in the state of Utah.
I like having annual meeting in Sun Valley generally. The occasional switch to another location is ok. If it could be the same time each year (around July 4) it makes for easier planning.
I like the Fall Forum because it's easy to arrange time to get there. The out-of-state venues rarely work for me.
I like variety in venue myself.
I love the fall forum
I only attend CLE where I can network with lawyers in my specific practice area. The above events are too generalized.
I try to make the St. George Convention every year. Sun Valley I used to attend, but it is difficult to go to two conventions per year.
I would like to have the substantive classes more substantial. The classes tend to be very much for those who came to vacation and not for those who want to knuckle and actually learn. Also, I would like to have more classes where the class members are expected to prepared before coming.
I would love to attend these meetings, but I can't afford it.

I'm not really sure that it makes sense to move more activities to Southern Utah, but I am more likely to attend events that do not require that I not be able to go to my office for 3 or more days (that includes the travel time). I recognize that the vast majority of attorneys practice in the Wasatch Front area or further north, but I'm unlikely to attend many events there due to the costs - time, financial, car wear & tear, etc.
in the past two years I attended both fall forums. I recall in particular a role playing session in the litigation category that was ridiculous--the idea of the role playing was good, but the topic (can't remember it) was silly, I guess in an attempt to be entertaining--they had roles from a fairy tale--and the discussion was a legal discussion about the fairy tale issue-- , rather than a substantive legal topic!--I don't need entertainment! there was another session in which the session leader kind of behaved like bob parker on the price is right....trying for laughs. Again, not necessary. Some of the ethics/civility sessions--shamanism/meditation were interesting but could not honestly say they made any contribution to my substantive learning about those topics. In general would appreciate getting the nuts and bolts about law, whatever the category, getting the inside in sight on the way it is in the trenches, or how things really work in the courtroom, etc, real life issues or how to's. thanks.
Include nonprofit law subjects.
IP related topics.
It is too expensive for young attorneys and small firm practitioners.
It is too inconvenient to travel to St. George or out of the state (such as to Idaho or California) to attend a bar meeting. It doesn't even make sense to hold a state bar meeting outside of the state. I would probably attend the annual meeting if it were held in Utah, and the semi-annual meeting if it were sometimes held somewhere besides St. George.
It would be helpful to me if some energy, natural resources, and environmental issues could be covered.
I've enjoyed the Fall Forum the last three years. I can't think of any improvements. Maybe let paralegals attend for free, and just pay for lunch?
I've found that most CLEs are nearly worthless (except for filling the CLE requirement). I wish they were more "how to" with forms, etc. that help you expand or perfect an area of the law. Most of the time it's a lecture on what not to do with very little time spent talking about what to do.
Just make content relevant to my practice and if it is I likely would attend.
Keep the annual meeting in Sun Valley.
Keep the annual meeting in Sun valley. Could have fewer, but more helpful break-out sessions. break-out topics could be more "how to" and practical.
Lawyers should be in their communities participating in Patriotic and community service on the 4th of July. To have all the lawyers leave the state for a big party on such holidays gives the profession the deserved reputation that lawyers want to live off the community not in the community. It is an embarrassment to the bar that is talked about in every town and village in the state outside of SLC when it show up in the news media.
LESS EXPENSIVE CLE
Less time for award ceremonies. More time for "60 tips in 60 minutes." More room for the litigation classes (since every year people are left standing just outside the hallway listening).
Little relevance to local government law practice at any of the events.
location
Love going to San Diego every few years

make it cheaper
Make them convenient by location and have the price reduced substantially.
MORE LOCATIONS IN AND OUTSIDE UTAH, ONCE IN A WHILE LOCATIONS FAR AWAY, OTHERS IN WESTERN STATES MORE SPECIALTY FOCUSED CLE
More sessions relating to government lawyers.
More space in popular subjects.
Most bar events have no to little applicability to government practice. Attorneys on a government salary cannot attend expensive venues, which include Sun Valley and San Diego (the government typically does not cover these events).
Move the annual meeting to Utah. Would like to support the Utah economy. The spring convention and fall forum are in good locations and times.
My employer will not pay for travel costs associate with CLE unless the CLE is solely devoted to the kind of work I do which is quite specialized. As a result, the Fall Forum is usually the only one I can attend on occasion because it is in SLC.
My family goes to St George every year when my daughter is on spring break from college & can go with us. But the convention is usually a week earlier & I cannot take 2wks off in a row. Plus if I want to bring my husband to any of the events, it's so expensive.
My specialty is patent law. I usually attend the IP Summit in February each year. It is unreasonable to expect similar content in the major bar events. Thus, it is likely that I will continue to attend the IP Summit and not the major events.
N/A
n/a
No changes. I attend the Spring convention because it is in southern Utah and I do not attend the Fall Forum because it is in Northern Utah - I am glad there are those options so you can reach the entire state. The annual convention usually does not fit in with other obligations for a long time-off in the summer due to activities of my family, so I attend it rarely
no comment
No out of state events. No more than one of the above events outside the Wasatch front.
No suggestions
No suggestions. I appreciate the efforts of others to do what they are presently doing.
None
none
None
None at this time.
None.
None.
None.
None.
None.
Not applicable.
Offer prizes and free annual Bar membership dues, etc.
One would think that the Annual Meeting of the Utah State Bar would be held in a location, within the state of Utah, where a majority of the members of the bar would be able to attend without having to incur significant travel time or lodging expense. As it is, the annual meeting in Sun Valley, Idaho is pretty much just a snobfest for the most successful Utah lawyers to attend. Way to not include the rank and file or have them

represented!
Park City venue would be helpful.
Pick good locations where people want to go with all kinds of fun activities. I hate Sun Valley - it's so BORING and the restaurants are terrible. The accommodations are terrible considering the price.
Price
Record these and put them online for CLE.
Registration fees may be appropriate for the attorneys who practice full time; however, since I practice only part-time and a large portion of my practice consists of services to the poor and seniors, I lose several thousand dollars every year. I would like to attend the Fall, Spring and Annual conventions each year, but simply cannot afford them.
see above
See above.
some 1/2 day sessions would be useful, I don't really want to go all day or pay for all day
Some of the classes are of such poor quality that I feel taken advantage of. Thursday night of the Fall Forum was awful. You actually told people to "know your case." Was that remedial CLE?
Sometimes hard to find topics that fit me and my practice -- commercial litigation. Even when it appears to fit me, it often ends up being too niche.
Substance focused upon actual judicial practice and consensus on forms.
The Annual Meetings are irrelevant to my practice. The ones I have attended are like a good old boys club meeting. I'd rather attend CLE events that are national in scope or specific to a practice area I want to know without the extraneous social and membership events. If they were held next door to my office I would not attend.
The Bar has some "star power" and the visitor/convention business is in SERIOUS trouble -- meaning, it should not be that hard for the Bar to negotiate some great deals for travel accommodations. I would love to attend these meetings, but my firm does not pay for it, and I have a wife and 3 kids. So, if I could afford to take my family and stay at the location, it would be a win-win, but when you consider the price of participation together with the cost of accommodations, it is outside the reach of most younger attorneys' budgets. If the Bar wants to remain relevant, it has to encourage the participation of the young cubs, not just the old lions. To do that, there should be some recognition of the value of our attendance, and a price break. For example, a sliding scale of costs depending on your number of years in the Bar or number of years in attendance. Don't you think some of the old lions would agree to pay \$50 bucks more to attend the convention, if that meant that more young associates have the chance to attend too?!? I do. Also, the Bar spends a lot of money on advertising, mentoring etc., when it is missing one of its easiest ways to encourage young lawyers to stay close to the fold ... getting them involved in the conventions/meetings and getting them trained in the seminars. Perhaps the Bar could set aside a certain number of attendance vouchers or "scholarships" for young lawyers to attend the conventions and annual meetings, and have a process where young lawyers could apply to use them on an as needed basis. I know you have to cover your costs, but the "return on investment" for this would probably make it worth it. Call me to discuss, Joe McAllister.
The bar seems to ignore the fact that many of us are government attorneys. I am not a litigator, but so much of the training seems only to focus on that. I would like to see more training on employment law as it relates to government entities, the Government Employee Ethics Act, GRAMA, the Open and Public Meetings Act, State constitutional issues, etc.

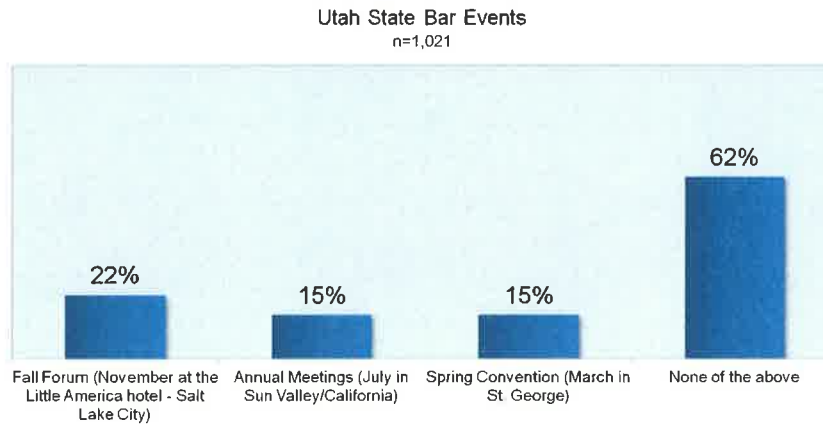
The bar seems to view all members as well-paid attorneys and plans its activities accordingly. I and I suspect many other attorneys struggling to earn a decent living cannot attend fancy junkets in San Diego or Sun Valley. The bar is happy to take our annual dues then plan fancy trips for its rich colleagues. I don't expect this will ever change.
The Conventions do not seem geared toward government criminal practice. With tight budgets and low pay, it really isn't a realistic option for most of us to attend.
The cost is prohibitive for government employees. Almost none of it is relevant to the practice of criminal law.
The fall forum should break up the lunch with the session that they normally include in the lunch. In other words, they should have a 30-45 minute lunch, and then continue with the breakout sessions.
The litigation panel was well done at the Fall Forum. The other Fall Forum classes were not as good. They didn't give much insight or instruction. Seemed that the panels weren't prepared. The mediation "drama" wasn't really worth going to.
The nature of the practice of law is changing with the economy and upcoming generations. More and more young attorneys who are dedicated to practicing law but are finding no openings with firms or government, are moving into solo practice or "indirect" legal jobs. Furthermore, as "Gen-X" and "millennials" increase their presence among bar membership the need to bridge the generation gap and acknowledge the shift to small or solo firm work will become increasingly necessary to sustain their participation in bar activities.
The only reason I do not attend the annual meeting is that we are always busy during the summer. November has also been quite busy as well.
The vast majority of the topics presented have no interest to me.
There seems to be minimal focus on criminal law.
they don't need to be vacations.
They're too expensive; you should have a free one with no food or anything at a free location, so more people can come to hear speakers; you could get those free too. Have a few different ones, in different counties so people could take 4 hours in a day to attend, and wouldn't have to spend a weekend or make a big expense in it. Not every attorney is a big shot high roller, most are people who need to work every day but would still like to go to events to see what is happening in the law. Why does the bar try to keep the old boys network, and only cater to those who have more money, and then guilt trip everyone for not providing pro-bono services. Most people need to work full time just to make ends meet, and don't have the luxury of going to California for the weekend to listen to overpaid attorney blather on about some thing. Why don't we have more, smaller, local events?
Too many sessions are specialized, making them of little interest to those not practicing in the focus area.
use different speakers--a handful of people appear regularly, and it would be nice to see new faces and hear different perspectives
Utah State Bar fuctions should be held in the state of Utah
We should be supporting our own local economy, not another state's!
Why pay money to be given a sales demo at the Fall Forum. Also, I believe that the cost is prohibitive for solo members.
Young lawyers like me simply cannot afford such events.

APPENDIX 3

2011 Dan Jones Survey of Bar Membership – Portion Relating to Bar Conventions

Questionnaire #4

Q87. Which of the following Utah State Bar events do you attend when you are able?
(select all that apply)

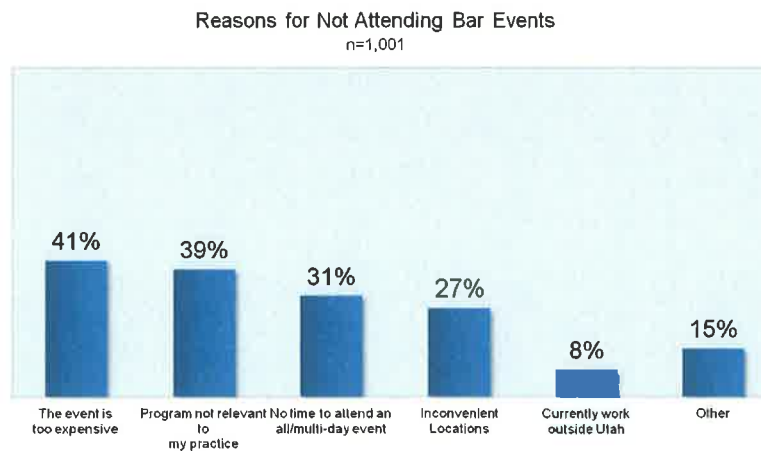


#97

2011 Utah State Bar Annual Survey of Members -

Questionnaire #4

Q88. If you do not attend one or more of the above-mentioned major Utah Bar events (the Annual Meeting in July, the Spring Convention in March, or the Fall Forum in November), please select the reasons why below:



#98

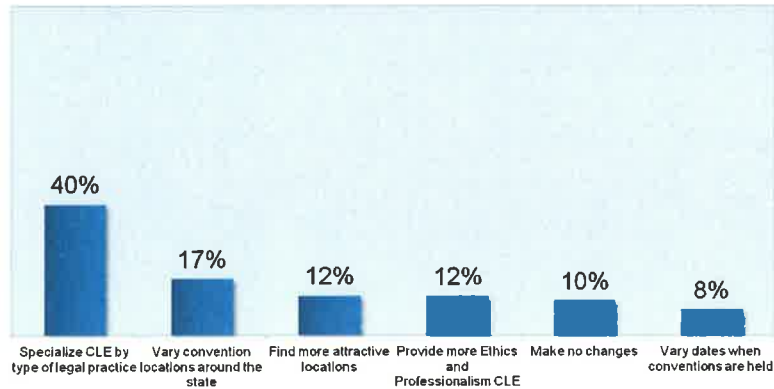
2011 Utah State Bar Annual Survey of Members -

Questionnaire #4

Q89. Which of the following would increase the likelihood that you will attend one or more of the above-mentioned major Utah Bar events in the next year?

Reasons for Not Attending Bar Events

n=1,001



#99

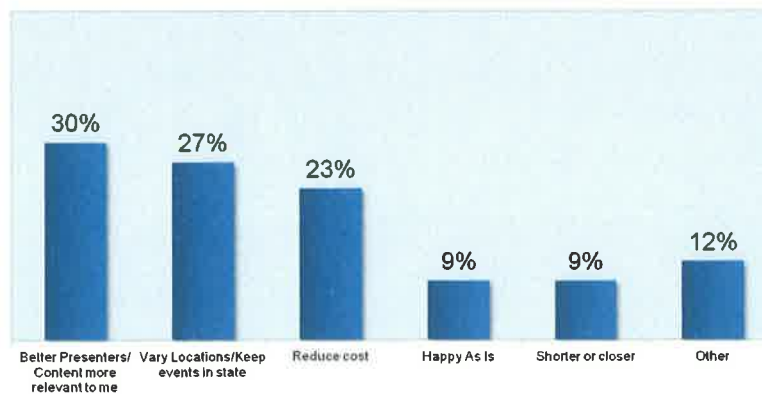
2011 Utah State Bar Annual Survey of Members -

Questionnaire #4

Q90. Please share any suggestions for changes or improvements to the Annual Meeting, Spring Convention or Fall Forum?

Suggestions Changes / Improvements

n=113



#100

2011 Utah State Bar Annual Survey of Members -

APPENDIX 4

Information Regarding Potential Convention Venues in Park City, Utah

APPENDIX 4

POTENTIAL CONVENTION VENUES IN PARK CITY, UTAH

Canyons Resort Village

Grand Summit Hotel: \$144; Sundial Lodge: \$119; Silverado Lodge: \$114

Resort fee: \$15-\$25/day + 12% tax

F&B minimum: \$39,000 + 32% service charge/tax

Meeting room rental: \$5,000

Meeting room capacity: Ballroom: 700 theatre; 375 classroom; breakouts (6 rooms): 100-145

The Chateaux Deer Valley

\$179 + 5% resort fee + 11% tax

F&B minimum: \$30,000 + 20% service fee + 9% tax

Meeting room space waived if F&B minimum met

Meeting room capacity: Ballroom: 660 theatre; breakouts (6 rooms): 50-220 theatre

Westgate Park City

\$175 + \$19.95 resort fee + 12% tax

F&B minimum: \$5,000/day

Meeting room space waived if F&B minimum met

Meeting room capacity: 300 theatre; 500 attendees—insufficient space

Montage, Stein Eriksen, St. Regis: \$259-279 and up; presently have insufficient meeting room space.

APPENDIX 5

Report on Convention Practices of other Western States Bars

APPENDIX 5

CONVENTION PRACTICES OF OTHER WESTERN STATES BARS*

Alaska: Annual Convention (May); generate a slight profit; 23% attendance over the last 4 years (750-800)

Arizona: Annual Convention; profit (does not include overhead associated with staff); 7% (1,600)

California

Colorado (voluntary): Discontinued Annual Convention

Hawaii: Annual Convention; generates a profit; 15% attendance (1,050)

Idaho: Summer Convention; sustains annual loss; 5-6% attendance (250-300)

Montana: Annual Convention (September); 6% attendance (200-300)

Nevada: Annual Convention; breaks even or slight loss; 4% (360)

New Mexico: Annual Convention – 4% attendance (350)

North Dakota: Summer Convention; 8 of the last 10 years lost money; 10% attendance (270)

Oregon: Does not hold an Annual Convention

South Dakota: Summer Convention; 33% attendance (750); subsidized with dues

Texas: Annual Convention (June); generates a profit; 2% attendance (1,900)

Washington: Has not held an “Annual Convention for decades”

Wyoming: Annual Convention; always a profit unless held in Jackson Hole; 8%-14% attendance (300)

*** None of the other Western States hold a Mid-Year Convention or Fall Forum Conference.**

TAB
4

**UTAH BAR COMMISSION MEETING
AGENDA ITEM**

Title: Professionalism Award Selection

Item # 2.10

Submitted by: John Baldwin

Meeting Date: October 30, 2015

ITEM/ISSUE:

To select the Professionalism Award recipient.

CRITERIA:

The Professionalism Award recognizes a lawyer or judge whose "deportment in the practice of law represents the highest standards of fairness, integrity, and civility." The award was first given out in 2004 and includes a list of prominent members of the Bar who have exhibited the type of truthfulness, reliability, and honor which is held as a standard among their peers.

NOMINEES:

1. Tara Isaacson
2. Kent Scott

PAST RECIPIENTS AND NOMINEES:

Past Recipients		Other Nominations That Year
2014	Laura S. Scott	Greg Bell, Martin Blaustein, R. Bruce Johnson, Stuart Schultz, Laura Scott, John A. Snow
2013	William S. Britt	Greg Bell
2012	Paul M. Durham	
2011	T. Richard Davis	T. Richard Davis Judge Glenn K. Iwasaki Sean Reyes
2010	Timothy B. Anderson	Richard Gunnarson
2009	Craig Mariger	Timothy B. Anderson T. Richard Davis
2008	Ellen Maycock Don Winder	
2007	Francis J. Carney	
2006	Bert L. Dart, Jr.	Victoria Kidman
2005	Hon. Richard C. Howe	Ray R. Christensen
2004	Ken Chamberlain M. Dayle Jeffs Stephen B. Nebeker Richard W. Campbell Hon. Gordon J. Low	Gary N. Anderson Carol Clawson Ray R. Christensen Ken Anderton Bill Schultz George Hammond Gayle McKeachnie

INFO ONLY:

DISCUSSION:

ACTION NEEDED: X

Christy Abad

From: Walter F. Bugden [wally@bilaw.net]
Sent: Sunday, October 11, 2015 2:24 PM
To: Christy Abad
Subject: Utah State Bar professionalism award

Good afternoon Ms. Abad:

I'm writing to recommend Tara Isaacson for the 2015 Professionalism award.

I apologize that I've missed the deadline to submit this letter, but I was out of town all last week with no access to email or telephone. It only recently came to my attention that nominations for this award were under consideration.

Tara has been my law partner for 19+ years.

I can honestly say that I can't think of another lawyer that exemplifies professionalism and civility more than she does. Tara is the rare lawyer that opposing counsel enjoy litigating against. Because of her politeness, collegiality, thoroughness, skill, and overall effectiveness as an advocate for clients, it is not unusual for prosecutors to recommend that family and friends hire Ms. Isaacson if they happen to be charged with a crime, minor or serious. It's not an exaggeration to say that she is universally respected and admired by prosecutors across the state.

The same favorable opinions are held by the judges that she has appeared before. She is polite, professional, and always respectful to the Court. I am confident that her skills are widely appreciated from the bench. I'm not overstating her popularity; she is surely a favorite lawyer of the judges that she appears before. I recently appeared before Judge Dawson. After politely saying "good day" to me, he noted only partially tongue-in-cheek, how disappointed he was that Ms. Isaacson, listed on the court docket as counsel of record for this particular defendant, was not appearing that day. It's a common joke in our office how often prosecutors that I'm dealing with ask me to please say hello to Tara. It happens all the time, to my consternation and envy.

We handle all manner of criminal cases -- from misdemeanors in the justice court to complicated felony matters in state and federal court. We frequently represent defendants accused of sexual offenses. In our team approach to these cases, Ms. Isaacson is always the attorney that examines either the child or adult alleged victim. She is able to confront and cross examine these witnesses with remarkable grace and effectiveness. She is courteous, while asking the tough questions that need to be asked. Her polite and professional demeanor never falters and never trends towards rudeness.

Tara is also remarkably well prepared, organized, and conscientious. There is nothing seat-of-the-pants about her trial preparation. Instead, she painstakingly pours over the police reports and takes days to prepare carefully thought out cross examinations. Her cross examinations of alleged victims have led to countless acquittals. I believe she has won more acquittals for defendants in sex abuse cases than any other criminal defense attorney in Utah.

Clients adore Ms. Isaacson. Her dedication, access to her clients, night and day, does not go unnoticed. I grow weary of seeing the flower bouquets on her desk from countless thankful clients.

Not only does Ms. Isaacson epitomize all the best qualities of lawyering, but she has mentored young lawyers. She also volunteered as a big sister for four years for a young girl whose parents and

grandparents went to prison. Tara helped this young girl to be the first person in her family to graduate from high school.

I can't imagine a more deserving lawyer to receive the professionalism honor.

I hope you will overlook my tardiness and consider Ms. Isaacson for the professionalism award.

Yours truly Wally Bugden

Walter F. Bugden, Jr.
Bugden & Isaacson, LLC
445 E 200 S, Suite 150
Salt Lake City, UT 84111
Tel (801)467-1700
Fax (801)746-8600
Wally@bilaw.net

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WOMEN LAWYERS of UTAH

October 9, 2015

Re: *Professionalism Award Nomination*

Nominee: *Tara Isaacson*

2014-2015 Board

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President

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Immediate Past President

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Zakia Richardson
UMBA/YLD Representative

Patricia Christensen
Senior Bar Member
Representative

Dear Bar Commission,

The Professionalism Award recognizes a lawyer or judge whose “deportment in the practice of law represents the highest standards of fairness, integrity, and civility.” Tara Isaacson embodies these ideals in all she does and her strength and commitment to these standards is an inspiration to all.

Tara is a partner with Bugden & Isaacson, LLC, and focuses her practice in the area of criminal defense. Members of the Bar describe Tara as “hardworking, compassionate and nonjudgmental,” and someone who is committed to “fairness and honesty in all of her dealings.” Never one to shy away from a difficult case, Tara has won the respect of prosecutors, district attorneys and judges alike. Tara strikes the impressive balance of being both a fierce litigator dedicated to advocating for her clients, while at the same time being professional and polite. And although Tara is always civil, she doesn't hesitate to “ask the tough questions that need to be asked.”

Tara is admired (and even adored) by her office staff, law partner, colleagues and current and former clients. Former clients describe Tara as “professional” and “competent,” and her colleagues marvel at her “collegiality, thoroughness, skill, and overall effectiveness as an advocate.”

Outside of the practice of law, Tara serves in the Big Brothers Big Sisters Program and is an active mentor to several new lawyers participating in the New Lawyer Training Program.

In furtherance of this nomination, please find attached information regarding Tara's career along with letters detailing Tara's professionalism and stellar reputation. Thank you for considering her nomination.

Sincerely,

/s/AudreyPhillips

Audrey Phillips
Career Advancement Committee Chair
Women Lawyers of Utah

Tara Isaacson



Tara L. Isaacson is a partner with Bugden & Isaacson, LLC. Ms. Isaacson focuses her practice in the area of criminal defense. She has represented clients accused of violent offenses, drug possession and trafficking, DUI, domestic violence and white collar offenses. She has been a criminal trial attorney since 1996 and has won acquittals in 32 jury trials. She has argued cases before the Utah Supreme Court and the Utah Court of Appeals.

Earlier this year, the Utah Association of Criminal Defense Lawyers recognized Ms. Isaacson as its Attorney of the Year.

In 2011, Ms. Isaacson was inducted into the American College of Trial Lawyers.

In 2008, Super Lawyers magazine featured Ms. Isaacson in an article entitled "The Unpopular Defense." She was selected as a Rising Star for the Mountain States Super Lawyers in 2008 and 2009. Utah Business magazine named Ms. Isaacson as one of the Legal Elite in Utah.

In 2006, Mr. Bugden and Ms. Isaacson published an article in the Utah Bar Journal, Crimes, Truth and Videotape: Mandatory Recording of Interrogations at the Police Station. This article provided an overview of cases involving false confessions. The article recommends that the Utah Supreme Court to exercise its supervisory power to require videotaping of custodial interrogations of juvenile and adult crime suspects.

Ms. Isaacson served as a Utah State Bar Examiner from 1998 to 2005. She has also served on the Utah Sentencing Commission's DUI Subcommittee and on the Board of the Utah Association of Criminal Defense Lawyers. Ms. Isaacson earned her Juris Doctorate from the University of Utah College of Law and has been licensed to practice law in Utah since 1996. Email her at tara@bilaw.net.

I am nominating Tara for the Utah State Bar Professionalism Award. I feel like criminal defense attorneys are sometimes overlooked for these types of awards. I have worked closely with Tara for several years and she and I have co counseled on several big cases.

Tara literally embodies professionalism. She handles the toughest of cases dealing with Sexual Abuse of Children, Rape and Homicide. She always conducts herself civilly whether she is dealing with clerks, Judges, prosecutors, victims or witnesses.

Tara can be both a mediator and a fierce litigator. However, even while being a fierce litigator, she is professional.

Her court room demeanor is to be envied by any woman. She is tough and prepared, but also gracious.

If you were to take a sampling of Judges in this State, you would find that they all of the upmost respect for Tara and enjoy having her in their courtrooms.

In my 14 years of practice as both a prosecutor and a defense attorney, she is one of the best attorneys in the State.

Cara Tangaro
Tangaro Law
35 W Broadway #203,
Salt Lake City, Utah 84101
Phone: (801)-673-9984

I would like to offer a few words and thoughts for the nomination of Tara Isaacson. I have worked with Tara for over twelve years. I am her paralegal and office manager.

I started with Tara one year after her business partnership was formed with Wally Bugden - Bugden & Isaacson, L.L.C. Since I've known Tara, and even to this day, she has remained an inspiration and mentor to women lawyers across the state of Utah. Tara has always remained very hardworking, compassionate and nonjudgmental to her clients despite what predicament they have found themselves in. She goes over and beyond to represent her clients. She does not take her position as their lawyer lightly. Her perceptions, insight, and organization contribute to her thorough representation of her clients. Where there may be even a small possibility for an issue of doubt for a jury, or the possibility of an extenuating circumstance in favor of the client, she will pursue that avenue to enlighten the prosecution to a fair resolution.

In situations where Tara has been co-counsel in a criminal matter, she is always able to provide new insight and direction which have resulted in successful results.

Tara is highly respected and highly regarded by prosecutors, district attorneys and judges as an exceptional lawyer and her plea propositions and negotiations to prosecutors and district attorneys do not go without notice or consideration. She is also highly respected in the legal community amongst her peers.

She is beloved by her staff of two paralegals (myself and Sindra McBride), as well as her law partner, Wally Bugden. Her ability in maintaining an office environment despite her law partner's wild antics, outbursts and just plain old Wally World entertaining would be amusing and admired by any other criminal defense office.

In addition to Tara's talents and contributions to the criminal defense community, she is also a Big Sister in the Big Sister / Big Brother program. She has been a Big Sister to a young woman, Jasmine, since she was in elementary school. She has tutored and mentored Jasmine through middle school up through high school where she assisted and succeeded in seeing Jasmine graduate from West High School. She continues to mentor and support Jasmine through the avenues of jobs and continuing education as well as daily life struggles.

Tara is also a mentor in the New Lawyer Training Program through the Utah State Bar and was recently nominated and awarded as UACDL's Attorney of the Year for 2015.

Please do not hesitate to contact me should you need any additional information or if I can be of further assistance.

Sincerely,

Suzanne Williams, CP
Certified Paralegal
Bugden & Isaacson, L.L.C.

BUGDEN & ISAACSON, LLC
Trial Lawyers

445 EAST 200 SOUTH, SUITE 150
SALT LAKE CITY, UT 84111
PHONE 801-467-1700
FAX 801-746-8600
SINDRA@BILAW.NET

SINDRA MCBRIDE, PARALEGAL

October 7, 2015

Utah State Bar

Re: Tara Isaacson / Professionalism Award Nomination

To Whom it May Concern:

I have had the pleasure of working as Tara's paralegal for over five years and have been continually amazed by her dedication to her firm, clients, and community.

Tara is the quintessential model of professionalism and integrity. There are numerous times that I have called a prosecutor to discuss a case and they simply state that if Tara says there is an issue with the case that they believe it without reviewing anything. She is trusted because she continually shows fairness and honesty in all of her dealings.

Respected for her keen legal knowledge, her strong organizational skills, and her ability to manage a case from start to finish, Tara is continually receiving case referrals from other lawyers and being asked to step into matters as co-counsel. When acting as co-counsel she does an excellent job of dividing responsibilities and keeping clients informed of the happenings between multiple offices.

Tara is a zealous advocate for her clients. She treats all cases with great care and realizes that no matter what type of case she is working on, it is all equally important to the client. She thoroughly explores all possible defenses and mitigating circumstances for her clients and in turn presents them in a persuasive manner to prosecutor, judge, or jury. I can recall multiple incidences upon leaving the courtroom where jurors, audience members, or fellow attorneys have let out utterances including, "You rock!" and "If I ever get arrested, I'm hiring you!"

Tara is admired by her office staff and law partner. She makes herself approachable and addresses any conflict that may arise with fairness, grace and confidence. We are all continually amazed at her ability to manage her case load, keep her office staff happy, and still find time to ride her horses, train her puppy, and spend time with her husband.

October 7, 2015

Page 2

Finally, in addition to running a successful practice and maintaining a busy personal life, Tara still finds time to give back to her community. She has participated as a mentor to multiple young lawyers through the Utah State Bar and rarely turns down any request to speak at an event or CLE. She is also a Big Sister in the Big Brothers and Big Sisters program. She has been a Big Sister to a young woman from elementary through high school graduation. Even now that her Little Sister has graduated, Tara continues to help her navigate the world of young adulthood.

Tara's deportment in her legal practice and her personal life is the prime example of professionalism and civility that we should all strive to make. She is very deserving of this award.

Sincerely,

Sindra McBride

October 9, 2015

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

Re: Tara Isaacson Nomination for Professionalism Award

Dear State Bar:

The Board of Directors of the Utah Association of Criminal Defense Lawyers ("UACDL") nominates Tara Isaacson for the Bar's Professionalism Award. This award honors lawyers or judges whose "deportment in the practice of law represents the highest standards of fairness, integrity, and civility." These qualities aptly describe Tara in all facets of her law practice. She not only excels as a trial lawyer but she conducts herself with dignity and poise for her clients, opposing counsel, and judges. All who interact with her leave feeling respected and understood even when she may disagree with them or even object to their positions in controversial, complex prosecutions. The examples of Tara's professionalism provided below establish a high standard for civility and excellence in the legal profession.

Tara's demeanor in all of her professional pursuits is best illustrated by her relationships with criminal defendants who are often difficult to communicate with and manage. Criminal defense practice routinely involves accused persons with serious mental health, addiction, and personality problems. Such clients can be demanding, unreasonable, and nearly impossible to satisfy. Nevertheless, Tara's clients uniformly like and respect her. She treats all persons with dignity and kindness regardless of their station in life, education level, race, gender, or any other trait. She also expects others to treat her clients respectfully as well. When needed, Tara is firm with clients but because she initially develops relationships that are based on empathy and respect, her clients listen to her advice and know that she truly fights for their best interests.

Opposing counsel similarly respond to Tara's professional approach. Tara is a fierce fighter for justice and fairness but she does so in a manner that evokes positive reactions from prosecutors rather than contempt. Prosecutors know that Tara sincerely believes in whatever she seeks and that she does not make unreasonable demands. Rather, she seeks attainable goals and is honest and credible in all of her dealings. As such, prosecutors trust her and know that she accurately portrays the facts of the case and will be professional in all of her interactions with them. Tara commands respect from prosecutors because she treats all them with dignity and civility and expects others to treat her sometimes difficult clients the same way.

For the same reasons, judges implicitly trust Tara's representations and know that she is reliable and trustworthy. Because Tara does not make unfounded requests or seek unattainable goals, judges know that her requests are reasonable and supported by the facts and the law. In turn, prosecutors are less likely to object to her requests because they trust her just as judges do. Tara has learned that

establishing a reputation for veracity, civility, and credibility benefits not only herself but her clients as well.

To further illustrate both Tara's dignified manner and her excellence in the practice of law, examples from each phase a criminal case demonstrate her good character and superior legal abilities. Tara has developed a skill for resolving difficult, conflict-filled cases even before criminal charges are filed. In one kidnaping case, Tara helped her client to resolve serious criminal charges by diplomatically contacting key witnesses and meeting with investigating police officers. Tara listened carefully to the witness and police allegations but calmly explained her client's side of the story. Despite the seemingly lack of common ground inherent in a kidnaping situation, Tara was able to resolve the case without charges ever being filed.

Likewise, Tara has shown her effective, affable demeanor during the preliminary hearing stage. Recently, in a case involving allegations of child sexual assault by a father, Tara tactfully and effectively cross-examined a 12 year old child and her mother. Tara objectively pointed out discrepancies between the child's statements and her mother's handling of the allegations. Without any accusatory tones or disparaging comments, Tara established in a matter of fact manner that the mother's and child's stories conflicted and lacked credibility. Rather than becoming demonstrative or righteously indignant, Tara presented the legal arguments to the judge and persuasively demonstrated that the prosecution had failed to present sufficient evidence to bind the case over for trial.

Tara's efforts in this case were remarkable given the low evidentiary standard at evidentiary hearings, the prosecutor's response, and the judge's ultimate ruling. Under Utah law, the prosecution need only present some believable evidence of a crime to survive a preliminary hearing. Well over 95% of preliminary hearings result in a bind over for trial. This figure is likely much higher in child sexual assault cases which involve considerable emotion and involve grave concerns about protecting children. Nevertheless, Tara's deft but respectful cross-examination showed the weaknesses in the state's case. Given the sensitivity of child sex cases, Tara's dignified approach proved to be effective and exemplary.

Showing just how professionally Tara handled this case, following the preliminary hearing the prosecutor agreed that the mother's and child's statements were so troubling as to warrant dismissal *with prejudice*. That remedy is rarely granted in any criminal prosecution and is even more scarce in child sex cases. Concerns for protecting children almost always cause prosecutors to leave the door open for future re-prosecution should additional evidence arise. But, Tara's performance was so skillful and handled so professionally that the prosecutor felt compelled to agree to no further attempts to prosecute Tara's client.

In an equally rare decision, the trial judge agreed and dismissed the case with prejudice. Judges are just as loathe as prosecutors to terminate prosecutions entirely in cases involving children out of concern for the potential harm that could result in such matters. But, given Tara's impeccable reputation and effective handling of the case, the felt compelled to dismiss the case with prejudice.

Tara is equally skilled and civil at trial. In other child sexual assault cases, Tara's respectful but resolute demeanor has persuaded jurors to acquit her clients when the evidence is unproven or questionable. In one trial, Tara demonstrated on cross-examination how an innocent touching evolved into claims of a sinister sexual act when a mother embellished her story. In another child sex case, Tara effectively cross-examined a medical professional who claimed a child had been sexually assaulted. Although the

medical expert was certain in her opinions, Tara effectively demonstrated how the expert was biased and her opinions were medically and legally unfounded.

It bears emphasizing that these types of cases are extremely difficult to try given jurors' understandable concern about the welfare of children. Emotions run extremely high and jurors naturally want to protect vulnerable children from sexual abuse. Accordingly, prevailing in these cases requires a skilled lawyer who can persuasively and credibly show the weaknesses in the prosecution's case. Tara is able to do just that given her courteous yet firm approach to witnesses and others in the court room. She proves that lawyers need not be theatrical or hyperbolic to be effective advocates.

Finally, Tara also excels in plea bargaining and sentencing. Currently, the criminal justice system is undergoing a dramatic transformation in how it approaches crime and punishment. Social science research is showing best how to respond to criminal behavior in ways that will reduce recidivism and change offenders' lives for the better. The tough on crime policies of the past have proven to be ineffective and even detrimental to reducing recidivism. Tara has been on the forefront of these efforts as shown by her ability to negotiate and earn appropriately moderate sentences for her clients. She has done so despite strong pressures to impose severe penalties that contradict the social; science research.

In one example, Tara represented a person who was accused of killing a swimmer in a boating accident involving alcohol. Despite extensive news coverage and public demands for a stiff sentence, Tara persuaded prosecutors that a more reasonable and effective response to the crime would be a lesser charge of impaired operation of a boat. Instead of jail time, Tara negotiated a sentence that required the defendant to engage in treatment and counseling. The research showed that these responses were appropriate and proportional contrary to public cries for retribution. Again, Tara's reputation, pleasant demeanor, and credibility helped to secure the sentence.

Likewise, Tara overcame public outcries when she represented a man charged with illegally excavating a dinosaur footprint. Research demonstrated that no jail time was needed for this act given the defendant's lack of criminal history and his future prospects for success. In opposition, many concerned citizens wanted the defendant to be incarcerated to send a message to others that such behavior would not be tolerated. Tara overcame these pleas for punishment and demonstrated to prosecutors and the judge that a sentence that did not include jail time would adequately address the criminal conduct while also ensuring that the defendant did not reoffend in the future.

Such favorable results do not occur routinely in the criminal justice system. Rather, they are earned by hard working professionals who develop reputations for honesty, courtesy, and respect. Tara embodies these qualities. As such, she is an ideal recipient of the Professionalism Award.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kent R. Hart', with a stylized, flowing script.

Kent R. Hart
Executive Director

Christy Abad

From: bigroyal [bigroyal@gmail.com]
Sent: Tuesday, October 06, 2015 12:14 PM
To: Christy Abad
Subject: Awards

This is a nomination for the Professionalism Award for Kent Scott. Each year Kent takes on new layers and law students where he will introduce the students and new lawyers to the legal profession. Kent is a regular contributor to Bar and Judicial committees including the Judicial Council's ADR committee and the Supreme Court's Professionalism committee. He reaches out to Lawyer's helping Lawyers and has saved countless lawyers from washing out from the legal profession. Kent is one of the great lawyers in the Bar. He is long overdue for recognition. Second, Sharon Donovan should be nominated for recognition as the Pro Bono Award. Sharon serves on the Bar's Pro Bono Commission where she works with signature projects, cle and address pro bono work for the domestic bar. The recognition of Sharon is timely. She would be a great award recipient. Judge Royal Hansen Sent from my iPad

TAB
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**UTAH BAR COMMISSION MEETING
AGENDA ITEM**

Title: Community Member of the Year Award Selection

Item # 2.11

Submitted by: John Baldwin

Meeting Date: October 30, 2015

ITEM/ISSUE:

To select the Community Member of the Year Award recipient.

CRITERIA:

Presented to a community member to recognize outstanding service toward the creation of a better public understanding of the legal profession and the administration of justice, the judiciary or the legislative process. To recognize a community member who over a period of time have served or assisted the legal profession in a significant way - has offered outstanding contributions of their time and talents to bar activities.

NOMINEES:

1. Anne Burkholder
2. Susan Madsen

PAST RECIPIENTS AND NOMINEES:

Past Recipients		Other Nominations That Year
2014	Steven R. Burt	
2013	Robert Austin	Robert Austin, Steve Burt
2012	Mary Kay Griffin	Prof. Marianna Di Paolo Robert Austin
2011	Robert Myrick	Third Judicial Nominating Commission
2010	Linda Sappington	
2009	Karen Hale	
2008	Carma J. Harper	
2007	Daniel J. Becker	
2006	Donna K. W. Johnson	Dominique Meier
2005	Rev. Mr. France A. Davis	
2004	Peggi Lowden	
2003	Fraser Nelson	Bonnie Miller
2002	Sylvia Bennion	
2001	Jo Brandt	Sherrie Hayashi; Ethics Advisory Opinion Committee <i>Individual</i> Members
2000	Jennifer Yim	
1999	Ray O. Westergard	
1998	John Florez	
1997	Margaret R. Bird	
1996	Sherianne S. Cotterell	
1994	Ray O. Westergard	
1993	Lyle K. Campbell	
1992	Stanley B. Bonham	
1991	Norma W. Matheson	
1990	KSL	

INFO ONLY:

DISCUSSION:

ACTION NEEDED: X

October 20, 2015

VIA EMAIL
john.baldwin@utahbar.org

John Baldwin
Executive Director
Utah State Bar
645 South 200 East
Salt Lake City, UT 84111

Robert O. Rice
ATTORNEY AT LAW

PO Box 45385
Salt Lake City, Utah
84145-0385

36 South State Street
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Salt Lake City, Utah
84111

801 532-1500 FIRM
801 323-3352 DIRECT
801 532-7543 FAX
rrice@rqn.com
www.rqn.com

Re: 2015 Community Member of the Year Nomination

Dear John:

I would like to nominate Anne Burkholder, Chief Executive Officer of the YWCA Utah, for the Community Member of the Year award. As you know, this award is issued to those who provide "outstanding service toward the creation of a better public understanding of the legal profession and the administration of justice, the judiciary or the legislative process." Anne is exceptionally well qualified to receive this award, as discussed below.

Anne served on the Utah State Bar's Futures Commission. She was not a figurehead. She made substantive contributions at meetings and line-item and valuable edits to the Futures Commission's final report. Her contributions were specific, precise and reflected the needs of her constituency with respect to access to justice issues. Anne provided an intelligent, needed voice in this important effort to assist the public in better understanding our legal profession and promoting the administration of justice.

Anne also led the effort to form the Family Justice Center at the YWCA. The Family Justice Center serves victims of domestic violence by providing access to many different critical resources under a single roof to provide better coordinated, seamless services for male and female victims and survivors. The center brings together specialized services in one location where victims can report domestic violence related crimes to the police, obtain assistance with protective orders, speak to a victim advocate, contact a prosecuting attorney to learn about the criminal process or discuss a pending criminal case, find shelter, housing and support groups, and obtain employment and job training. The Family Justice Center is, frankly, the embodiment of access to justice.

Of course, Anne's contributions to our community are not limited to access to justice issues. As CEO of the YWCA, she has advocated for and sheltered victims of domestic violence for years. The YWCA is a leading voice in Utah promoting diversity

John Baldwin
October 20, 2015
Page 2

and fighting against domestic violence. Anne's master's degrees from Yale University Divinity School, the University of Connecticut and Oxford University are simply more evidence of the talent and experience that she brings to her position. In short, she is exceedingly well-qualified for this award.

Thank you for your consideration.

Sincerely,

RAY QUINNEY & NEBEKER



Robert O. Rice

ROR/mm

1348036



WOMEN LAWYERS of UTAH

Re: *Community Member of the Year Award*
Nominee: *Susan Madsen*

Dear Bar Commission,

2015-2016 Board

Noella Sudbury
President

Susan B. Motschiedler
Immediate Past President

Diana Hagen
President-Elect

Kate Conyers
Treasurer

Mica McKinney
Secretary

Audrey Phillips
Career Advancement
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Elysa Dishman
CLE Committee Chair

Sarah Starkey
Community Outreach
Committee Chair

Kimberly Neville
Life/Work Balance
Committee Chair

Jaelynn Jenkins
Membership Committee Chair

Ashley Peck
Publicity Committee Chair

Karina Sargasian
Special Projects
Committee Chair

Angelina Tsu
Katy Strand
Regional Chapters Co-Chairs

Hon. Michelle Christiansen
Judicial Representative

Zakia Richardson
UMBA/YLD Representative

Patricia Christensen
Senior Bar Member
Representative

The Community Member of the Year Award recognizes a community members whose “outstanding service” has created a “better public understanding of the legal profession and the administration of justice, the judiciary or the legislative process.” Dr. Susan Madsen is an active leader in our community who focuses her career on leadership development for women. She encourages women to participate in the political process through Real Women Run, a collaborative nonpartisan effort to encourage and train Utah women to run for public office. In the many hats she wears, she encourages women to pursue their dreams and advance in professions and careers they may not have otherwise considered. She is a truly outstanding community member and deserving of this award. The advancement of women is not only her career, it is her passion.

Dr. Madsen has been teaching in Utah schools since 1985. She is the founder of numerous successful networks, including the International Leadership Association's (ILA) Women and Leadership Affinity Group. She has received numerous awards for her teaching, research, and service. She is a Senior Advisor to the Utah Women and Education Initiative, an outgrowth of the Utah Women's College Task Force (UWCTF) convened by Governor Gary Herbert in 2011. She has published several widely distributed research and policy briefs on the challenges and opportunities facing Utah women.

Dr. Madsen teaches women how to “hone their confidence and individuality” and to “have the courage and strength to help other women accomplish the same in their lives.” “The legal profession needs smart, talented, principled young women who know and love the law and will become outstanding leaders not only in private practice but also in public service, whether elected, appointed, or career.” Dr. Madsen helps grow that tradition in Utah.

In furtherance of this nomination, please find attached information regarding Dr. Madsen's career along with letters of recommendation in support of this nomination.

Sincerely,

/s/Audrey Phillips

Audrey Phillips
Women Lawyers of Utah

Background
Susan Madsen



Dr. Susan R. Madsen is the Orin R. Woodbury Professor of Leadership and Ethics in the Woodbury School of Business at Utah Valley University. She is also a Distinguished Visiting Fellow of the Lancaster Leadership Centre in the UK, a Visiting Fellow of the Faculty of Economics and Business at the University of Zagreb (Croatia), and a Fellow of The Leadership Trust Foundation in Ross-on-Wye, England. Dr. Madsen has been heavily involved for the last decade in researching the lifetime development of prominent women leaders. She has personally interviewed a host of women university presidents, U.S. governors, and international leaders, and she has published a host of books and articles on her work. Susan has conducted related research in the U.S., the six Arab Gulf countries, China, and recently in Eastern Europe. She has published nearly 100 articles, chapters, and reports and presents often in local, national, and international settings. She has been an invited speaker at the New York Times and in NGO sessions at the United Nations in New York and Geneva. Susan is the founder of numerous successful networks, including the International Leadership Association's (ILA) Women and Leadership Affinity Group. She has received numerous awards for her teaching, research, and service. She is a co-editor of the ILA/IAP Women and Leadership book series.

Susan is a leadership and change consultant and loves to teach, research, and write. She also enjoys her involvement in various service assignments and activities within Utah as well. She founded the Utah Women and Education Project in 2009 and continues to work with key Utah stakeholders on related efforts as the Senior Advisor to the Utah Women and Education Initiative. In August of 2013, she founded the Utah Women and Leadership Project that she continues to direct today. She received her doctorate from the University of Minnesota in human resource development. She earned a master's degree in exercise science/wellness from Portland State University and a bachelor's from Brigham Young University in Speech Communication Education. She started her career many years ago as a junior high speech and debate teacher.

I am happy to write in support of Dr. Susan Madsen's nomination for the Utah State Bar Community Member of the Year Award, which recognizes outstanding service toward the creation of a better public understanding of the legal profession and the administration of justice, the judiciary or the legislative process.

I became acquainted with Susan through her active, thoughtful, and creative participation in Real Women Run, a collaborative nonpartisan effort to encourage and train Utah women to run for public office.

Susan is an outstanding educator and a passionate advocate for women. Her focus on women's education and on women's leadership development—as well as her six widely distributed research and policy briefs on “The Status of Women in Politics,” “The Status of Women Leaders in Utah Nonprofits,” “The Status of Women Leaders in Utah Education,” “The Status of Women Leaders in Utah Business,” “Why Do We Need More Women Leaders in Utah?” and “Women, Confidence and Leadership: What Do Women Think?”—have challenged our perceptions and deepened our understanding of the challenges and opportunities facing Utah women today.

She is well known and revered widely throughout our state and beyond, and is in high demand as a local, national, and international speaker. She is simply indefatigable in her efforts to champion women's leadership, and to find innovative ways to help women learn and to become more than they ever imagined.

Why should this matter to the Utah State Bar? Because Susan's unfailing encouragement and championship of women's leadership inspires young women to reach for professions and careers that they might never have thought of entering, let alone succeeding in. The legal profession needs smart, talented, principled young women who know and love the law and will become outstanding leaders not only in private practice but also in public service, whether elected, appointed, or career. That's good for everyone, and Susan's work is helping to make it happen. She deserves recognition for all she is doing on behalf of Utah women today.

Anne Burkholder | Chief Executive Officer



phone: (801) 537-8608 | email: aburkholder@ywca.com
address: 322 East 300 South, Salt Lake City, Utah 84111
website: ywca.com | facebook: facebook.com/ywcautah | twitter: ywcaslc



ROBINSON
SEILER &
ANDERSON, LC

Attorneys and Counselors at Law

Mark F. Robinson
Thomas W. Seiler
Jared L. Anderson

Morgan Fife
Jarnis M. Gardner†
Derek T. Marshall *
Lacey M. Whimpey

October 26, 2015

RE: Outstanding Community Member Award – Dr. Susan R. Madsen

Dear Bar Commission:

I am writing this letter in support of the nomination of Dr. Susan R. Madsen for the Outstanding Community Member Award. I believe Dr. Madsen is an ideal candidate for the award.

Dr. Madsen focuses her career on leadership development for women, both young and old. Dr. Madsen sponsors many seminars for women to help build their confidence and leadership skills. While acknowledging the significant progress society has made in the advancement and independence of women, she knows much progress remains in that area. Not only does Dr. Madsen teach women how to hone their confidence and individuality, she also teaches women how to buoy other women in those areas. As women become stronger in their own lives, they must have the courage and strength to help other women accomplish the same in their lives.

Although Dr. Madsen's work focuses on women, it strengthens the entire community. Dr. Madsen's research has shown the more women who take on leadership roles, the stronger the community becomes. Women bring a different voice to the management of business and community projects, making our society better-rounded. I cannot think of a better candidate for the Outstanding Community Member award.

Sincerely,

ROBINSON, SEILER & ANDERSON, LC

Lacey M. Whimpey
Attorney at Law
lwhimpey@rsalawyers.com

TAB
6

**UTAH BAR COMMISSION MEETING
AGENDA ITEM**

Title: Outstanding Mentor Award Selection

Item: #2.12

Submitted by: John Baldwin

Meeting Date: October 30, 2015

ITEM/ISSUE:

To select the Outstanding Mentor Award recipient.

CRITERIA:

Outstanding Mentor will have been a valued guide who helped the new lawyer understand the rules of professionalism and civility and how adherence to them benefits clients and the profession as a whole.

NOMINEES:

1. **Mark Tolman, January 2014 Term**
2. Susan Peterson, January 2014 Term
3. Russell Ferricks, January 2014 Term
4. Nate Alder, January 2014 Term
5. **Scott Hansen, February 2014 Term**
6. Jared Anderson, February 2014 Term

PAST RECIPIENTS AND NOMINEES:

Past Recipients		Other Nominations That Year
2014	Timothy J. Larsen Debra M. Nelson Tupakk G. Renteria	S.Grace Acosta, Roger Griffin, Ann Tailaferro, Padma Veeru-Collings, Don Winder
2013	Hugh Cawthorne Brent H. Bartholomew	
2012	R. Josh Player Sharon A. Donovan David E. Leta Thomas R. Vaughn	

INFO ONLY:

DISCUSSION:

ACTION NEEDED: X

To: Board of Bar Commissioners
From: Emily A. Sorensen, Esq. - NLTP Coordinator
RE: Outstanding Mentor Selection
Date: October 13, 2015

The Utah State Bar Committee on New Lawyer Training considered 14 nominations for the Outstanding Mentor Award to be given at the November 2015 Fall Forum. All of the nominees mentored a new lawyer in 2014. Seven nominations were for the January 2014 mentoring term and 7 were from the July 2014 mentoring term.

The Committee voted by email to choose an award recipient from each term. For the January 2014 term, **Mark Tolman** received 3 votes and Susan Peterson, Russell Fericks, and Nate Alder tied with 2 votes each. For the July 2014 term, **Scott Hansen** received 4 votes and Jared Anderson received 3 votes.

The Utah State Bar Committee on New Lawyer Training recommends that Mark Tolman and Scott Hansen receive the Outstanding Mentor Award.

Sincerely,



Emily A. Sorensen

Utah State Bar Committee
On
New Lawyer Training

Recommendations

Nominee: Mark Tolman
Nominator: Taryn Evans
Term: January 2014

I would like to nominate my mentor, Mark Tolman, for the Outstanding Mentor award. During my first year of practice, I faced many interesting and challenging issues both personally and professionally. Mark was available not only during our monthly meetings, but on an additional as-needed basis to assist me. Here are some specific examples of how Mark went the extra mile as my mentor:

- My husband was very ill and actually passed away during my first year of practice. During this time, I was able to turn to Mark for advice and support as I struggled to find a balance between my home and work life. Mark was also extremely flexible with scheduling our meetings to make sure they occurred each month and to accommodate my family emergencies.
- Mark took the time to explain the importance of civility and maintaining professional relationships with opposing counsel. Just prior to the passing of my husband, I was faced with an opposing counsel who treated me uncivilly (arguing that the Court to require me to attend depositions I was not trained to attend without the lead attorney on the case; filing information about my husband's illness in the Court case for improper purposes). I was able to almost immediately go to Mark for advice and support on how to properly respond. Through Mark, I learned different techniques to maintain my character and civility (even if opposing counsel is not acting civilly), while still zealously representing my client. I have found these lessons invaluable in my young career and learned that my clients benefit from me acting civilly and extending professional courtesies.
- Mark arranged for and took me to lunch with a Utah Court of Appeals judge so I could get to know the judge and ask practical questions about oral argument, written briefs, etc.
- Mark spent time talking to me about my current cases and their pending issues and gave me advice on how he would approach the issue(s). For example, in dealing with a discovery dispute, Mark helped me analyze relevant employment laws and discovery rules so I could decipher what information my client would be entitled to. I used this information in my court filings and argument.
- For each of my mentoring plan topics, Mark focused on practical application and/or reoccurring issues that I was likely to encounter in my legal career. Mark taught me to check the rules (even if briefly) every time I cite to them. I have found this very helpful, especially given the recent changes to numerous rules.
- Mark made sure I was able to identify any ethics issues that come up in my cases (conflicts, malpractice, mistakes, etc.). He also made sure I knew who I need to talk to at our firm if I identify such an issue or have a question so that any issue can be dealt with early on.

Most importantly, Mark continues to be a mentor, friend and support to me as a young lawyer even after our mentoring period has ended.

Nominee: Scott Hansen
Nominator: Anetta Pietrzak
Term: July 2014

I am nominating Scott Hansen for the Outstanding Mentor Award for his (1) willingness to share skills, knowledge, and expertise, (2) positive attitude and enthusiasm, (3) personal investment in the mentorship relationship, (4) guidance and constructive feedback, and (5) support for ongoing education and growth in the legal field.

Scott's influence as a mentor began before he was officially approved as my mentor by the New Lawyer Training Program.

I graduated from the College of Law at the University of Utah in May of 2013. At that time, I was studying for the Utah State Bar Exam and sending out job applications for various attorney positions. I took the Bar Exam in late July of 2013, and then was invited to interview at Select Portfolio Servicing, Inc. ("SPS") for an in-house Counsel position. SPS is a mortgage servicer specializing in the servicing of single-family residential mortgages. I met with all of the in-house attorneys during my initial interview including Scott. All of the in-house attorneys were very intelligent, motivated, hardworking, and approachable. Scott, as my future supervisor, made me feel very welcome during the interview. I remember leaving the office hoping for an offer.

I was very excited to receive an offer almost immediately. Unfortunately, seven days before my start date, I learned that I did not pass the Bar Exam.

I immediately emailed Scott to notify him that I did not pass the Bar Exam. I advised Scott that this was not a reflection of my abilities or performance and that I intended to re-take the exam in February of 2014. Scott and the General Counsel of SPS responded to my email saying that they were looking forward to my arrival on my scheduled first day of work. (I am still very grateful and appreciative of their decision to leave the job offer open.)

My job duties at SPS would involve managing a high volume case load, settling cases, and providing servicing support to business departments. From my first day at SPS, Scott demonstrated that a successful mentoring and supervisory relationship requires time, commitment, and willingness to continually share information on an ongoing basis. The type of mentoring and supervisory relationship that Scott initiated made me feel very comfortable to use my legal skills and exercise my authority to make business decisions for SPS. Scott provided me with an overview of the mortgage servicing industry, made copies of all of his important notes and contacts, reviewed my assigned cases, and made himself available to answer any questions that I had. He took me on a tour of the company and introduced me to various department heads. Scott took several hours out of his busy work day everyday to teach me about financial services litigation. I vividly remember Scott drawing diagrams on my whiteboard outlining securitization and guiding me through teleconferences about complicated litigation. Scott would always check-in at least once a day with me to track progress. Scott was always enthusiastic and had a positive attitude about the mentoring relationship.

Then, when I had to begin studying for the February 2014 Bar Exam, Scott stressed the importance of studying, eating correctly, sleeping, and taking care of myself. Because I would only be taking 10 days off from work before the bar exam, Scott advocated that I take a few hours out of my work-day to study for the exam. Scott would check-in periodically to see how I was doing and occasionally quizzed me on MBE subjects at the office. Eventually, I passed the February Bar Exam. Even though my own family could not make it to the Swearing-In Ceremony, Scott (and several other attorneys from SPS) came to the ceremony. Scott even filmed the ceremony on his iphone so that I could share it with my family living on the East Coast. I was very excited to have a supervisor and mentor who was so personally invested in my legal career and physical and emotional well-being.

Naturally, I asked Scott to be my mentor for the New Lawyer Training Program ("Program"), and the mentoring relationship only further solidified. Previously, Scott and I would meet once a week. Now, we made sure to devote ample time to get through the Program requirements. The Program provided a great structure for ongoing education and growth in the legal field for both of us. As my responsibilities with the company increased, Scott assigned me to manage and personally observe/participate in highly contested hearings or mediations. Scott was great at highlighting my strengths and kindly pointing out my weaknesses. For example, as my caseload increased in number and complexity, I had difficulty articulating the litigation risks that SPS was facing in our weekly meetings and larger company meetings. In turn, Scott taught me how to slowly think through legal issues, anticipate questions from upper management, take shorter notes, review my notes, and speak more slowly and loudly when discussing cases at meetings. "Making better oral arguments" became one of our 2015 goals for me.

In addition, throughout the Program, Scott always demonstrated his support for ongoing education and growth in the field. He shared relevant articles and books. He recommended that I actively attend any and all relevant CLEs and often accompanied me on them. Scott also pushed us both to engage in volunteer pro bono work within Salt Lake City. We began attending the Debtor's counseling clinic together. Having Scott personally attend these functions only motivated me to further contribute to the community.

I am very happy to state that Scott is still my supervisor and mentor to this day. His ongoing support has been instrumental in my success in passing the bar exam and excelling in my legal career. Scott has been continually empowering me to develop my own strengths, beliefs, and personal attributes. I truly hope that Scott is awarded the Outstanding Mentor Award. It would make him feel very appreciated and acknowledged for his contributions to the New Lawyer Training Program and Salt Lake community.

JANUARY 2014 NOMINEES

Nominee: Nate Alder
Nominator: Daniel Garner
Term: January 2014

I would like to nominate my mentor Nate Alder at Christensen and Jensen for the Outstanding Mentor award. Nate deserves the outstanding mentor award because he was always available to discuss issues ranging from ethics to how to treat your support staff. Nate took a sincere interest in my growth as an attorney for the long term of my career and continues to do so. We continue to have lunch and we talk frequently about my progression as an attorney and contributor to our community. Nate has fundamentally changed my life for the better and I couldn't imagine a better mentor.

Nominee: Brent Bateman
Nominator: Kendall G. Laws
Term: January 2014

I would like to nominate my mentor, Brent Bateman for Outstanding Mentor. Brent did an phenomenal job of mentoring me, especially considering the circumstances in which he did it. Brent is the State Ombudsman and is located in Salt Lake City. I was a brand new attorney who had moved to the area I grew up in and started my own practice in rural San Juan County right after passing the bar. Most of our meetings were over Skype due to the logistics of meeting together but Brent made himself available to me multiple times a week. I could email him with a problem and he would quickly respond by asking me to call or Skype him. After he and I spoke about the situation and fleshed out many of the details, Brent would either point me in the right direction to solve the problem or he would put me in contact with an attorney he knew that was skilled in that particular area of the law. Through Brent and his connections I was able to competently handle, and learn from, cases on personal injury, family law, employment law, water law, land use, municipal law, and many more. When I think of a mentor I imagine the ideal mentor being just like Brent. He always took his position very seriously and did everything in his power to help me or lead me to the right person to answer the questions that he didn't know. I imagine that it takes mentors like mine to make the NLTP a success but I cannot imagine that many mentors could as outstanding, let alone better, than Brent Bateman.

Nominee: Mark Burns
Nominator: Marcus Yockey
Term: January 2014

I would like to nominate Mark Burns from the Office of the Utah Attorney General for consideration of the Outstanding Mentor Award. I believe that Mr. Burns truly excelled in providing guidance in acquiring the practical skills, judgment, professionalism, ethics, and civility to practice in a highly competent manner during the mentor program.

Mr. Burns is an excellent example of professionalism and a great mentor. While I was in the NLTP mentor program, I was informed that my previous mentor would be unable to continue as my mentor. This caused quite a bit of concern on my behalf as I was approximately half way through the program and was unsure how I was going to proceed with the program. I frantically looked at the mentor list offered by the NLTP and tried and find another available mentor. I also contacted a few people inside the AG office to determine who would willing to be a mentor. I finally able to get in touch with Mr. Burns. Mr. Burns graciously accepted to be my mentor even though he was under no obligation to do so.

Mr. Burns truly deserves this award. In addition to accepting to be my mentor halfway through the program, Mr. Burns excelled at providing the guidance I needed in a highly competent manner. Even with his work schedule and countless responsibilities at the AG's office, Mr. Burns always made sure to keep to the monthly mentoring schedule and made sure each task, activity, and experience was satisfied to the highest degree. Before our mentor meetings, Mr. Burns would conduct detailed research into each of the NLTP topics we were expected to cover. Mr. Burns also suggested that I do the same to ensure the learning experience would be beneficial for both of us. Mr. Burns would then go into extreme depth on each issue and make sure it was completely covered. If questions arose about the topic that he was not prepared to answer, Mr. Burns would return to his office and research the information so that the topic was completely covered and all questions were properly answered.

In addition, if there was a topic in which Mr. Burns had less experienced or in which he felt that he wouldn't be able to address to the highest degree, Mr. Burns would contact other attorneys from within his office and invite them to attend our monthly mentor meetings. Mr. Burns would provide me address the topic to the best of his knowledge and then allowed the other attorney to address the matter so that the topic was properly addressed.

Mr. Burns also attended some of my hearings to assist and critique me. While at the hearings he took scrupulous notes. During breaks in the hearings he would offer words of advice on how to best proceed. Afterwards, he would provide advice on how to improve my litigation skills for future hearings. I am truly grateful for the assistance and advice Mr. Burns provided and the time he took to create the best mentor experience possible.

Mr. Burns continues to mentor me even though the NLTP program has ended. I am still in contact with Mr. Burns and am grateful that he allows me to contact him when I need

assistance with difficult issues. Mr. Burns deserves this award because he truly excelled in providing guidance in acquiring the practical skills, judgment, professionalism, ethics, and civility to practice in a highly competent manner.

Law Office of Martin Stolz PLLC

September 4, 2015

Emily Sorensen
NLTP Coordinator
645 South 200 East
Salt Lake City, Utah 84111

NOMINEE:
RUSS FERICKS

NOMINATOR:
MARTIN STOLZ

TERM: JANUARY 2014

Re: Nomination of Russell C. Fericks for the NLTP Outstanding Mentor Award

Dear Emily,

I am writing to nominate Russell C. Fericks ("Russ") for the New Lawyer Training Program (NLTP) Outstanding Mentor Award of the Utah State Bar.

I had known Russ for years before he became my NLTP mentor. Some months before, unforeseen events had prevented another lawyer, who I had lined up to serve as my mentor, to participate in the NLTP. So I wanted to ask Russ for recommendations for other attorney-mentors who practiced in areas I was interested in pursuing, such as family law and bankruptcy, two areas outside of Russ's own practice. Instead of sending me elsewhere, he offered to be my mentor. Russ has a clear vision of what it means to practice law in a dignified and professional manner, regardless of the specific practice areas. So we crafted a mentoring plan with broader objectives, such as effective advocacy, negotiating and client communications.

Russ brought passion and commitment to imparting his knowledge and experience and to teaching me new skills. He patiently listened to my stories, gently asked questions and kindly offered me insights that aided my development and growth as a lawyer. His suggestions to me consistently had the effect of causing me to reflect on whatever matters I faced in new and different ways, or to allay my worries. A philosopher and raconteur by nature, Russ often used his own stories to discern deeper meaning, find humor or convey wisdom.

Russ is a natural teacher. He thought of me frequently and found ample opportunities from his work to expose me to meaningful experiences, which in turn allowed the mentorship process to grow and fueled more discussion. To identify a few, Russ arranged for me to attend a negotiation session he led aimed at avoiding needless litigation, an effort later successful due to his diplomatic and mediation skills. Russ allowed me to observe an emotionally-fraught mediation conducted by a retired judge. He reviewed business contracts that I drafted for a client and gave me detailed feedback. He invited me to review and provide research for a draft of a motion in one his *pro bono* cases. In each of these interactions we had outside of our monthly mentor-mentee breakfasts, Russ passed along his personal and infectious enthusiasm for performing the legal tasks at hand and his resolve that I experience the lessons to be learned.

After decades in the trenches, Russ has a strong understanding of the business culture of practicing law in Utah. He is highly respected and successful for the reasons I discovered first-hand, through the unique privilege I had of being his NLTP mentee. I am eager to try to imitate Russ. I hope that in my efforts, I may someday fully absorb and carry out the lessons he taught.

Throughout his career, Russ has been involved with the Bar in a variety of capacities. An abiding concern of his, though, is professionalism, civility and ethics in the practice of law. Russ has seen all aspects of the profession, and he transmitted to me the utmost importance of demonstrating integrity as a lawyer and aspiring to be a good person.

Russ, himself, is a shining exemplar of what it means to be a good person. Throughout the year of our NLTP mentorship, Russ's deep sense of empathy showed itself with his honesty and genuine concern for my practice, my well-being, my family and me as a person.

I urge you to carefully consider Russ for the NLTP Outstanding Mentor Award. He deserves this honor because Russ has been generous with me and many other mentees in passing on the skills he has acquired and honed over the years as a trial advocate, negotiator, litigator, business owner and compassionate human being. Above all other things, he deserves this honor because he is, quite simply, the most remarkable lawyer and teacher I have ever met.

Thank you.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Martin Stolz', with a long horizontal flourish extending to the right.

Martin Stolz
Attorney at Law

Nominee: Susan Peterson

Nominator: Adam Bondy

Term: January 2014

I'd like to nominate my mentor, Susan Peterson. She really put in extra effort to ensure that I got as much as possible out of the New Lawyer Training Program. Susan devoted extra time to the mentorship, had me meet with experts to supplement her own knowledge, emphasized the importance of volunteer work, and has continued our friendship.

Susan didn't skimp on the time spent discussing each of the topics in extensive detail; I'm pretty sure the shortest of our meetings was at least two and half hours. Frequently, they would exceed three hours, and I would emerge with copious notes and example documents to review.

Susan also introduced me to other lawyers to learn their perspectives on some of the topics. Susan is primarily a transactional lawyer, so whenever we discussed litigation topics, she would invite one or two other lawyers who were primarily litigation-oriented to join us for lunch and then a post-lunch discussion. When we were discussing screening and conflicts, Susan also invited an attorney specializing in conflicts and dual-representation. On another occasion, we met with an environmental/land-use attorney to discuss environmental impact statements and to walk us through an example scenario.

Susan didn't just invite legal experts. She also brought two junior associates to lunch on one occasion to talk about how they handled work-life balance as young associates. Susan also had me sit down with billing and records staff to learn how they did their jobs, how lawyers could work with them most efficiently, and what things lawyers should avoid to ensure a harmonious office.

Due to my job, I was unable to volunteer at Tuesday Night Bar (since I work for the courts). But Susan had me come along and observe her volunteering there, advising the attendees, and helping them understand what legal steps they could take to resolve their problems. I enjoyed this experience and look forward to being able to volunteer in future. Susan also invited me to several CLEs and networking events to expose me to other firms and practice areas.

Finally, I believe that I have made a long term connection with Susan. Since the conclusion of the official mentorship program, we have continued to meet for lunch, discussing career opportunities as well as just plain having a good time.

For these reasons, I nominate Susan Peterson, and would be happy to explain them if more detail is needed.

Nominee: Reid Tateoka
Nominator: David Gustin
Term: January 2014

My mentor, Reid Tateoka, was the best! He was willing to start mentoring me before the formal time began. I was able to start gathering experience before sworn in, a time that is usually wasted. I had very little court experience at the end of schooling. He made sure I had lots by the end of our mentorship. He made himself available to meet monthly (as required, but I hear from other peers that this is rare). We were involved with cases that went to the Utah Supreme Court as well as other one-day bench trials. He insisted I get over my fear/apprehension of court and had be taking depositions and cross-examining witnesses during my year with him. We even went to sit in on a case during voi dire so that I could know what to expect if I had such a case. I started a solo practice right out of school. I can't imagine where I would be without my mentor. He was extremely generous in sharing any pleading or document that I needed, whether or not it was a client we were handling together or I had on my own. I seriously cannot imagine a more dedicated selfless mentor. I would do almost anything to help him. He was available for me in my moments of need. He is the best!

JULY 2014 NOMINEES



LAKEY | HOGELIN

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JOHN LAKEY PARTNER
JUN HOGELIN PARTNER
JOSEPH D. THOMAS, III COUNSEL
CHRISTOPHER J. BRADSHAW OF COUNSEL

August 27, 2015

Sent via electronic mail to Emily.Sorenson@utahbar.org

Emily Sorensen
Utah State Bar – NLTP Coordinator
645 South 200 East
Salt Lake City, UT 84111

NOMINEE:
JARED L. ANDERSON

NOMINATOR:
JUN HOGELIN

TERM: JULY 2014

RE: Outstanding Mentor Nominations

Ms. Sorensen:

As a recent participant of the New Lawyers Training Program, where I was the new lawyer in training, I would like to nominate Jared L. Anderson for the Outstanding Mentor award. I am not the first mentee for Mr. Anderson, where hopefully I am not the last either. Mr. Anderson is a first class mentor who not only provides knowledge and resources concerning practical applications for the practice of law, but also incorporates the fundamental necessities of adhering to and observing professionalism and ethics, as provided in the Utah Rules of Professional Conduct and the Utah Standards of Professionalism and Civility.

I was honored to spend at least two hours every month visiting with Mr. Anderson and learning the practical applications of the practice of law. However, Mr. Anderson's mentoring was not limited to just that time, where he made himself available via email, telephone calls, and short personal visits when I had a question or was seeking professional advice. Mr. Anderson was always prepared to address the topics provided in the mentoring plan, where each topic was addressed thoroughly and any questions were addressed, either by his own knowledge, by the both of us doing research, or by Mr. Anderson reaching out to his professional contacts. Further, Mr. Anderson shared with me examples from his own work to help me to understand particular requirements needed to fulfill a particular objective. If there was an issue that required more time, Mr. Anderson made sure to find time in his schedule to complete the issue timely. Finally, Mr. Anderson would reach out to me independently to follow up and make sure I understood what we had covered.

Mr. Anderson also went above and beyond what was required as a mentor. Along with covering the topics from the mentoring plan, Mr. Anderson would review with me my own cases and clients that I was engaged in with in my practice. Essentially, we would have a case review as part of our session where Mr. Anderson provided excellent insight and suggestions that helped for me to be a better attorney and where my clients benefitted from my new learned skills and knowledge.

In particular, where I have my own practice, I found that some of my first cases had fairly aggressive opposing counsels that were very zealous in their representation of their clients. Mr. Anderson would review these cases with me and help me to identify my strategy, where I learned to keep my focus on the pertinent issues and not to get caught up in the "sabre rattling", as he would term it. He taught me to focus on the issues and happenings that most benefit my client, despite whatever personal feelings or consternation that I was facing with opposing counsel. As I applied this reasoning, I found that I was able to provide not only better representation to my client, but that I was also able to enjoy my practice more.

Finally, and in no small part to this nomination, I believe that Mr. Anderson is deserving of this award due to the fact that every lesson, every application, and every skill was incorporated with the observance and respect for our noble profession. Mr. Anderson continually reinforced the proper actions of an attorney, where he referred constantly to the Utah Standards of Professionalism and Civility and the Utah Rules of Professional Conduct. Mr. Anderson emphasized candor, honesty, and professionalism in every aspect of being attorney. Mr. Anderson reminded me time and time again that every aspect of my practice should be built upon a foundation of the rules, regardless of others actions or my personal feelings.

I have found that these principles have not only provided for me to be a better attorney, but they also have allowed for me to have a good relationship with my clients, the court, and opposing counsel. An example of this application is where I had made a mistake in how a represented an issue in one of my briefings, where I caught such mistake in preparing for oral arguments. Mr. Anderson had emphasized that candor with the court is always the right way to go. So, during oral arguments, the first thing I addressed was that mistake and my apologies for any disrespect shown the court. I found by having such candor, the court was very appreciative and reissued their ruling.

The bottom line is that I cannot exemplify my appreciation for Mr. Anderson in what he has given me in regards to knowledge, skills, and appreciation for this noble profession. He did more than was required, all while believing it was only just a service, where he was not aware the he received CLE credit. He is a great example and engages in his practice the right way. As such, I would like to recommend him for this award with the greatest amount of support that I can give. I would ask that you consider him as such. Thank you.

Sincerely,

LAKEY HOGELIN, PLLC

Jon M. Hogelin
Attorney at Law

Nominee: Philip M. Ballif
Nominator: Axel Trumbo
Term: July 2014

I nominate Philip M. Ballif (Bar #4268) as the Outstanding Mentor for the New Lawyer Training Program. Though he's a busy shareholder at Durham Jones & Pinegar, he was willing to mentor an outside attorney. He introduced me and invited me to attend the Inn of Court, he invited me and my wife to a movie screening--where we were able to socialize with Phil and his family--and he has consistently given me great advice on cases I'm working on. He warned me about common ethical pitfalls and how to avoid them, such as disclosing client information in situations that might not seem inappropriate, but that are in fact ethical violations.

He introduced me to a couple of attorneys at his firm, and invited me to watch one of the attorneys argue before the Utah Court of Appeals. I can tell he genuinely wants to help me succeed, and has invited me to continue to meet with him in the future. I will do so because my competency and confidence as an attorney has increased because of his mentoring. I couldn't have picked a more thoughtful and interested mentor. He deserves the award.

Nominee: Terry Cathcart
Nominator: Tamara Rasch
Term: July 2014

I cannot imagine surviving my first year of practice without my mentor, Terry Cathcart. I don't think I fully appreciated the importance of having a mentor who was interested in teaching, guiding, and sharing wisdom when I set out. However, after looking back over the past year, I realize how fortunate I was to have Terry as my mentor.

Terry was interested in informing, leading, and assisting me in all aspects of my legal practice. With his experience as a solo practitioner, he had insight into not just cases I was working on, but how to run my practice successfully. He offered to help me in all phases of my cases, from procedural questions, to providing me with copies of forms, to statutory and case law references. He was never too busy to take a phone call, or to sit down with me and hash out a difficult case. Even now, after we have completed the mentoring program, he remains willing to take my phone calls and assist in any way I need.

Terry has provided me guidance in dealing with specific courts, opposing counsel, and the legal community in general. One of my first cases was a particularly complicated one. Terry volunteered to sit down with me and the client's file, and aid me in determining the proper strategy. He read my brief and provided feedback to better achieve a result which would be favorable to my client. As I learned over the following months, this was typical to his willingness to help me with any case.

I know that I am not the first attorney to benefit from Terry's expertise and willingness to teach, but with Terry's retirement this year, I may have been the last. I hope his excellence as a mentor will be recognized.

Nominee: John Lindsay
Nominator: M. Covey Morris
Term: July 2014

I'd like to nominate my mentor John Lindsay. For many young attorneys and their mentors, the New Attorney program is something to be suffered, a cross to be borne and a hurdle to jump. While I'm sure many mentors diligently met their mentee once a month and provided wonderful advice, this award should go to someone who did more than that. I'm sure most of the nominations you'll receive describe model attorneys who gave wonderful advice, and my nomination could have been one of those, but instead I write about mentor that did more, a mentor who worked tirelessly to make me a successful attorney.

Of outmost importance in the development of practical skills, judgment, professionalism, ethics, and civility, is experience. To get experience a young attorney need a steady stream of work and broad exposure to many different issues. Generating steady work and broad exposure isn't a course taught in law school, and developing the trust and confidence of clients and other attorneys, from which trust work and exposure to flow, is the biggest challenge I've faced in my practice so far.

John put his reputation on the line to lobby other attorneys, our board, and almost every committee in our firm to get me work, and to keep me busy. He's gone way beyond the advice and time that most mentors give. At times he's gone as far as to send me work that he could do, effectively taking money out of his pocket by reducing his billable hours, giving me much needed work and experience. What more could a mentee ask for? Please seriously consider John Lindsay for the Outstanding Mentor award. Thanks for your consideration.

Nominee: Paul Macarthur
Nominator: Curtis Thomas
Term: July 2014

I would like to nominate Paul Macarthur for the OUTSTANDING MENTOR award. Paul was my mentor for the July 2014 mentoring term of the New Lawyer Training Program. Although I passed the bar exam and was admitted to the Utah Bar, I am not a traditional lawyer. I work for a small business primarily as a director of business development, although I perform legal tasks under the direction of the General Counsel as needed. Because I did not have a steady flow of legal work to review with my mentor, I was concerned about being able to meet the requirements of the mentoring plan. Paul went out of his way to help me meet those requirements. Paul allowed me to meet with him twice a month, which was above the once-a-month minimum requirement. During those meetings, Paul would help me with legal issues that I was facing at work if I had any, but, if I did not have any specific legal issues to discuss, he would provide documents or case studies to discuss. For example, Paul helped me to create an estate plan for my wife and me to review the principles of effective estate planning. He also walked me through all of the paperwork required to effectively set up an LLC, although we never filed the paperwork. Paul would often discuss experiences he had in the past that were relevant to experiences that I was facing or would likely face in my current position. When Paul learned of my interests in areas outside of his expertise, he would reach out to his contacts in those areas to try to set up meetings where I could discuss with them my interests. In every meeting, Paul would provide advice that went beyond the mechanics of legal work and included advice on how to balance work and family life, how to morally and ethically deal with difficult clients and issues, and how to progress my career in areas that match my interests.

Paul went above and beyond what was required of him as a mentor, and I believe he deserves to receive the OUTSTANDING MENTOR award.

Nominee: Leslie Slaugh

Nominator: Steve Loos

Term: July 2014

I would like to nominate Leslie Slaugh of Howard Lewis & Petersen for the outstanding mentor award. Here is my statement:

"Les really went the extra mile in training me and introducing me to the practice of law. He invited me to attend one of his depositions, which I attended, and took the time to explain the rules regarding the same. He walked through responding to a motion for summary judgment and how to do it properly. He even went so far as to show me what a bad example looked like. As we walked through the requirements of the NLTP, he would open his book of the Utah Code section or Rules of Civil Procedure and would show me the rule and then explain it to me to make sure that I understood it. In addition to the monthly meetings that were held, he allowed me to call whenever I had questions, which I did frequently, and made me feel comfortable in doing so. He would always take my calls or timely respond to my emails. Law school gave me the analytical skills but Les supplemented those with the practical skills that I needed to practice law. I did not know Les prior to him accepting my request to serve as my mentor but I have gained significant respect for him as an attorney and I deeply appreciate the countless hours that he spent with me. Even though the mentoring program has concluded, he has given me permission to call him any time with questions and told me to please stay in touch. My experience in the NLTP was a huge success and this was all due to my excellent mentor."

TAB
7



TANNER

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Member of



North America

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October 9, 2015

Board of Commissioners and Management
Utah State Bar
645 South 200 East, Suite 310
Salt Lake City, UT 84111

Ladies/Gentlemen:

In planning and performing our audit of the financial statements of the Utah State Bar (the Bar) as of June 30, 2015 and for the year then ended, in accordance with auditing standards generally accepted in the United States of America, we considered the Bar's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing an opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Bar's internal control. Accordingly, we do not express an opinion on the effectiveness of the Bar's internal control.

Our consideration of internal control was for the limited purpose described in the preceding paragraph and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies and, therefore, material weaknesses or significant deficiencies may exist that were not identified. In addition, because of inherent limitations in internal control, including the possibility of management override of controls, misstatements due to error or fraud may occur and not be detected by such controls.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis.

A material weakness is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the Bar's financial statements will not be prevented, or detected and corrected, on a timely basis.

A significant deficiency is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

We consider the following deficiency to be a material weakness:

Segregation of Incompatible Duties in Accounting and Finance Functions

Internal controls should be designed to safeguard assets and help prevent losses, errors, or fraudulent acts. A fundamental concept in an adequate system of internal control is the segregation of incompatible duties. Proper segregation of incompatible duties dictates that the same individual should be involved only once in the authorization, recording, asset custody, and control activities related to a transaction. Currently, individuals have roles in more than one function of authorization, recording, asset custody, and control activities of a transaction.

We noted the following incompatible duties:

- The Chief Financial Officer authorizes accounts receivable write-offs and reconciles the bank account.
- The Chief Financial Officer has access to payroll records, prepares payroll checks, distributes payroll checks, and reconciles the payroll bank accounts and other bank accounts.
- The Chief Financial Officer maintains the general ledger, is authorized to record general ledger journal entries without independent review, and reconciles the bank accounts.

We suggest that management reassess the Bar's internal controls over these processes to ensure that proper segregation of incompatible duties for authorizing, recording, and maintaining custody of assets exists to reduce the opportunity for any one person to be in a position to both perpetrate and conceal irregularities.

We consider the following deficiencies to be significant deficiencies:

Documentation of Review of Manual Journal Entries

To prevent one person from manipulating financial information and compromising assets, a review of manual journal entries must be done by another person who did not prepare the manual journal entries. There is no documentation of reviews of manual journal entries. We suggest that management reassess their processes for review of manual journal entries to ensure that another person who did not prepare the entries reviews them and that proper documentation of those reviews is maintained.

Documenting Transaction Processes and Creating Appropriate Checklists

The Bar has not formally documented the processes and controls surrounding its key accounting processes including cash receipts, cash disbursements, property and equipment purchases, payroll, and the monthly financial close. Documenting these processes will help transition new employees into their roles and ensure that employees know and understand their responsibilities. Creating period-end checklists will assist in ensuring all adjustments have been made to the financial statements at the end of a reporting period.

The following deficiencies should be considered as part of the ongoing process of modifying and improving the Bar's internal control practices and procedures:

Third-Party SOC 1 Reports

The third-party payroll processing company, Intuit, does not have a SOC 1 report. A SOC 1 report provides reasonable assurance that transactions with the third party are captured completely, accurately, and timely. We suggest that management take into consideration whether a third-party provider has a SOC 1 report when choosing a third-party provider.

Documentation of Control Performance

The Bar does not currently retain evidence documenting the performance of certain internal controls (e.g., John Baldwin's monthly review of the financial statements). We were able, through inquiry of several individuals, to gain an understanding that these controls were in place and generally the procedures were being performed; however, we recommend that management create physical evidence of control performance (e.g., John Baldwin's signature and date on the financial statements after his review).

This communication is intended solely for the information and use of the Board of Commissioners and management, and is not intended to be and should not be used by anyone other than these specified parties.

Sincerely,

Tanner LLC

By: 
Kent M. Bowman, Partner

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October 9, 2015

Board of Commissioners
Utah State Bar
645 South 200 East, Suite 310
Salt Lake City, UT 84111

Dear Board Members:

We have audited the financial statements of the Utah State Bar (the Bar) as of June 30, 2015 and for the year then ended (fiscal year 2015), together with summarized financial information as of and for the year ended June 30, 2014, and have issued our report thereon dated October 9, 2015. Professional standards require that we provide you with information about our responsibilities under auditing standards generally accepted in the United States of America (US GAAS), as well as certain information related to the planned scope and timing of our audit. We have communicated such information in our letter to you dated June 22, 2015. Professional standards also require that we communicate to you the following information related to our audit.

Qualitative Aspects of Accounting Policies

Management is responsible for the selection and use of appropriate accounting policies and practices. The significant accounting policies used by the Bar are described in Note 1 to the financial statements. No new accounting policies were adopted that had a significant impact on financial reporting and the application of existing policies was not changed during fiscal year 2015. We noted no transactions entered into by the Bar during fiscal year 2015 for which there is a lack of authoritative guidance or consensus. All significant transactions have been recognized in the financial statements in the proper period.

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected. The most sensitive estimates affecting the financial statements are as follows:

Management estimates the economic useful lives of property and equipment based on the expected number of years the asset will be used. Management revisits these assumptions annually and adjusts the economic useful lives if warranted.

We evaluated the key factors and assumptions used to develop the estimates above in determining that they are reasonable in relation to the financial statements as a whole.

The financial statement disclosures are neutral, consistent, and clear.

Difficulties Encountered in Performing and Completing the Audit

We encountered no difficulties in working with management in performing and completing the audit, other than delays in receiving certain information necessary to complete the audit.

Corrected and Uncorrected Misstatements

Professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that are trivial, and communicate them to the appropriate level of management. There were no adjustments proposed by us during the audit.

Disagreements with Management

For purposes of this letter, professional standards define a disagreement with management as a financial accounting, reporting, or auditing matter, whether or not resolved to our satisfaction, that could be significant to the financial statements or the auditors' report. No such disagreements arose during the course of the audit.

Management Representations

We have requested certain representations from management that are included in the management representation letter dated October 9, 2015. A copy of that letter has been provided to you.

Management Consultations with Other Independent Accountants

Management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a "second opinion" in certain situations. If a consultation involves application of an accounting principle to the Bar's financial statements or a determination of the type of auditors' opinion that may be expressed on those financial statements, professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

Other Audit Findings or Issues

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management prior to retention as the Bar's auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.

Independence

Independence is crucial to the performance of audit services. We are subject to the independence standards of the American Institute of Certified Public Accountants.

All partners and employees of our firm are provided access to our policies and procedures relating to independence and conflicts of interest. Annually, we obtain written confirmation from partners and employees about their adherence to these policies.

There are no relationships between Tanner LLC and the Bar that in our professional judgment may reasonably be thought to impair our independence.

Other Information in Documents Containing Audited Financial Statements

With respect to the supplementary information accompanying the financial statements, we made certain inquiries of management and evaluated the form, content, and methods of preparing the information to determine that the information complies with accounting principles generally accepted in the United States of America, the method of preparing it has not changed from the prior year, and the information is appropriate and complete in relation to our audit of the financial statements. We compared and reconciled the supplementary information to the underlying accounting records used to prepare the financial statements or to the financial statements themselves.

We will be pleased to respond to any questions you have about the foregoing. We appreciate the opportunity to continue to be of service to the Bar.

This information is intended solely for the use of the Board of Commissioners, and is not intended to be and should not be used by anyone else.

Sincerely,

Tanner LLC

By: 
Kent M. Bowman, Partner

Note: For the best PDF viewing experience, disable “Enhance thin lines” in Adobe Acrobat. Click on Edit >> Preferences >> Page Display, and uncheck “Enhance thin lines.”



TANNER

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CRITICAL KNOWLEDGE



PROACTIVE INSIGHT

Utah State Bar

**Financial Statements and Supplemental Schedules
As of and for the Year Ended June 30, 2015
(With Summarized Financial Information
as of and for the Year Ended June 30, 2014)**

Together with Independent Auditors' Report





TANNER
BUSINESS ADVISORS AND
CERTIFIED PUBLIC ACCOUNTANTS

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INDEPENDENT AUDITORS' REPORT

To the Board of Commissioners of the Utah State Bar

We have audited the accompanying financial statement of the Utah State Bar (a nonprofit corporation) (the Bar), which comprise the statement of financial position as of June 30, 2015, the related statements of activities and cash flows for the year then ended, and the related notes to financial statements.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to error or fraud.

Auditors' Responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to error or fraud. In making those risk assessments, the auditors consider internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Bar as of June 30, 2015, and the changes in its net assets and its cash flows for the year then ended in accordance with accounting principles generally accepted in the United States of America.

Report on Summarized Comparative Information

The summarized comparative information presented herein as of June 30, 2014 and for the year then ended is consistent, in all material respects, with the audited financial statements from which it was derived.

Report on Supplemental Schedules

Our audit was conducted for the purpose of forming an opinion on the financial statements as a whole. The supplemental schedules are presented for the purpose of additional analysis and are not a required part of the financial statements. These schedules are the responsibility of the Bar's management and are derived from and relate directly to the underlying accounting and other records used to prepare the financial statements. Such schedules have been subjected to the auditing procedures applied in our audit of the financial statements and certain additional procedures, including comparing and reconciling such schedules directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, in accordance with auditing standards generally accepted in the United States of America. In our opinion, such schedules are fairly stated in all material respects in relation to the financial statements as a whole.

Tanner LLC

October 9, 2015

UTAH STATE BAR
Statement of Financial Position

As of June 30, 2015
(With Summarized Financial Information as of June 30, 2014)

	Bar Operations	Bar Sections	Client Security Fund	Mandatory Continuing Legal Education Fund	Total 2015	Total 2014
Assets						
Current assets:						
Cash and cash equivalents	\$ 2,778,163	\$ 12,429	\$ 22,557	\$ 42,308	\$ 2,855,457	\$ 2,886,142
Investments, at fair value	2,491,519	355,627	319,197	467,469	3,633,812	3,298,168
Prepaid expenses	82,458	-	-	-	82,458	125,315
Receivables	1,335	-	-	125	1,460	4,223
Total current assets	5,353,475	368,056	341,754	509,902	6,573,187	6,313,848
Property and equipment, net	1,851,736	-	-	2,770	1,854,506	1,827,382
Total assets	\$ 7,205,211	\$ 368,056	\$ 341,754	\$ 512,672	\$ 8,427,693	\$ 8,141,230
Liabilities and Net Assets						
Current liabilities:						
Accounts payable and accrued liabilities	\$ 615,196	\$ 4,041	\$ -	\$ -	\$ 619,237	\$ 630,264
Deferred revenue	2,115,832	-	-	-	2,115,832	2,362,522
Current portion of Client Security Fund claims payable	-	-	75,000	-	75,000	75,000
Current portion of capital lease obligation	3,473	-	-	-	3,473	3,069
Interfund advance	(112,483)	90,022	-	22,461	-	-
Total current liabilities	2,622,018	94,063	75,000	22,461	2,813,542	3,070,855
Client Security Fund claims payable, net of current portion	-	-	50,000	-	50,000	125,000
Capital lease obligation, net of current portion	2,905	-	-	-	2,905	6,377
Total liabilities	2,624,923	94,063	125,000	22,461	2,866,447	3,202,232
Commitments and contingencies (Notes 5, 7, and 8)						
Net assets - unrestricted:						
Undesignated	4,580,288	-	-	-	4,580,288	4,063,712
Designated	-	273,993	216,754	490,211	980,958	875,286
Total net assets	4,580,288	273,993	216,754	490,211	5,561,246	4,938,998
Total liabilities and net assets	\$ 7,205,211	\$ 368,056	\$ 341,754	\$ 512,672	\$ 8,427,693	\$ 8,141,230

See accompanying notes to financial statements.

UTAH STATE BAR
Statement of Activities

For the Year Ended June 30, 2015
(With Summarized Financial Information For the Year Ended June 30, 2014)

	Bar Operations	Bar Sections	Client Security Fund	Mandatory Continuing Legal Education Fund	Total 2015	Total 2014
Revenues:						
Licensing	\$ 4,076,078	\$ -	\$ -	\$ -	\$ 4,076,078	\$ 3,962,013
Admissions	492,362	-	-	-	492,362	475,312
New lawyer training program	97,860	-	-	-	97,860	96,405
Office of Professional Conduct	12,682	-	-	-	12,682	11,895
Continuing legal education and conferences	987,092	-	-	-	987,092	910,530
Member services	167,927	-	-	-	167,927	157,488
Public services	20,674	-	-	-	20,674	16,649
Bar sections	-	355,011	-	-	355,011	357,400
Client Security Fund	-	-	194,912	-	194,912	172,202
Mandatory Continuing Legal Education Fund	-	-	-	257,639	257,639	322,077
Bar operations	13,905	-	-	-	13,905	7,460
Facilities	123,803	(75,051)	-	(7,783)	40,969	47,762
In-kind and interfund	36,261	75,051	-	7,783	119,095	137,432
Net investment income	33,057	-	1,090	1,963	36,110	49,565
Total revenues	\$ 6,061,701	\$ 355,011	\$ 196,002	\$ 259,602	\$ 6,872,316	\$ 6,724,190

(continued)

See accompanying notes to financial statements.

UTAH STATE BAR
Statement of Activities
For the Year Ended June 30, 2015
(With Summarized Financial Information For the Year Ended June 30, 2014)
(Continued)

	Bar Operations	Bar Sections	Client Security Fund	Mandatory Continuing Legal Education Fund	Total 2015	Total 2014
Expenses:						
Licensing	\$ 142,172	\$ -	\$ -	\$ -	\$ 142,172	\$ 165,560
Admissions	459,105	-	-	-	459,105	455,158
New lawyer training program	62,482	-	-	-	62,482	101,165
Office of Professional Conduct	1,199,246	-	-	-	1,199,246	1,163,459
Continuing legal education and conferences	901,329	-	-	-	901,329	877,918
Member services	531,354	-	-	-	531,354	575,781
Public services	377,391	-	-	-	377,391	346,406
Bar sections	-	341,942	-	-	341,942	302,293
Client Security Fund	-	-	40,899	-	40,899	73,422
Mandatory Continuing Legal Education Fund	-	-	-	239,268	239,268	242,100
Bar operations	1,341,716	-	-	-	1,341,716	1,287,114
Facilities	494,069	-	-	-	494,069	495,932
In-kind and interfund	36,261	75,051	-	7,783	119,095	137,432
Total expenses	5,545,125	416,993	40,899	247,051	6,250,068	6,223,740
Increase (decrease) in net assets	516,576	(61,982)	155,103	12,551	622,248	500,450
Net assets:						
Beginning of the year	4,063,712	335,975	61,651	477,660	4,938,998	4,438,548
End of the year	\$ 4,580,288	\$ 273,993	\$ 216,754	\$ 490,211	\$ 5,561,246	\$ 4,938,998

See accompanying notes to financial statements.

UTAH STATE BAR
Statement of Cash Flows

For the Year Ended June 30, 2015
(With Summarized Financial Information For the Year Ended June 30, 2014)

	Bar Operations	Bar Sections	Client Security Fund	Mandatory Continuing Legal Education Fund	Total 2015	Total 2014
Cash flows from operating activities:						
Change in net assets	\$ 516,576	\$ (61,982)	\$ 155,103	\$ 12,551	\$ 622,248	\$ 500,450
Adjustments to reconcile change in net assets to net cash provided by (used in) operating activities:						
Depreciation and amortization	198,011	-	-	384	198,395	130,607
Net unrealized losses on investments	35,986	-	79	45	36,110	83,240
Changes in assets and liabilities:						
Prepaid expenses	42,857	-	-	-	42,857	(19,323)
Receivables	2,763	-	-	-	2,763	(633)
Accounts payable and accrued liabilities	(11,381)	(3,531)	-	3,885	(11,027)	26,450
Deferred revenue	(95,290)	(151,400)	-	-	(246,690)	(227,008)
Client Security Fund claims payable	-	-	(75,000)	-	(75,000)	(75,000)
Net cash provided by (used in) operating activities	689,522	(216,913)	80,182	16,865	569,656	418,783
Cash flows from investing activities:						
Purchases of property and equipment	(224,114)	-	-	(1,404)	(225,518)	(806,496)
Purchases of investments	(13,159,351)	(1,057,350)	(523,787)	(803,239)	(15,543,727)	(18,644,957)
Proceeds from sale of investments and reinvested income	12,627,314	1,281,773	461,552	801,333	15,171,972	19,805,942
Net cash provided by (used in) investing activities	(756,151)	224,423	(62,235)	(3,310)	(597,273)	354,489
Cash flows from financing activities:						
Payments on capital lease obligation	(3,068)	-	-	-	(3,068)	(2,710)
Net increase (decrease) in cash and cash equivalents	(69,697)	7,510	17,947	13,555	(30,685)	770,562
Cash and cash equivalents as of beginning of the year	2,847,860	4,919	4,610	28,753	2,886,142	2,115,580
Cash and cash equivalents as of end of the year	\$ 2,778,163	\$ 12,429	\$ 22,557	\$ 42,308	\$ 2,855,457	\$ 2,886,142
Supplemental disclosures of cash flow information:						
Cash paid for interest	\$ 1,480	\$ -	\$ -	\$ -	\$ 1,480	\$ 1,480

See accompanying notes to financial statements.



June 30, 2015

1. **Description
of
Organization
and Summary
of Significant
Accounting
Policies**

Description of Organization

The Utah State Bar (the Bar) is an organization created in 1931 under the laws of the State of Utah. The Bar was created by court order on June 30, 1981 and was incorporated as a 501(c)(6) organization on June 24, 1991. All attorneys licensed under the laws of the State of Utah are considered Members of the Bar.

Basis of Presentation and Fund Accounting

The assets, liabilities and net assets of the Bar are reported using the accrual method of accounting. The undesignated fund is used for the general operations of the Bar. The designated funds are used for activities of the various Bar sections, the Client Security Fund, and the Mandatory Continuing Legal Education Fund (MCLE Fund), including overhead charges to defray the costs of administering those funds.

The financial statements include the prior-year summarized comparative information in total but not by net asset class. Such information does not include sufficient detail to constitute a presentation in conformity with accounting principles generally accepted in the United States of America (US GAAP). Accordingly, such information should be read in conjunction with the Bar's financial statements as of and for the year ended June 30, 2014, from which the summarized information was derived.

Concentrations of Risk

The Bar maintains its cash and cash equivalents in bank deposit accounts which, at times, exceed federally insured limits. As of June 30, 2015, the Bar had approximately \$2,141,034 of cash and cash equivalents that exceeded federally insured limits. To date, the Bar has not experienced a loss or lack of access to its invested cash and cash equivalents; however, no assurance can be provided that access to the Bar's invested cash and cash equivalents will not be impacted by adverse conditions in the financial markets.

Use of Estimates in Preparing Financial Statements

The preparation of financial statements in conformity with US GAAP requires management to make estimates and assumptions that affect the reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

Cash Equivalents

The Bar considers all highly liquid investments purchased with original maturities to the Bar of three months or less to be cash equivalents. As of June 30, 2015, these cash equivalents consisted of money market accounts and certificates of deposit totaling \$2,002,846.



1. Description of Organization and Summary of Significant Accounting Policies
(Continued)

Investments

Investments consist primarily of corporate bonds and certificates of deposit. Realized and unrealized gains or losses are reflected currently in the statement of activities.

Property and Equipment

Property and equipment are stated at cost less accumulated depreciation and amortization. Depreciation and amortization are calculated using the straight-line method over the estimated economic useful lives of the assets or over the related lease terms (if shorter), as follows:

Building	25 years
Building improvements	10-25 years
Office furniture, equipment and leased equipment	3-7 years
Computers and computer software	3-5 years

Expenditures for routine maintenance and repairs are charged to operating expenses as incurred. Major renewals and betterments are capitalized and depreciated over their estimated useful lives. Upon retirement or other disposition of property and equipment, the cost and accumulated depreciation are removed from the accounts and any gain or loss is recorded as income or expense in the statement of activities.

Revenue Recognition and Deferred Revenue

The Bar recognizes revenue from services and programs, conventions, bar examinations, room rental and catering and other services at the time of sale or the time at which services are provided. Licensing fees are assessed in June for the following fiscal year. All fees collected prior to the current fiscal year-end are recorded as deferred revenue. Deferred revenue is recognized as income in the year in which it is earned.

Income Taxes

On June 24, 1991, the Bar was incorporated as a 501(c)(6) organization and has received a determination letter from the Internal Revenue Service exempting the Bar from federal income taxes. Management believes that the Bar is currently designed and operates in compliance with the applicable requirements of the Internal Revenue Code and, accordingly, no provision for federal and state income taxes has been provided for in the accompanying statement of activities.

The Bar is subject to income tax at current corporate rates on net income from unrelated business activities. Income taxes on unrelated business activities have not been significant. The Bar paid no income taxes for the year ended June 30, 2015.

UTAH STATE BAR
Notes to Financial Statements
(Continued)

1. Description of Organization and Summary of Significant Accounting Policies
(Continued)

Income Taxes (continued)

A liability for uncertain tax positions is recognized in the financial statements when it is more-likely-than-not the position will not be sustained upon examination by the tax authorities. As of June 30, 2015, the Bar had no uncertain tax positions that qualified for either recognition or disclosure in the financial statements. The Bar is subject to routine audits by tax jurisdictions; however, there are currently no audits for any tax periods in progress. The Bar believes it is no longer subject to selection for examinations for fiscal years prior to 2012.

Subsequent Events

Management has evaluated events occurring subsequent to June 30, 2015 through October 9, 2015 (the date the financial statements were available to be issued) for possible disclosures or accounting impact.

2. Investments and Net Investment Income

Investments consisted of the following as of June 30, 2015:

	Amortized Cost	Net Unrealized Gains	Fair Value
Corporate bonds	\$ 780,259	\$ 36,110	\$ 816,369
Certificates of deposit	2,817,443	-	2,817,443
	<u>\$ 3,597,702</u>	<u>\$ 36,110</u>	<u>\$ 3,633,812</u>

Investment income related to cash and cash equivalents and investments for the year ended June 30, 2015, consisted of the following:

	Undesignated	Designated	Total
Net investment loss and interest	\$ (13,733)	\$ (2,064)	\$ (15,797)
Net unrealized gains	46,790	5,117	51,907
	<u>\$ 33,057</u>	<u>\$ 3,053</u>	<u>\$ 36,110</u>



UTAH STATE BAR
Notes to Financial Statements
(Continued)

3. Property and Equipment Property and equipment consisted of the following as of June 30, 2015:

Building and improvements	\$ 2,979,039
Office furniture, equipment and leased equipment	870,245
Computers and computer software	751,589
Land	<u>633,142</u>
	5,234,015
Less accumulated depreciation and amortization	<u>(3,379,509)</u>
Property and equipment, net	<u>\$ 1,854,506</u>

Depreciation and amortization expense for property and equipment totaled \$198,395 for the year ended June 30, 2015.

4. Fair Value Measurements The Bar's financial instruments include cash equivalents and investments as of June 30, 2015. Management believes that the recorded value of each financial instrument approximates its fair value.

Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. To increase the comparability of fair value measures, the following hierarchy prioritizes the inputs to valuation methodologies used to measure fair value:

Level 1	Valuations based on quoted prices for identical assets or liabilities in active markets
Level 2	Valuations based on observable inputs other than quoted prices included in Level 1, such as quoted prices for similar assets or liabilities in active markets, quoted prices for identical or similar assets and liabilities in markets that are not active, or other inputs that are observable or can be corroborated by observable market data.
Level 3	Valuations based on unobservable inputs reflecting the Bar's own assumptions, applied consistently with reasonably available assumptions made by other market participants. These valuations require significant judgment.

The Bar's cash equivalents and investments are considered Level 1 assets under the fair value hierarchy and are measured on a recurring basis. Bar management obtains valuation data for the corporate bonds and certificates of deposit from third-party sources, which determine the net asset values for the Bar's accounts using quoted market prices and reportable trades.



UTAH STATE BAR
Notes to Financial Statements
(Continued)

- 5. Lease Obligation** The Bar leases certain equipment under a capital lease obligation. The lease requires quarterly payments of \$1,029, has an imputed interest rate of 13.1%, and is secured by the equipment being leased. As of June 30, 2015, equipment held under the capital lease had a cost of approximately \$14,000 and accumulated amortization of \$9,500. As of June 30, 2015, future minimum lease payments under the capital lease were as follows:

Years Ending June 30:

2016	\$ 4,120
2017	3,089
	<u>7,209</u>
Less amount representing interest	<u>(831)</u>
	6,378
Less current portion	<u>(3,473)</u>
	<u>\$ 2,905</u>

- 6. Employee Benefit Plans** The Bar sponsors a defined contribution 401(k) plan (the Plan). Employees who have completed one year of service with the Bar and have attained the age of 21 or older are eligible to participate, and may elect to contribute a portion of their compensation, subject to Internal Revenue Code limitations, to the Plan. The Bar contributes to the Plan an amount equal to 10% of the compensation of all Plan participants. Contributions to the Plan were \$227,511 for the year ended June 30, 2015.

The Bar sponsors a Section 125 cafeteria plan. All contributions to this plan are made by the participants.

- 7. Client Security Fund** On October 30, 1983, the Bar received approval from the Utah Supreme Court to collect up to \$20 per attorney per year to accumulate a client security fund (the Fund) in the base amount of \$200,000. The Fund was created to partially indemnify the public against losses incurred as a result of lawyers' misappropriation of clients' funds. Claims against the Fund are limited to \$20,000 per claimant.

UTAH STATE BAR
Notes to Financial Statements
(Continued)

- 7. Client Security Fund** *Continued* Cases must be reviewed and approved by the Fund Committee of the Bar and also by the Board of Commissioners of the Bar before they are considered to be claims payable by the Fund. In 2012, the Fund Committee of the Bar approved various claims with respect to one attorney totaling \$425,000 to settle a significant matter related to client losses. The Fund paid \$75,000 of this settlement in fiscal 2015, with the remaining balance of \$125,000 to be paid in two installments of \$75,000 in fiscal 2016 and \$50,000 in fiscal 2017. The Fund Committee routinely reviews open matters which, in its opinion, will not have a material adverse effect on the financial position, results of activities or liquidity of the Bar.
- 8. Contingencies** The Bar may, from time to time, be subject to legal proceedings arising in the normal course of business. Management does not believe the outcome of any matters currently pending will have a material impact on the financial position, results of activities, or liquidity of the Bar.
- 9. Related Parties** The primary purpose of the Bar is to perform services on behalf of its members, which may result in related-party transactions arising through its regular activities.

SUPPLEMENTAL SCHEDULES

UTAH STATE BAR
Schedule of Continuing Legal Education and Conferences
Revenues and Expenses

For the Year Ended June 30, 2015

	Summer Convention	Fall Forum	Spring Convention	CLE Events	Total
Revenues	\$ 114,948	\$ 100,139	\$ 123,943	\$ 648,062	\$ 987,092
Expenses:					
Program	181,332	60,917	70,672	311,401	624,322
Salaries and benefits	34,014	16,943	19,090	108,989	179,036
General and administrative	18,296	8,527	12,453	106,963	146,239
Interfund facilities	(2,246)	(570)	(1,464)	(43,988)	(48,268)
Total expenses	231,396	85,817	100,751	483,365	901,329
Excess (deficiency) of revenues over expenses	\$ (116,448)	\$ 14,322	\$ 23,192	\$ 164,697	\$ 85,763

See Independent Auditors' Report.

UTAH STATE BAR
Schedule of Member Services Revenues and Expenses

For the Year Ended June 30, 2015

	Bar Journal	Member Services	Legislative	Public Education	Young Lawyers Division	Total
Revenues	\$ 136,114	\$ 27,435	\$ -	\$ -	\$ 4,378	\$ 167,927
Expenses:						
Program	27,971	142,800	59,704	4,327	50,159	284,961
Salaries and benefits	32,907	737	8,726	89,099	911	132,380
General and administrative	118,024	1,355	-	4,669	1,072	125,120
Interfund facilities	(3,920)	-	(7,187)	-	-	(11,107)
Total expenses	174,982	144,892	61,243	98,095	52,142	531,354
Deficiency of revenues over expenses	\$ (38,868)	\$ (117,457)	\$ (61,243)	\$ (98,095)	\$ (47,764)	\$ (363,427)

See Independent Auditors' Report.

UTAH STATE BAR
Schedule of Public Services Revenues and Expenses

For the Year Ended June 30, 2015

	Committees	Consumer Assistance	Access to Justice	Tuesday Night Bar	Total
Revenues	\$ 5,155	\$ -	\$ 15,519	\$ -	\$ 20,674
Expenses:					
Salaries and benefits	30,157	91,730	110,070	3,471	235,428
Program	90,803	715	24,618	31,590	147,726
General and administrative	1,692	5,697	31,797	567	39,753
Interfund facilities	(5,778)	(613)	(11,828)	(27,297)	(45,516)
Total expenses	116,874	97,529	154,657	8,331	377,391
Deficiency of revenues over expenses	\$ (111,719)	\$ (97,529)	\$ (139,138)	\$ (8,331)	\$ (356,717)

See Independent Auditors' Report.

UTAH STATE BAR
Schedule of Bar Sections Revenues and Expenses

For the Year Ended June 30, 2015

	Balance June 30, 2014	Revenues	Expenses	Balance June 30, 2015	Net Increase (Decrease)
Bar Section Funds:					
Administrative Law	\$ 6,984	\$ 1,439	\$ 3,736	\$ 4,687	\$ (2,297)
Antitrust/Unfair Competition	6,083	1,375	363	7,095	1,012
Appellate Practice	(4,865)	12,337	5,678	1,794	6,659
Banking and Finance	7,138	4,740	4,210	7,668	530
Bankruptcy	4,319	6,320	9,080	1,559	(2,760)
Business Law	12,228	2,765	16,127	(1,134)	(13,362)
Collection Law	13,183	2,958	4,445	11,696	(1,487)
Communications Law	2,307	480	152	2,635	328
Constitutional Law	3,804	3,230	2,415	4,619	815
Construction Law	(1,611)	6,195	6,967	(2,383)	(772)
Corporate Counsel	(7,654)	11,216	6,038	(2,476)	5,178
Criminal Law	12,557	7,778	15,695	4,640	(7,917)
Cyber Law	4,786	4,199	1,945	7,040	2,254
Dispute Resolution	5,340	8,302	5,744	7,898	2,558
Education Law	5,134	1,345	2,446	4,033	(1,101)
Elder Law	11,036	8,220	9,162	10,094	(942)
Environmental Law	5,574	11,556	12,456	4,674	(900)
Family Law	51,350	49,661	61,097	39,914	(11,436)
Franchise Law	(332)	2,335	1,821	182	514
Governmental Law	27,578	4,334	8,315	23,597	(3,981)
Health Law	5,221	5,103	1,912	8,412	3,191
Intellectual Property	62,547	39,646	67,407	34,786	(27,761)
International Law	1,830	3,780	4,007	1,603	(227)
Juvenile Law	2,673	2,750	987	4,436	1,763
Labor and Employment Law	6,295	14,105	12,190	8,210	1,915
Litigation Law	19,076	45,986	55,402	9,660	(9,416)
Military Law	309	876	419	766	457
Non-profit/Charitable Law	857	3,080	3,136	801	(56)
Probate/Estate Planning	8,043	20,401	18,522	9,922	1,879
Real Property	13,724	17,832	26,064	5,492	(8,232)
Securities	31,454	7,797	10,291	28,960	(2,494)
Senior Lawyers	(141)	1,225	323	761	902
Solo, Small Firm, Rural Practice	(5,199)	7,640	4,575	(2,134)	3,065
Tax	9,213	16,800	20,466	5,547	(3,666)
Total Bar Section Funds	320,841	337,806	403,593	255,054	(65,787)
Paralegal Division	15,134	17,205	13,400	18,939	3,805
	\$ 335,975	\$ 355,011	\$ 416,993	\$ 273,993	\$ (61,982)

UTAH STATE BAR
Schedule of Mandatory Continuing Education Advisory Board

For the Year Ended June 30, 2015

Revenues:	
Compliance fees from attorneys	\$ 130,177
Continuing Legal Education (provider attendance fees)	127,462
Investment income	<u>1,963</u>
Total revenues	<u>259,602</u>
Expenses:	
Salaries, payroll taxes, and benefits	191,894
Office overhead	41,786
Interfund facilities	7,783
Travel	4,325
Board meetings	<u>1,263</u>
Total expenses	<u>247,051</u>
Excess of revenues over expenses	<u>\$ 12,551</u>

UTAH STATE BAR
Schedule of Facilities Revenues and Expenses

For the Year Ended June 30, 2015

Revenues:	
Outside parties	\$ 40,969
In-kind and interfund revenues:	
Interdepartmental charges	154,767
Sections	75,051
Utah Dispute Resolution and other in-kind	34,326
MCLE	7,783
Total in-kind and interfund revenues	271,927
Total revenues	312,896
Expenses:	
Building overhead	210,042
Food, beverage and AV costs	150,927
Salaries and benefits	120,169
General and administrative	12,931
	494,069
In-kind expenses	36,261
Total expenses	530,330
Deficiency of revenues over expenses	\$ (217,434)

TAB
8

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

SEPTEMBER 18, 2015

S.J. QUINNEY COLLEGE OF LAW

- In Attendance:** President Angelina Tsu, President-elect Rob Rice; Commissioners:, H. Dickson Burton, Kate Conyers, Kenyon Dove, Mary Kay Griffin, Susanne Gustin, Liisa Hancock, John Lund, Michelle Mumford, Herm Olsen and Katie Woods.
- Ex-Officio Members:** Nate Alder, Dean Robert Adler, James D. Gilson, Melinda Bowen, Susan Motschiedler, Margaret Plane, and Chris Wharton.
- Not in Attendance:** Steven Burt, Heather Farnsworth and Ex-Officio Members: Heather Allen, Dean James Rasband, and Lawrence Stevens.
- Also in Attendance:** Executive Director John C. Baldwin, Assistant Executive Director Richard Dibblee, General Counsel Elizabeth A. Wright, and Sean Toomey, Utah State Bar Communications Director.

Minutes: 9:15 a.m. start

1. President's Report:

1.2 Fall Forum November 19-20. There will be anti-bias training in conjunction with the Fall Forum. People should email Angelina with the names of people who would be interested in attending the training.

1.3 LLLT Task Force Report: Tim Shea. Tim reported that the task force members were appointed by the Supreme Court. Justice Himonas chairs the Task Force. The Task Force has a public webpage and all meetings are open to the public in compliance with the Public Meetings Act. There are two sub-committees. One is looking into LLLT and other strategies and one is looking into Document Preparers. Tim briefly explained what other jurisdictions are doing and the issues raised by each type of legal service. One issue is the prohibition against using lawyer licensing fees to regulate non-lawyers. National Court Management Expert Tom Clarke has written a white paper for the task force that Tim will share with the Commission as soon as it is available.

1.4 AAA Task Force Report, Rob Rice: Rob reminded the Commission of the Task Force's goal of increasing access to lawyers and reported on four of the Task Force's Committees. **(1) Legislative Sub-Committee** (Michelle Mumford and Susanne Gustin) is working on increasing the small claims cap from \$10,000 to \$20,000. Representative Brain King in the House and Senator Todd Weiler in the Senate are onboard and have

legislation. The hurdle will be to make sure it is not lost in the volume of bills. **(2) Community Layering Committee** Charles Stormont is developing a Domestic Document Clinic at which paid lawyers will meet individuals at the Bar to review documents the individuals prepared themselves or through OCAP. It will be staffed by lawyers from Open Legal Services. **(3) Communications Committee** is working on a lawyer referral service and the PR necessary to spread the word about the referral or directory. This is a large project that will take time. **(4) Non-Profit Legal Services Committee** aka Open Legal Services Effort Committee is considering ways the Bar can support this method for delivery of legal services.

1.6 Appointment of Commissioner to Modest Means Committee. Jim Gilson is stepping down as Commission Liaison to the Modest Means Committee. Commissioners interested in serving as the liaison to the Committee should email Angelina.

1.7 National Association of Women Judges Conference Participation. Because the Utah State Bar donated to the NAWJ Conference that will be held here in Salt Lake City on October 8-11, 2015, Commissioners will be able to attend some of the events. Kate Conyers will send an email with the schedule and a list of events that are open to Commissioners.

2. Discussion Items:

2.1 Futures Commission Follow Up: John Lund and Nate Alder. John and Nate provided two handouts and a PowerPoint presentation listing the recommendations of the Futures Commission, names of Bar staff who can provide support, outside partnerships, what needs to be done and a timeline for completion. Commissioners volunteered to investigate and begin implementing the different recommendations.

2.2 OPC Review and Recommendation to Court on ABA Consultation. Tim Shea reported that the Committee's report is still forthcoming but would likely recommend rule changes for OPC to clarify its relationship vis a vis the Commission and regarding the release of records. The Commission then discussed the logistics of having the ABA Standing Committee on Professional Discipline provide a consultation regarding the OPC. Only the Court can recommend and pay for the consultation. The Commission discussed whether the rule changes regarding OPC's release of records needs to be made before the consultation could take place. The Commission decided to wait for Review Committee report before taking action.

3.

Action Items

3.2 Bar Review. Angelina Tsu proposed that the Bar provide \$2000 for four social events in Salt Lake City at which lawyers could network and learn about what the Bar does and how they can become involved with the Bar. Angelina would also seek sponsors to cover some of the costs for food and drink. The Commission discussed the need to also provide these opportunities for lawyers outside of Salt Lake City. Angelina pointed out the very low attendance at prior social outreach events outside of Salt Lake City. The Commission

discussed the different strategies required for successful networking events outside of Salt Lake City such as hosting daytime events. **John Lund moved to approve \$4000 for “Bar Review” events. Four events will take place in Salt Lake City and four will take place outside of Salt Lake City. Herm Olsen seconded the motion which passed unopposed.**

3.3 Technology CLE Series: John Lund and Dickson Burton. John and Dickson were tasked with coming up with a series of CLEs that would help solo and small firm practitioners learn about and use technology in their practices in order to be more entrepreneurial and profitable. John and Dickson recommend the creation of a Committee called “Technology and Innovation in the Law” or TAIL. John and Dickson will begin working on a charter for the new TAIL Committee.

3.4 Veteran’s Mobile Clinic. Kate Conyers. Kate was tasked with investigating whether the Bar could operate a mobile veteran’s legal clinic. Kate reported that the YLD currently operates a veteran’s legal clinic at the VA Hospital in Salt Lake City. There are numerous challenges to operating clinic in other parts of the state including available locations and reliable volunteers. Meanwhile, the legal clinic in Salt Lake could use improvements in volunteers, screenings, structure and procedures. Kate recommended that the Bar improve the current legal clinic before starting a mobile clinic. Also, other options for mobile outreach require more investigation and outreach. Options include a referral system, SKYPE meetings or phone conferences. Kate will continue her investigation and report in 4 months.

3.5 Expungement Seminar: Susanne Gustin, Kate Conyers and Jim Gilson. Susanne reported that a one-day, one-stop expungement clinic is not feasible in Utah because of the applicable legal requirements that victims be notified and have an opportunity to object and the time needed to obtain required documents and finger prints. Susanne reported on the successes and failures of other efforts to help individuals expunge criminal records. Commissioners discussed the need for changes to some of the laws that make expungement so burdensome. The final recommendation was to put Bar resources towards bolstering the U of U Law School’s expungement programs. Rob Rice suggested that assistance with the U’s clinic would be an appropriate Signature Project for the Pro Bono Commission.

3.7 Leadership Academy: Liisa Hancock. Liisa proposed that the Bar create a Leadership Academy similar to the one the ABA conducts. Four other states also conduct similar programs. The purpose of the Leadership Academy would be to foster future Bar leaders. The program would be limited to 10-15 lawyers who would have to apply. Three positions would be reserved for lawyers who practice outside of Salt Lake City. There would be a retreat and eight leadership sessions. The cost would be \$20,000 which includes \$8,000 for the initial retreat. A Board of Trustees composed of seven people would run the program.

Various Commissioners raised several concerns about the proposed program including the disparity between the cost and the number of people who would benefit. It was noted

that we foster leaders through the YLD including sending individuals to conferences and other programs. It was decided that Commissioners should email Liisa with their questions and/or concerns and she will address them at the next meeting.

4.

Information Items

4.1 Constitution Day Report: Sean Toomey. Sean reported that Bar volunteers visited 170 classrooms this year. Next year Sean hopes to have the Commission revamp the curriculum.

HANDOUTS DISTRIBUTED AT MEETING:

1. 2015 Fall Forum brochure.
2. Two Spreadsheets with Futures Commission program recommendations

ADJOURNED: 12:10 p.m.

CONSENT AGENDA:

1. Approve Minutes of August 28-29, 2015 Commission Meeting.

TAB
9

UTAH STATE BAR
Budget and Finance Committee
FINANCIAL STATEMENT HIGHLIGHTS
September 30, 2015

<u>Key areas</u>		-YTD Revenues, net of related expenses-		Commentary	
		Actual	Budget		
1.	<u>Licensing:</u>	Net	3,934,450	3,888,282	The Bar has 145 fewer active attorneys than a year ago, all In Under 3 years Over 300 attorneys suspended Aug 31, similar to 2014
2.	<u>Admissions:</u>	Net	(69,420)	(136,927)	Admissions revenue up by \$69k
4.	<u>Investment Income:</u>		7,541	5,764	Average return is under .7% per year. Invested funds over \$3 million monthend
5.	<u>Property Management:</u>	Revenue Expense Net	55,485 (114,266) (58,781)	57,772 (149,962) (92,190)	Bar provides over 90% of LJC usage Postage, mail costs below budget; copy
6.	<u>CLE:</u>	Revenue Expense Net	97,184 (88,448) 8,736	69,049 (61,101) 7,948	More CLE events held at LJC Costs have risen as more events held
7.	<u>Summer Convention:</u>	Revenue Expense Net	191,663 (204,853) (13,190)	140,505 (245,645) (105,140)	Paid convention attendees up 36% to budget Improved cost control for 2015 Sun Valley event Nearly 100k turnaround in convention net
8.	<u>Fall Forum:</u>	Net	15,752	9,986	Early registrations up; 80% of registrations yet to come
9.	<u>Spring Convention:</u>				Spring convention activity still de minimus
10	<u>Bar Journal</u> 13	Revenue Expense Net	57,638 (49,821) 7,817	43,179 (48,236) (5,057)	Journal ads space and rates are up Journal expense holding steady
11	<u>Other Member Services</u> 15 16 20 22 23	Revenue Expense Net	760 (101,230) (100,470)	(81) (148,927) (149,008)	Spending down primarily in Legislative costs
12	<u>Public Services</u> 14 17 18 19	Revenue Expense Net	4,610 (160,408) (155,798)	4,582 (156,610) (152,028)	Both revenues and cost in line with budget
13	<u>Total Revenue and Expenses - Cash Basis:</u>	Revenue Expense Net	4,537,394 (1,585,288) 2,952,106	4,329,337 (1,671,352) 2,657,985	Higher licenseing, admissions and Summer convention revenues vs budget Lower ppty mgmt, summer convention and legislative costs

UTAH STATE BAR
Budget and Finance Committee
FINANCIAL STATEMENT HIGHLIGHTS
September 30, 2015

OTHER COMMENTS

Board Designated Reserves:

In consultation with Bar management and the Budget and Finance Committee, the Commission targeted the following reserve amounts:

Operations Reserve (4 months' operations)	\$	2,018,000
Capital Replacement Reserve (equipment)		200,000
Capital Replacement Reserve (fixed amount for building)		650,000
Total	\$	2,868,000.00
 Cash and investments at monthend	 \$	 6,051,569

Utah State Bar
Summary Income Statement
September 30, 2015

	Year to Date			YTD %	2015/16
	Actual	Budget	Variance Fav/(Unfav)	of Ttl Bdgt	Total Budget
Revenue					
Licensing	\$ 3,975,071	\$ 3,941,393	\$ 33,678	96.1	\$4,137,400
Admissions	84,370	15,223	69,147	19.2	439,300
NLTP	14,400	21,815	(7,415)	15.9	90,300
Mgt - Service	7,184	8,111	(927)	34.4	20,900
In Kind Revenue	124	739	(615)	5.2	2,400
Mgt - Interest & Gain	7,541	5,764	1,777	44.1	17,100
Property Mgt	55,485	57,772	(2,287)	17.8	312,152
OPC	1,156	136	1,020	9.9	11,700
CMIS/Internet	-	100	(100)	-	500
CLE	97,184	69,049	28,135	17.9	543,100
Summer Convention	191,663	140,505	51,158	121.8	157,400
Fall Forum	38,048	21,050	16,998	21.5	176,750
Spring Convention	2,150	-	2,150	1.7	124,300
Bar Journal	57,638	43,179	14,459	38.7	149,100
Committees	10	480	(470)	2.1	480
Member Benefits	760	(81)	841	24.5	3,100
Section Support	-	-	-	-	76,621
Access to Justice	4,600	4,102	498	28.8	16,000
Commission/Sp Proj	10	-	10	0.1	7,300
Young Lawyers Division	-	-	-	-	100
Total Revenue	\$ 4,537,394	\$ 4,329,337	\$ 208,057	72.2	\$6,286,003
Expenses			(Fav)/Unfav		
Licensing	40,621	53,111	(12,490)	33.7	120,653
Admissions	153,790	152,150	1,640	33.6	457,985
NLTP	17,750	15,531	2,219	23.7	74,845
Bar Mgt	183,312	189,784	(6,472)	26.3	696,249
Property Mgt	114,266	149,962	(35,696)	19.6	582,642
OPC	325,161	316,398	8,763	25.9	1,253,170
General Counsel	50,514	59,116	(8,602)	19.6	257,990
Computer/MIS/Internet	40,269	43,082	(2,813)	19.4	207,053
CLE	88,448	61,101	27,347	17.5	506,224
Summer Convention	204,853	245,645	(40,792)	76.8	266,758
Fall Forum	22,296	11,064	11,232	12.7	176,114
Spring Convention	4,666	3,211	1,455	4.1	114,878
Bar Journal	49,821	48,236	1,585	27.7	180,104
Committees	76,667	79,082	(2,415)	58.0	132,226
Member Benefits	42,377	36,811	5,566	28.7	147,546
Section Support	21,291	20,262	1,029	27.8	76,621
Consumer Assistance	26,931	24,026	2,905	22.0	122,449
Access to Justice	48,411	43,574	4,837	27.1	178,919
Tuesday Night Bar	8,399	9,928	(1,529)	22.8	36,810
Legislative	-	51,974	(51,974)	-	73,074
Commission/Sp. Proj	82,185	68,875	13,310	48.8	168,336
Public Education	32,902	24,520	8,382	19.5	168,346
Young Lawyers Division	4,660	15,360	(10,700)	8.3	56,100
Total Expenses	\$ 1,639,590	\$ 1,722,803	\$ (83,213)	27.1	\$6,055,092
Net Revenue/(Expense)	\$ 2,897,804	\$ 2,606,534	\$ 291,270		\$ 230,911
Add: Depreciation	54,302	51,451	2,851		165,458
Cash Increase/(Decrease) from Operations	\$ 2,952,106	\$ 2,657,985	\$ 294,121		\$ 396,369
Other Uses of Cash					
Change in Assets/Liabilities	(2,133,479)	(2,133,479)	-		
Capital Expenditures	36,739	125,000	(88,261)		125,000
Net Change in Cash	781,888	399,506	382,382		271,369
Beginning Cash	5,269,681				
Ending Cash	\$ 6,051,569				

**UTAH STATE BAR
OFFICE OF PROFESSIONAL CONDUCT**

**ANNUAL REPORT
August 2015**

INTRODUCTION

This report on the Office of Professional Conduct (“OPC”) will focus on six areas: (I) staff composition; (II) attorney misconduct case process and procedure; (III) statistics for July 1, 2014 to June 30, 2015 (“year 2014-2015”); (IV) progress and goals on cases; (V) the Consumer Assistance Program (“CAP”);^A (VI) other items for consideration; and (VII) goals for July 1, 2015 to June 30, 2016 (“year 2015-2016”).

I. STAFF COMPOSITION

The staff for year 2014-2015 consisted of 10 full-time employees and one part time paralegal. These 10 full-time employees include Senior Counsel, a Deputy Senior Counsel, four Assistant Counsel, three Paralegals, and one Intake Secretary.

II. ATTORNEY MISCONDUCT CASE PROCESS AND PROCEDURE

A) Rules

The Rules of Lawyer Discipline and Disability (“RLDD”) are in Chapter 14, Article 5, of the Utah Supreme Court Rules of Professional Practice. The RLDD are the authority for the attorney discipline process and procedure. Rule 14-504 of the RLDD is the overall authority for the OPC and Senior Counsel as head of the OPC.

B) Ethics and Discipline Committee

Pursuant to Rule 14-503 of the RLDD, 27 volunteer attorneys and eight volunteer non-attorneys are appointed by the Utah Supreme Court to serve on an administrative body called the Ethics and Discipline Committee (“Committee”). The Committee’s function is to consider attorney discipline cases that are appropriately referred to it under the RLDD.

^A CAP is a program at the Utah Bar separate from the OPC and manned by a part-time attorney to handle minor disputes between consumers (i.e., clients) and attorneys.

The Utah Supreme Court appoints a Committee Chair and two Committee Vice-Chairs from the 27 attorneys. The Committee Chair is responsible for the oversight of the Committee and the Committee Vice-Chairs assist the Committee Chair in this task. The remaining 24 attorneys and eight non-attorneys do their main work in subcommittees called Screening Panels. The Utah Supreme Court appoints a Chair and a Vice-Chair to each Screening Panel. The year 2014-2015 composition of the Committee was as follows:

Terrie T. McIntosh, (Attorney at Law) Chair, Ethics and Discipline Committee

Laura S. Scott, (Parsons, Behle & Latimer) Vice Chair, Ethics and Discipline Committee

Catherine L. Brabson, (Salt Lake City Attorney's Office) Vice Chair, Ethics and Discipline Committee

Panel A

Jill M. Pohlman, Stoel Rives LLP, Chair

Ellen Maycock, Kruse Landa, Maycock & Ricks, Vice Chair

Mark James, Hatch James & Dodge

Duane Gillman, Durham Jones & Pinegar

Heidi E.C. Leithead, Parr, Brown, Gee & Loveless

Richard G. Hamp, Salt Lake County District Attorney's Office

Bruce Landesman, Public Member

Stephen E. Parks, Public Member

Panel B

Michael McCarthy, Parsons Behle & Latimer, Chair

P. Matthew Muir, Miller Guymon, Vice-Chair

Jonathan Pappasideris, Salt Lake City Corporation

Kim Cordova, Brass & Cordova

Gary N. Anderson, Hillyard, Anderson & Olsen

Rebecca S. Parr, Utah Attorney General's Office

Dan Sorensen, Public Member

Suzanne Potts, Public Member

Panel C

Bryan J. Pattison, Durham Jones & Pinegar, Chair

Corbin Gordon, Attorney at Law, Vice-Chair

Eric A. Mittelstadt, Deputy Director, Utah Legal Services

Nanci S. Bockelie, Bockelie Law Office, L.C.

Randall L. Jeffs, Jeffs & Jeffs, P.C.
Rosemary J. Beless, Fabian & Clendenin
Linda Blake, Public Member
Alexis Cairo, Public Member

Panel D

Colin Winchester, Judicial Conduct Commission, Chair
Laura K. Thompson, Utah Attorney General's Office, Vice-Chair
Romaine C. Marshall, Holland & Hart, LLP
Elizabeth Whitney, Attorney at Law
Trystan B. Smith, Trystan Smith & Associates
J. Elizabeth Haws, Salt Lake City Corp.
Fred Fairclough, Public Member
Nancy Haanstad, Public Member

The majority of Screening Panel work is done by conducting hearings. The Screening Panel work must be presided over by either the Screening Panel Chair or the Screening Panel Vice-Chair, and must have a quorum consisting of two attorneys and one non-attorney.

The OPC has the duty to be the secretary of the Committee and handle the Committee's administrative affairs. These OPC duties include, among other responsibilities, the scheduling of the hearings of the Committee and sending notices to the participants of these hearings.

C) How the OPC Addresses Information That Comes to Its Attention

Specifically addressing the processing of cases, the pertinent provisions of Rule 14-504(b) of the RLDD state that Senior Counsel and the OPC have the power and duty to:

- (1) Screen all information coming to the attention of the OPC to determine whether it is within the jurisdiction of the OPC in that it relates to misconduct by a lawyer or to the incapacity of a lawyer;
- (2) Investigate all information coming to the attention of the Office which, if true, would be grounds for discipline or transfer to disability status and investigate all facts pertaining to petitions for reinstatement or readmission;

(3) For each matter not covered in Rule 14-510 [of the RLDD] brought to the attention of the OPC:

- (A) dismiss;
- (B) decline to prosecute;
- (C) refer non-frivolous and substantial informal complaints to the Committee for hearing; or
- (D) petition for transfer to disability status;

(4) Prosecute before the screening panels, the district courts and the Supreme Court all disciplinary cases and proceedings for transfer to or from disability status.

Information comes to the OPC's attention in the form of notarized/verified and non-notarized complaints. Notarized/verified complaints are official informal complaints ("informal complaints") within the meaning of Rule 14-510(a)(2) and, therefore, are processed pursuant to Rule 14-504 and Rule 14-510 of the RLDD. By contrast, non-notarized complaints are not official informal complaints, and are usually submitted to the OPC in the form of a Request for Assistance. The Request for Assistance form is able to be submitted to the Bar online. They are processed pursuant to Rule 14-504 of the RLDD. For purposes of this report, all non-notarized complaints will hereinafter be referred to as Requests for Assistance. The OPC reviews Requests for Assistance in coordination with CAP.

Additionally, pursuant to Rule 14-504(b)(2) and Rule 14-510(a)(1) of the RLDD, the OPC can start an attorney misconduct investigation or complaint on its own initiative, based upon information that comes to its attention. The most common circumstance where this happens is when the OPC reviews information that has been disseminated through the media or is part of a published court case. The OPC categorizes these cases as Media/Court. In these cases, the OPC usually sends the attorney a notice of the OPC complaint with the notarized signature of Senior Counsel.

Under Rule 14-510(a)(2), the OPC complaint is not required to be verified and attested to.

1) **Central Intake System**

Process

The OPC's Central Intake System is staffed by three attorneys who are assigned to review all initial information received (Requests for Assistance and informal complaints) to determine whether the matter should be appropriately closed by a declination to prosecute or a dismissal, or whether the matter should be processed further for referral to a Screening Panel. These decisions are made jointly by the intake attorneys and the other staff attorneys at weekly case status meetings.

As part of this system, at the weekly attorney staff meetings the OPC reviews all written Requests for Assistance that it receives, or that are made directly to CAP. Prior to opening a case, the OPC has a CAP review process where it determines whether the Request for Assistance is appropriate to be handled through CAP (i.e., minor attorney concerns that most likely do not rise to the level of Rule of Professional Conduct violations or matters that should be addressed in another forum). Within those parameters, Requests for Assistance are sent to CAP and there is no need for OPC to review the case further. In appropriate cases (matters that likely rise to the level of Rules of Professional Conduct violations; or matters involving attorneys who are already under investigation by the OPC), the OPC notifies the Complainant to resubmit their Request for Assistance with notarization and verification or OPC notarizes the Request for Assistance to open an OPC informal complaint.

2) Investigations

Initial Review

All reviews of all informal complaints and the decisions associated with these reviews are also made jointly by the OPC attorneys at weekly staff meetings. The informal complaint is reviewed for jurisdiction, merit and timeliness. Looking at the “four corners” of the informal complaint, if the OPC determines it does not have jurisdiction, if the informal complaint fails to state a claim, if the informal complaint is beyond the statute of limitations, or if the case lacks merit in that the alleged conduct, even if true is not an ethical violation, the case is dismissed. In these types of dismissal cases, there is no need to contact the attorney for information. Both the Complainant and the attorney receive a dismissal letter, and a copy of the informal complaint is sent to the attorney.

Preliminary Investigation

Assuming that the OPC does not dismiss an informal complaint based on jurisdiction, merit or timeliness as described above, the OPC conducts a preliminary investigation. The preliminary investigation is to ascertain whether the informal complaint is sufficiently clear as to the allegations. If it is not, the OPC will seek additional facts from the Complainant. Thereafter, the OPC will usually proceed to obtain an informal response from the Respondent.

Settlement

At any point during the investigation, the OPC is willing to conduct settlement discussions with the attorney.

Notice of Informal Complaint

After the preliminary investigation and the request for informal responses, if the OPC determines that a formal response is needed from the attorney to reach an appropriate resolution of the informal complaint in accordance with the RLDD, including the possibility of a Screening Panel hearing, the OPC will serve on the attorney a Notice of Informal Complaint ("NOIC"). The NOIC will have attached a true copy of the signed informal complaint and any additional information that the OPC has received from the Complainant. The NOIC will also identify with particularity the possible violations of the Rules of Professional Conduct raised by the informal complaint as preliminarily determined by the OPC. The attorney has 20 days after service of the NOIC to file with the OPC a written and signed answer setting forth in full an explanation of the facts surrounding the informal complaint, together with all defenses and responses to the claims of possible misconduct.

The OPC sends the Complainant a copy of the attorney's response to the NOIC and, in most cases, continues its investigation by obtaining a reply from the Complainant to the attorney's response. Further, where necessary and appropriate to ascertain the facts necessary to assess the charges, the OPC will seek additional responses and/or contact witnesses. The OPC always examines all documents submitted by all participants. Upon completion of the investigation as outlined above, the OPC determines whether the informal complaint sets forth facts which by their very nature should be brought before a Screening Panel or if good cause otherwise exists to bring the matter before a Screening Panel. These are "non-frivolous" and "substantial" informal complaints within the meaning of RLDD 14-504(b)(3) and are required to be presented to Screening Panels consistent with RLDD 14-510(a)(5).

Dismissal/Declination to Prosecute

If upon completion of this investigation the OPC determines that the case is not substantial or is frivolous (i.e., the factual allegations made by the Complainant that can be proven do not constitute a violation of the Rules of Professional Conduct or the evidence is insufficient to establish probable cause that the attorney violated the Rules of Professional Conduct), the OPC dismisses the informal complaint consistent with RLDD 14-510(a)(7). Additionally, as part of its dismissal authority, consistent with the language in Rule 14-510(a)(7) of the RLDD, the OPC can determine that an informal complaint is barred by the statute of limitations, or is more adequately addressed in another forum, or the OPC can decline to prosecute an informal complaint.

The OPC does not arbitrarily decide to decline to prosecute a case. Occasionally, due to the nature of a case (i.e., the remedy sought by a Complainant; ongoing proceedings and the possible disruption of those proceedings that a Bar disciplinary case could have; the OPC resources needed to process a case compared to the OPC resources needed if the matters are first addressed elsewhere), it is in everyone's best interests to resolve the disciplinary matter by declining to prosecute the case. Generally, the OPC standards for declining to prosecute cases are as follows:

- The OPC may decline to prosecute cases where there is a question as to the nexus between the allegations and the attorney's practice.
- The OPC may decline to prosecute cases where the attorney has already been disciplined in an attorney discipline matter for similar misconduct committed during the same period. In these cases, it is unlikely the misconduct will result in discipline greater than what has already been imposed in an attorney discipline matter.

- The OPC may decline to prosecute cases where the attorney has taken immediate action to remedy the alleged misconduct and that remedy has likely negated a violation of the Rules of Professional Conduct.
- The OPC may decline to prosecute a case by a referral to the Professionalism Counseling Board.^B

It should be noted that if the OPC declines to prosecute a case and a court subsequently makes findings that could be the basis for a finding of misconduct under the Rules of Professional Conduct, the OPC may re-open the case and address the findings.

3) **Diversions**

Diversion is an alternative to discipline that is entered into by agreement in attorney discipline cases. Pursuant to Rule 14-533 of the RLDD, the Utah Supreme Court created a Diversion Committee; if the attorney consents to a Diversion Agreement that is subsequently approved by the Diversion Committee, either a Screening Panel or the OPC may dismiss cases involving minor violations of the Rules of Professional Conduct. The specific types of cases that are not appropriate for diversion are: when the attorney is accused of misappropriating client funds; the attorney's behavior will, or is likely to, result in substantial prejudice to a client or other person absent adequate provisions for restitution; the attorney has previously been sanctioned in the immediately preceding three years; the current misconduct is of the same type for which the attorney has previously been sanctioned; the misconduct involved dishonesty, deceit, fraud, or misrepresentation; the misconduct constitutes a substantial threat of

^B The Professionalism Counseling Board is a Utah Supreme Court Committee charged with addressing violations of the Standards of Professionalism and Civility set forth in Chapter 14, Article 3 of the Utah Supreme Court Rules of Professional Practice.

irreparable harm to the public; the misconduct is a felony; a misdemeanor that reflects adversely on the respondent's honesty, trustworthiness, or fitness as a lawyer; or, the attorney has engaged in a pattern of similar misconduct.

To be eligible for diversion, the presumptive sanction must not be more severe than a public reprimand or private admonition. Further, all involved must make an assessment of whether or not participation in diversion is likely to improve the attorney's future behavior, whether aggravating or mitigating factors exist, and whether diversion already has been attempted.

The Diversion Committee has to review and approve every diversion contract. Possible program areas of diversion are as follows: Fee Arbitration; Mediation; Law Office Management Assistance; Psychological And Behavioral Counseling; Monitoring; Restitution; Continuing Legal Education Programs, including Ethics School; and, any other program or corrective course of action agreed to by the responding attorney necessary to address an attorney's conduct.

The OPC notifies an attorney of the diversion option when a case is received. A Complainant is notified of any proposed decision to refer an attorney to diversion and that Complainant may comment, however a decision to divert is not appealable by a Complainant.

Upon entrance to the diversion contract, the complaint against the attorney is stayed pending completion of diversion. If diversion is successful, the complaint is dismissed and all information regarding the terms of the diversion is kept confidential. Further, successful completion of diversion is a bar to disciplinary prosecution based on the same allegations. However, a material breach of the diversion contract is cause for terminating the agreement and subjects the lawyer to appropriate discipline as if

diversion had never been an option. As noted below, a screening panel may also refer a complaint to the Diversion Committee.

4) Informal Appeals

Pursuant to Rule 14-510(a)(7) of the RLDD, a Complainant can appeal within 15 days to the Committee Chair the OPC's dismissal, including declinations to prosecute, of any informal complaint. When the OPC dismisses an informal complaint after investigation or declines to prosecute an informal complaint, it gives notice to the Complainant of the language in Rule 14-510(a)(7) of the RLDD and allows the Complainant the opportunity to appeal the decision. If the Complainant files an appeal, the Committee Chair conducts a de novo review of the OPC file and either affirms the dismissal or directs the OPC to prepare the informal complaint for a Screening Panel hearing.

5) Screening Panel

If after investigation, the OPC determines that the allegations of the informal complaint are non-frivolous and substantial, or if the Chair or Vice-Chair of the Committee remands a case after an appeal, the OPC refers the informal complaint to a Screening Panel. The NOIC described in section 2 above is the official notice that is required for the OPC to bring the case before a Screening Panel.

A Screening Panel reviews all the facts developed by the informal complaint, the Respondent's answer, the OPC's investigation and the Screening Panel hearing. After this review, the Screening Panel may make any of the following determinations or recommendations:

- Dismissal for lack of merit;
- Dismissal with a letter of caution;

- Dismissal by referral to Diversion Committee;
- Dismissal by referral to Professionalism Counseling Board;
- Recommendation that the attorney be (privately) admonished or publicly reprimanded;
 - If the Screening Panel recommends an admonition or public reprimand, the attorney can file an exception to the recommendation with the Committee Chair.
 - The OPC can file an exception to any of the determinations or recommendations with the Committee Chair. It should be noted that the OPC filed one exception during year 2013-2014. This exception was granted during this year 2014-2015.
 - Following the Screening Panel Hearing, or upon completion of the Exceptions Hearing, if an Exception has been filed, the Committee Chair issues a formal determination and can either sustain, dismiss, or modify the Screening Panel's determination or recommendation of discipline.
 - After final written determination of the Committee Chair, where an exception had been filed, the OPC or an attorney can appeal by filing a request for review with the Supreme Court for reversal or modification. The OPC refers to these as "Administrative Appeals."
- A finding of probable cause that a Formal Complaint be filed with the District Court.
 - A determination that a Formal Complaint should be filed is not appealable.

If the Screening Panel determines that the informal complaint should be filed as a Formal Complaint, Rule 14-511 of the RLDD requires the OPC to prepare the Formal Complaint for the signature of the Chair of the Committee. Often the attorney has more than one informal complaint pending against him/her. If there is more than one informal complaint involved, an informal complaint may also pass through the Screening Panel process and can be combined into a single Formal Complaint ("Combined with Formal"). Once a Formal Complaint is filed, if an attorney has other informal complaints or a Request for Assistance filed against him/her, in lieu of the Screening Panel process

the OPC may elect to hold the cases for presentation at any Sanctions Hearing resulting from the Formal Complaint (“Hold for Sanctions”), pursuant to Rule 14-515 (a)(3) of the RLDD.

6) Formal Complaints

A Formal Complaint must be filed in the county where the alleged misconduct occurred, or in the county where the attorney resides or practices law or last practiced law. Once a Formal Complaint is filed with the District Court, if no settlement can be reached, the case is prepared for a bench trial. The bench trial is bifurcated, the first portion of which involves the adjudication of misconduct (i.e., Rules of Professional Conduct violations). If the judge does not dismiss the case and finds misconduct, the second stage of the trial is a sanctions hearing. At the end of the sanctions hearing, the judge can order sanctions and remedies that may include, but are not limited to, the following dispositions:

- | | |
|------------------------|--------------|
| ➤ Admonition | ➤ Probation |
| ➤ CLE or Ethics School | ➤ Suspension |
| ➤ Public Reprimand | ➤ Disbarment |
| ➤ Restitution | |

7) Formal Appeals

All appeals from District Court orders are directed to the Utah Supreme Court. Only the Respondent attorney or the OPC can appeal from the District Court order. The Utah Supreme Court under its constitutional authority to regulate the practice of law has the discretion to consider appeals of all attorney discipline cases.

8) Monitored Cases

Monitored cases include probation cases, disability cases and trusteeship cases. Where appropriate, probation cases require someone to docket reminder dates, and follow-up to ensure that the attorney meets the probation requirements. Disability cases

generally require someone to investigate the extent of the disability, to process the case through District Court, and to monitor the continuing status of the attorney. Trusteeship cases generally require that someone inventory the attorney's files, notify the attorney's clients of the trusteeship, and assist with distribution of client files to the clients. Additionally, trusteeship cases require someone to inventory unclaimed files, prepare a notice for publication of potential destruction of the files, prepare a request to the District Court to approve destruction of unclaimed files, and ultimately to destroy the files.

When the OPC has to undertake a trusteeship, it takes a significant amount of resources and time. It is preferable to the OPC that an attorney or firm outside of the OPC be appointed to manage trusteeships. However, since in most trusteeship cases there is little or no money for the recoupment of costs and fees, there are not always attorneys or firms that are willing and able to oversee a trusteeship.

9) Interim Suspension and Disability

Pursuant to Rules 14-518, 14-519, and 14-523 of the RLDD, if an attorney poses a substantial threat of irreparable harm to the public and has either committed a violation of the Rules of Professional Conduct or has been convicted of a crime which reflects adversely on the attorney's honesty, trustworthiness, or fitness as an attorney, or is under a disability as defined in the RLDD, the OPC may file a petition for interim suspension or disability. This is an immediate filing in the District Court, and need not go through the Screening Panel process outlined above.

10) Abeyances

Attorney discipline cases may be continued, stayed and held in abeyance when there is related pending litigation (i.e., criminal or civil) and the alleged misconduct is

substantially similar to the issues of the pending litigation. The request for abeyance can be made by either the OPC or the respondent attorney. The request is made to the Committee Chair pursuant to Rule 14-510(b)(9) if the discipline case is pending prior to the filing of a formal case ("Informal Abeyance") and the request is made to the judge pursuant to Rule 14-517(d) if the discipline case is pending in the District Court as part of a formal case ("Formal Abeyance").

11) Special Prosecutor Cases

Special Prosecutor Cases are cases filed against either OPC staff, Bar Commissioners or Committee members. Pursuant to Rule 14-517(f) of the RLDD, these cases have to be prosecuted outside of the OPC.

12) Final Dispositions

Until a case reaches a "final" disposition, the OPC considers it an active case. Final dispositions are cases where the result has been determined to be dismissal, dismissal with caution, admonition, public reprimand, disbarment, time-specified suspension, trusteeship where OPC is not the trustee, probation, resignation pending discipline, and cases in which no appeal is pending.

III. STATISTICS – Year 2014-2015

A) Case Activity

Active cases as of July 1, 2014 **461^c**

1) Cases opened

Contempt.....	1
Informal Complaint	168
Media/Court Information	8
Notice of Insufficient Funds	64
Reciprocal Discipline	6

^c Based upon an audit performed by the OPC and information taken from raw data, the number of active cases reported in the previous annual report as of 7/1/14 has been adjusted from 457 to 461.

Reinstatement	4
Request for Assistance	578
Rule 14-519	1
Special Prosecutor	4
Trusteeship	5
Total	839
Total cases processed during period:	1300

2) Informal Complaints Closed Without Discipline

By Dismissal	107
By Dismissal with Caution	5
By Dismissal with Diversion	3
By Dismissal with Professional Counseling	1
By Declination to Prosecute	3
Total	119

3) Requests for Assistance Closed Without Discipline

By Dismissal	41
By Dismissal with Caution	2
By Dismissal with Professional Counseling	3
By Declination to Prosecute	239
By Declination to Prosecute with Caution	11
By Sent to CAP	203
By Dismissal – Duplicate Complaint	1
Total	500

4) Media/Court Information Closed Without Discipline

By Declination to Prosecute	2
By Declination to Prosecute with Caution	1
Total	3

5) Special Prosecutor Closed Without Discipline

By Dismissal	3
By Dismissal with Caution	1
By Declination to Prosecute	1
Total	5

6) Reciprocal Cases Closed Without Discipline

By Declination to Prosecute	2
Total	2

7) Trusteeship Closed

By no Trusteeship Appointment	1
Total	1

8) Notice of Insufficient Funds Closed Without Discipline

By Dismissal	1
By Dismissal with Caution	1
By Declination to Prosecute	15
By Declination to Prosecute with Caution	34
Total	51

9) Orders Entered:

		<u># of attys</u>
Admonition.....	3	(3)
Public Reprimand	10	(10)
Suspension.....	6	(6)
Disbarment	1	(1)
Dismissal	2 ^D	(2)
Trusteeship Terminated.....	1	(1)
Reinstatement	4	(4)
Reinstatement Denied	2	(2)
Disability	1	(1)
Trustee Appointed (not OPC)	2	(2)
Resignation with Discipline Pending.....	2	(2)
Suspension and Probation	1	(1)
Stayed Suspension and Probation	1	(1)
Probation Terminated	1	(1)
Removed from Disability.....	1	(1)
Total	38	(38)

10) Informal Cases Combined with Formal Filings:

Informal Complaints.....	5
Requests for Assistance	4
Notice of Insufficient Funds	1
Total	10

Total case closures during period:.....729

Active cases as of July 1, 2015571
(Open cases minus closures for year 2014-2015)

11) During the Year 2014-2015 , the OPC had case activity as follows:

Diversions.....	2
Informal Abeyances	8
Informal Appeals.....	21
Informal Appeals Granted	3
Informal Appeals Denied	19
Screening Panel Exception by Respondent	5
Formal Cases Filed in Court.....	19

^D One case was dismissed when the Respondent passed away while the matter was pending before the district court. The second case was dismissed on appeal by the Utah Supreme Court (See, *In re Johnson*)

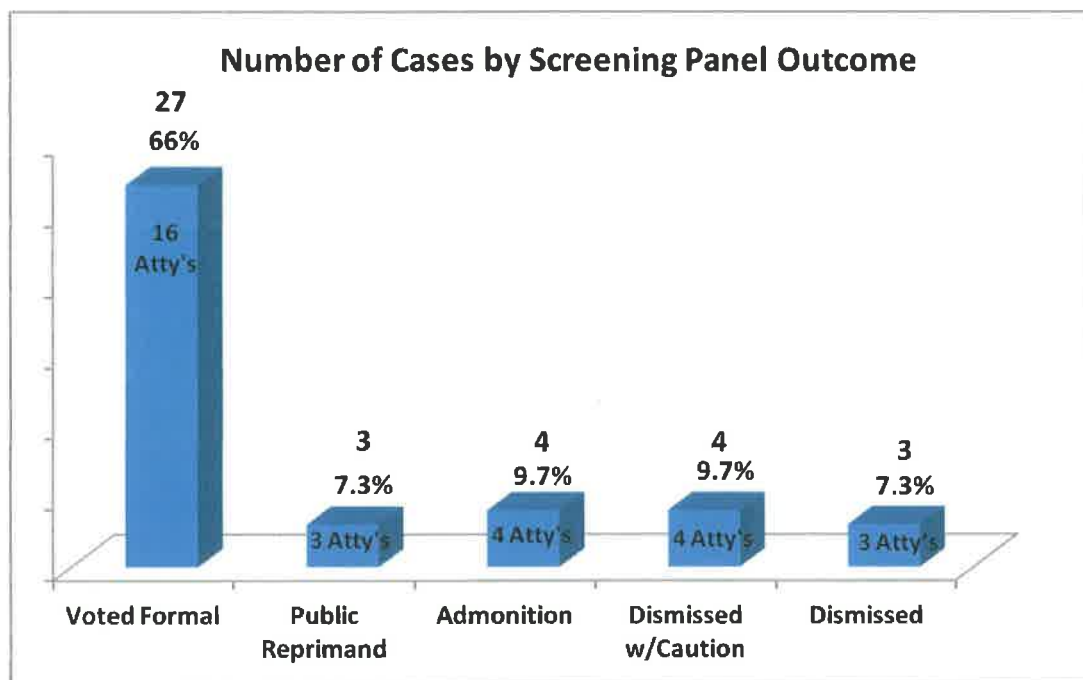
Combined with Formal Filings	10
Formal Appeals	2
Reciprocals.....	5

12) Stipulations

Stipulation to Admonition	1	(1)
Stipulation to Public Reprimand.....	3	(3)
Stipulation to Suspension	2	(2)
Stipulation to Disbarment	1	(1)
Stipulation to Resignation with Discipline Pending	2	(2)
Stipulation to Suspension/Probation.....	1	(1)
Total Stipulations	10^E	(10)

13) Screening Panel outcomes:

For the year 2014-2015, the OPC referred 41 matters, involving 30 attorneys, to the Ethics and Discipline Committee for a screening panel hearing. The outcomes of those hearings were:



14) Notice of Insufficient Funds

As part of the OPC case activity, Rule 1.15(a) of the Rules of Professional Conduct requires that attorneys maintain their trust accounts in financial institutions that

agree to report to the OPC “in the event any instrument in properly payable form is presented against an attorney trust account containing insufficient funds (NSF), irrespective of whether or not the instrument is honored.” Pursuant to this rule the OPC opened 64 NSF cases, and dismissed 51 NSF cases in year 2014-2015. The usual reasons for dismissals of NSF cases are accounting errors, bank errors, depositing errors, or drawing on the account before a deposit clears.

15) Summary

Of the 1300 cases the OPC processed in year 2014-2015, 691 or 53% were resolved by dismissals, declinations to prosecute, referral to CAP or combined with formal. Of the 1300 cases, 34 or approximately 2.6% of the cases resulted in 24 Orders of Discipline. 41.6% of the Orders of Discipline were by stipulation. Finally, approximately 3.15% of the OPC's processed cases for the year were heard by Screening Panels.

16) Beginning Year July 1, 2015 – June 30, 2016

The OPC begins year 2015-2016 with 571 active cases against 421 attorneys.

The breakdown of the various stages of the 571 cases is as follows:

Abeyance	12
At CAP	84
In CAP Review	5
Combined with Formal	15
Contempt.....	1
Diversion	2
Exception	2
Formal.....	27
Formal Appeal.....	6
Hold for Sanctions.....	17
Informal Appeal	3
Informal Complaint	209
Media/Court Information	5

^E All stipulations were post-Screening Panel at the District Court level or Supreme Court level.

Notice of Insufficient Funds	17
Reciprocal	7
Reinstatement	1
Request for Assistance	128
Rule 14-519.....	4
Special Prosecutor	4
Trusteeship	1
Trusteeship (OPC)	21

B) Miscellaneous

1) Ethics Hotline and CLE

Rule 14-504(b)(13) of the RLDD requires that the OPC provide informal guidance to promote ethical conduct by Bar members. In compliance with this rule, the OPC has an Ethics Hotline where the OPC attorneys give Bar members informal guidance by telephone.^F During year 2014-2015, the OPC received 600 requests for informal ethics opinions by telephone.

Additionally, the OPC attorneys make Continuing Legal Education (“CLE”) ethics presentations. During year 2014-2015 , the OPC’s CLE presentations totaled 41 hours. Two of the CLE presentations were at the Ethics School conducted by the OPC. The OPC titles the Ethics School “What You Didn’t Learn in Law School.” Some attorneys are required to be there as a condition of a disciplinary case, but the OPC usually opens it to the entire Bar. At the school, the OPC covers a number of topics, including the lawyer discipline process, engaging and terminating the attorney client relationship, conflicts of interests, lawyer trust fund accounting and hot topics of ethical issues. The OPC also usually tries to have at least one judge as a guest speaker to talk about civility and professionalism. The Ethics School was held in September and March of the year

^F The OPC also takes Ethics Hotline “calls” as posted to the Bar’s website. These website requests are responded to by telephone.

2014-2015 for six CLE hours each time. In September 2014, Ethics School was attended by 54 attorneys; and in March 2015, Ethics School was attended by 76 attorneys.

Finally, with respect to ethical guidance, in the past the OPC has provided written guidance to attorneys through publication of Utah Bar Journal articles on common ethics topics, and in brochures available to Bar members and the public. In the last year, the OPC published an article entitled, "Getting to know the Office of Professional Conduct – or Not". This article gave tips on avoiding the attorney discipline process and on what to do if you are involved in the process. As the need arises, the OPC anticipates continuing to publish articles on ethics topics.

2) Committees

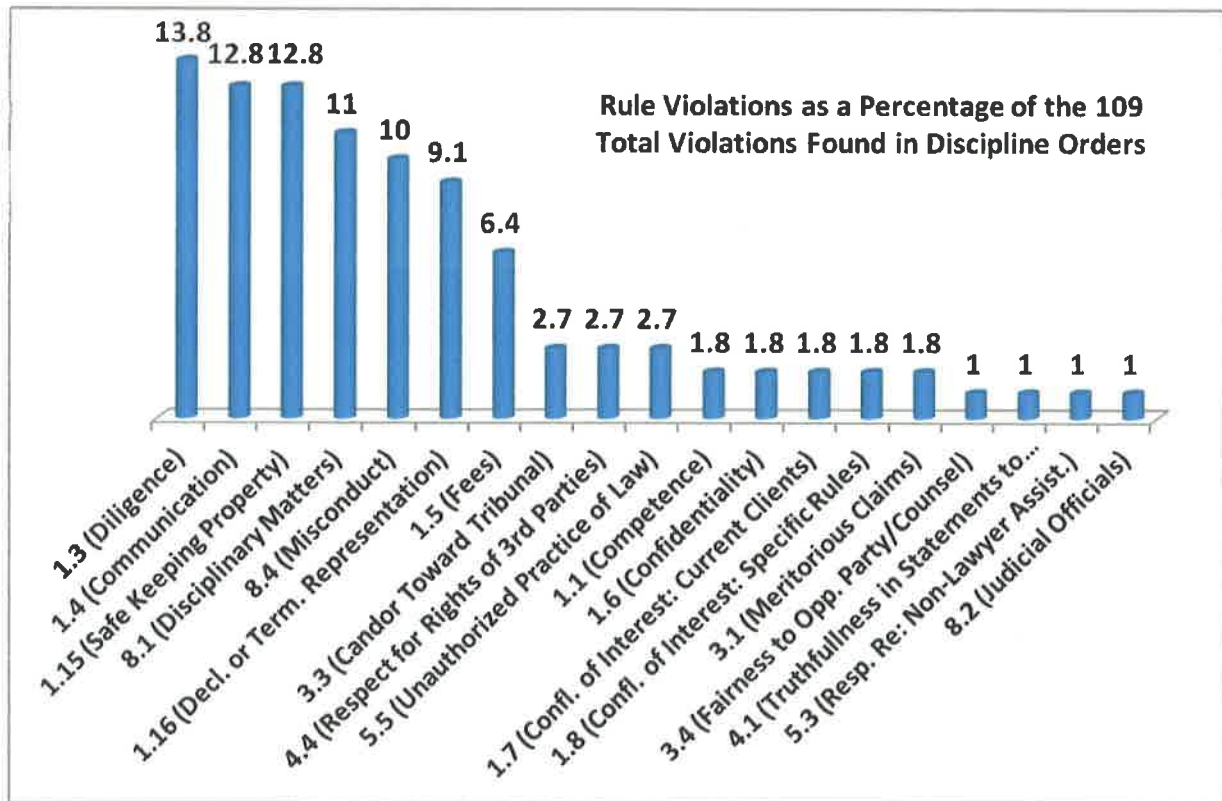
The OPC participates in committees with respect to attorney conduct. Senior Counsel of the OPC sits as a voting member of the Utah Supreme Court's Advisory Committee on the Rules of Professional Practice. OPC counsel sits as a voting member of the Ad Hoc Ethics and Discipline Committee on Rules which addresses proposed rule changes to the RLDD and Standards for Imposing Lawyer Sanctions. OPC counsel sits as a non-voting member on the Utah State Bar's Ethics Advisory Opinion Committee. And, Senior Counsel of the OPC is a voting member of the Utah Supreme Court's Advisory Committee on Professionalism.

3) Rule Violations and Source of Information

The OPC has collected and categorized other data regarding its cases. Specifically, the data collected provide statistics on the rule violations.

- (a) For example, using data from the 24 orders of discipline entered in

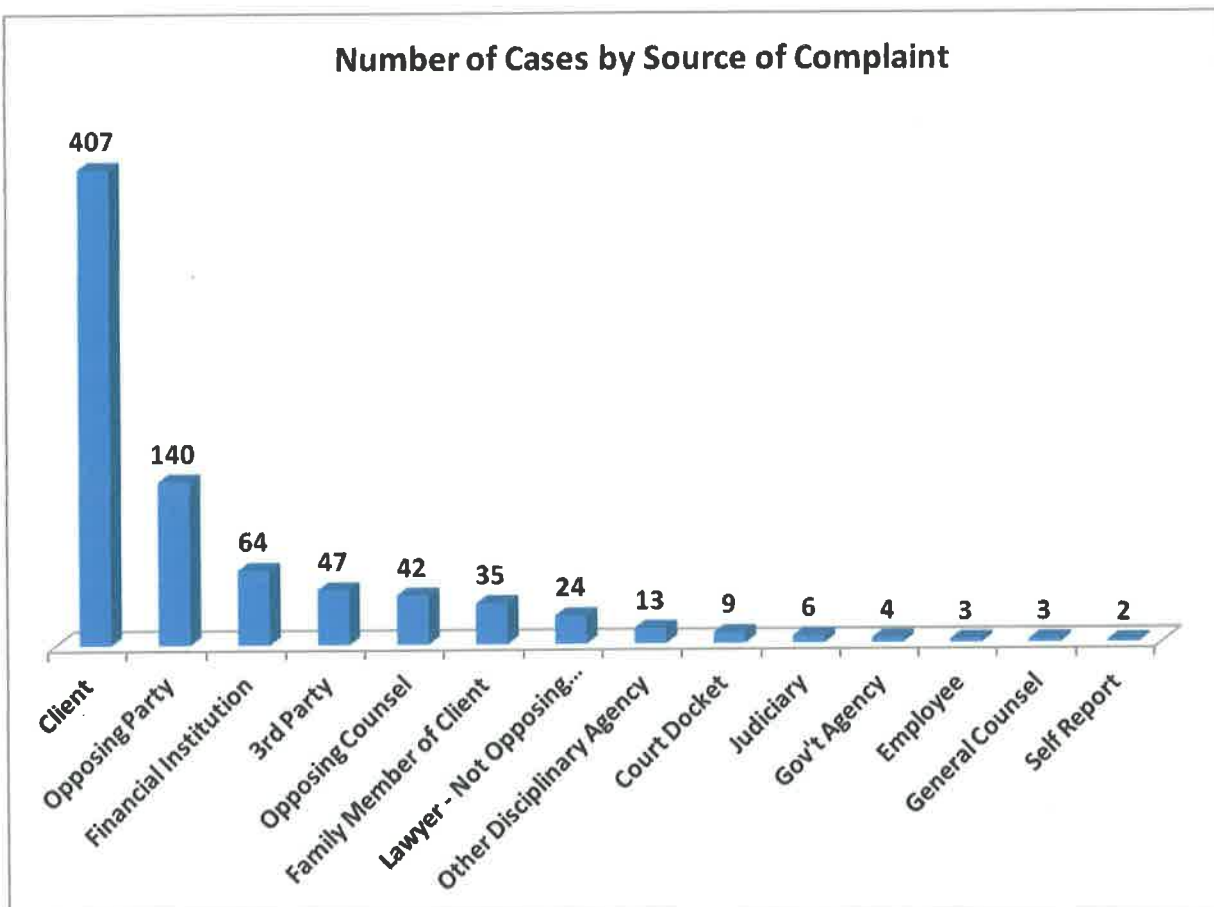
the year 2014-2015, which resulted in a finding of 109 total rule violations, we can see the frequency with which various rules were violated:



The OPC's impression is that violations of Rule 1.1 (Competence) commonly derive from attorneys missing court appearances; that violations of Rule 1.5 (Fees) commonly arise from attorneys collecting fees without performing meaningful work; that violations of Rule 1.15 (Safekeeping Property) often arise from attorneys failing to keep their personal money separate from clients' money or failing to promptly provide an accounting of how fees were used; that violations of Rule 1.16 (Declining or Terminating Representation) commonly result from attorneys withholding the client file upon termination of the representation; violations of Rule 8.1(b) (Bar Admission and Disciplinary Matters)

usually are based upon attorneys failing to respond to the OPC's lawful requests for information in the course of disciplinary investigations; and violations of Rule 8.4 (Misconduct) commonly arise from criminal conduct , deceitful or fraudulent conduct or conduct prejudicial to the administration of justice. Accordingly, the OPC's CLE presentations often focus on helping practitioners avoid these particular problems

(b) In year 2014-2015, information regarding possible attorney misconduct was received from the following sources:

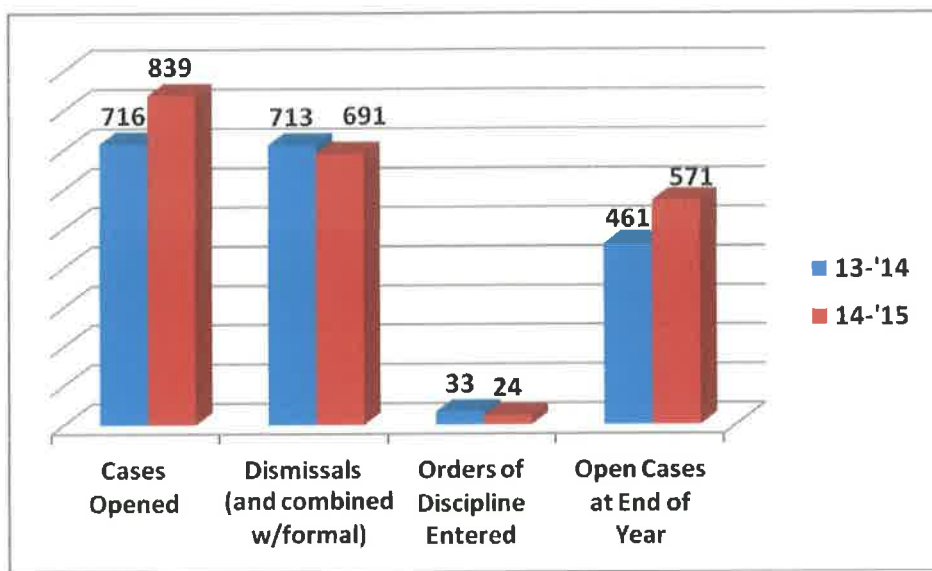


IV. PROGRESS AND GOALS ON CASES

The OPC, like every other state bar disciplinary authority, has and will continue to have unfinished work. Furthermore, the OPC, like every other state bar disciplinary authority, has and will continue to have a percentage of its unfinished work accumulate at the informal stage. The reason for this is the nature of the work. In this regard, the OPC processes disciplinary cases against attorneys who are often determined to use every means at their disposal to protect their license to practice law. This sometimes makes investigating and processing cases analogous to a criminal proceeding. In these cases, it tends to lengthen the processing at both the informal and post-informal stages. Notwithstanding the nature of the work, it should be noted that the OPC's overriding mission is to perform its responsibility in a professional and civil manner.

The OPC case progress goal is to have a system in place that keeps cases moving so the unfinished work at the informal stage is in percentage numbers as small as possible. This goal must be accomplished while simultaneously, and as expeditiously as possible, moving to resolution the larger percentage of cases that are at the post-informal stage (i.e., cases before Screening Panels or the District Court; cases on appeal; cases holding for resolution of a companion formal case; or cases held in abeyance pending related litigation).

As progress points of comparison of this year with last year:



As can be seen from the chart:

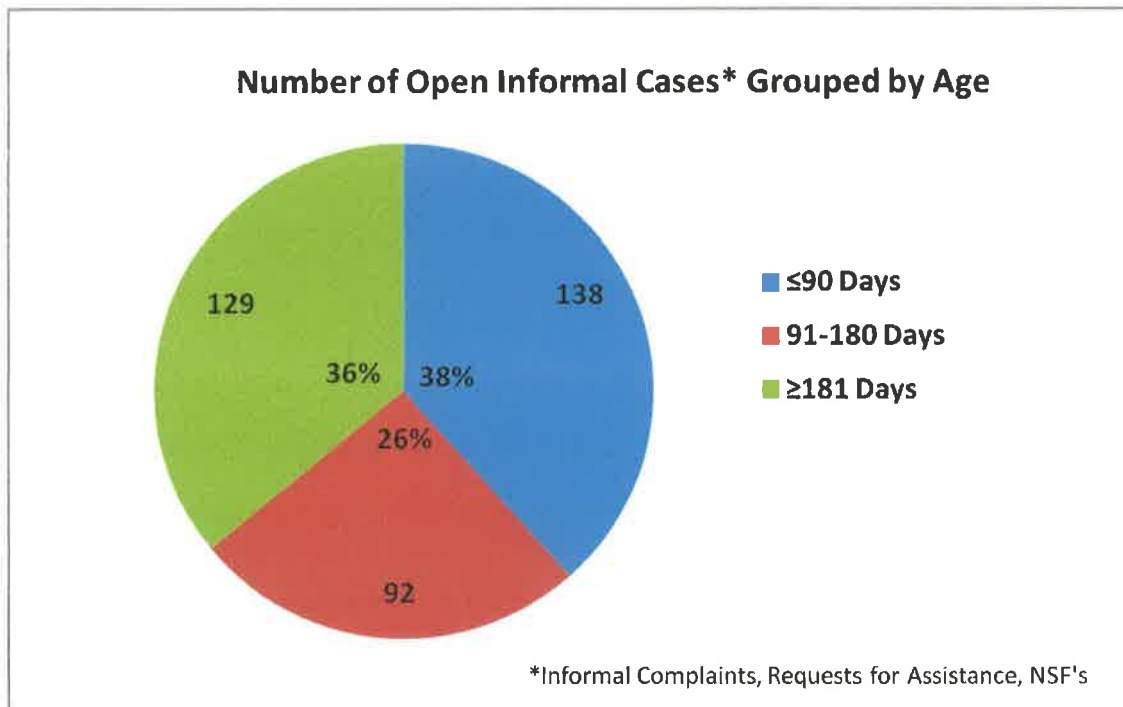
- (1) Cases opened this year were up approximately 17.17%^G;
- (2) Dismissals (and combined with formal) this year decreased by approximately 3.08%;
- (3) Orders of discipline entered this year decreased by approximately 27.27%; and
- (4) Active case numbers at the end of this year increased by approximately 23.06%.

The OPC has a goal to reduce its active case number each year by closing more cases in a year than the office receives in that year. This year, the OPC did not accomplish this goal because it opened 839 cases and closed 729 cases and its active case number increased by 23.06%.

The OPC has also established a goal of attempting to have 80% or more of its

^G However, it should be noted that the OPC, as part of its CAP review process, reviewed an additional 203 Requests for Assistance that were sent to CAP without further review. Therefore, the OPC actually reviewed 1042 matters (about the same as the 1025 of last year).

actively investigated cases in the informal stage resolved or moved to the next stage of prosecution in less than six months. Of its current caseload (571), 359 are at the informal stage. And of the 359 cases, 129 or approximately 36% have been in the informal stage for over six months.



So 64% of the actively investigated cases that are at the informal stage have been resolved or moved to the next stage of prosecution in six months or less. This 64% number is below the OPC's goal, however a significant percentage of its current caseload (212 cases or approximately 37%) is being processed and prosecuted beyond the informal stage where substantial resources are needed and expended. Nevertheless, the OPC will strive in the upcoming year to achieve its informal stage percentage goal.

Finally, the OPC has the goal of bringing the majority of all its cases to final resolution in a current year. In this year, the OPC brought approximately 56.07% of the

cases it processed to a final disposition; this included bringing informal and post-informal stage cases to final dispositions. Based upon this fact, the OPC accomplished this goal. It should also be noted that while accomplishing this goal, the OPC also filed a significant number of new formal cases. In this respect, in addition to handling 15 new cases in the areas of reinstatement/trusteeship/reciprocal/interim suspension, the OPC filed 19 new formal cases with the District Court (the 19 formal cases include an additional 10 underlying informal complaints).

The OPC does not simply concentrate its efforts on older cases: it attempts to provide expedited and efficient work on all cases, new and old. This work method is intended to keep cases progressing.

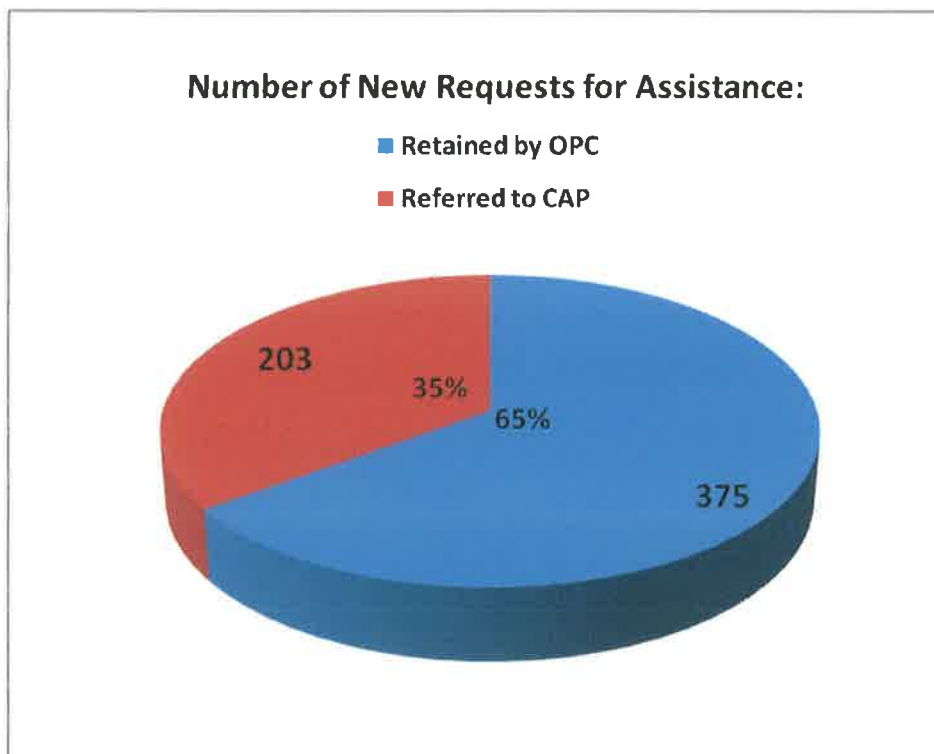
The Central Intake System greatly aids case processing goals. Central Intake enables the OPC to address all information coming to its attention (both notarized and non-notarized) and to quickly and efficiently determine the appropriate track for the information. This leaves more resources to address cases raising more serious ethical allegations, resulting in quicker case processing for all cases.

V. CONSUMER ASSISTANCE PROGRAM

The CAP is not part of the OPC, but the OPC works in coordination with it, and reviews information sent to the Utah State Bar as a non-notarized Request for Assistance. Additionally, as a result of the Board of Bar Commissioner's Review recommendation of the need for more extensive coordination between the OPC and CAP to ensure that cases do not fall between any gaps of OPC's and CAP's separate purview, the OPC receives periodic listings of CAP cases from CAP to review and determine if there is overlap between CAP and OPC on the case or attorney; and to

determine if any of the listed cases are cases that are more appropriately handled by OPC. CAP's listed cases include all cases under review by CAP (i.e., phone calls, emails, Requests for Assistance).

The OPC's review of CAP cases ensures that allegations of serious misconduct are not processed as Requests for Assistance. In year 2014-2015, the OPC reviewed 578 Request for Assistances which can be reviewed as part of its CAP review system, over one-third of which the OPC referred to CAP. Only 37 of these matters came back to the OPC as informal complaints.



Thus, with respect to year 2014-2015, 166 matters were resolved by CAP without resulting in informal complaints.^H The OPC uses the resources normally needed for reviewing and resolving the cases that are handled by CAP to process cases where

^H Since CAP is not part of the OPC, the OPC does not have complete statistics on cases resolved by CAP in a year.

there are serious ethical violations.

VI. OTHER ITEMS OF CONSIDERATION

A) Rule Making

Two cases were decided by the Court during the 2014-2015 year that addressed possible rule changes to the RLDD. One was a Formal Appeal; In the Matter of the Discipline of Nathan Jardine 2015 UT 51 and the other was an Administrative Appeal; Stacey Austin Johnson vs. Office of Professional Conduct, Utah State Bar 2014 UT 57. In the Jardine case, the Court suggested that clarification is needed to the RLDD for the factors to be considered for the re-establishment of the honesty and integrity of an attorney in a reinstatement case. In the Johnson case, the Court wanted the RLDD looked at regarding the due process issues associated with new Rules of Professional Conduct charges against an attorney at the Screening Panel hearing. The OPC is assisting the Ad Hoc Ethics and Discipline Committee on Rules with proposed RLDD changes to recommend to the Court consistent with the Court's direction in the Johnson and Jardine cases.

B) New Database

In November, 2014, the OPC began using a new database for its cases called JustWare. JustWare is an integrated case, calendar, report and document management system that is now used to automate and track OPC operations. The JustWare software is created and maintained by Journal Technologies subsidiary New Dawn located in Logan, Utah. The Utah Bar selected JustWare due to its ability to replicate existing OPC processes, its ability to be quickly modified to meet new requirements, its custom automated workflow and assignment tools, and its wide

adoption and use by other attorney disciplinary agencies such as the Colorado Attorney Regulation Counsel. The OPC anticipates that JustWare will be a tremendous tool for OPC's case tracking, management and reporting responsibilities.

VII. GOALS FOR YEAR 2015-2016

The OPC will continue to work toward the goals outlined in this report. Specifically, the OPC has a responsibility to resolve disciplinary complaints in a uniform; expeditious; professional; civil and systematic way to protect the public, clients, and the legal profession from the professional misconduct of attorneys. The overriding goal is to continue to develop the OPC case processing system to ensure that the majority of resources are utilized to more quickly prosecute those cases where it is appropriate to file formal complaints with the District Court.

CONCLUSION

The OPC staff is excellent and continues its hard work. The OPC will continue its efforts towards efficiency in the expedition of cases. The OPC looks forward to another productive year.

Billy L. Walker
Senior Counsel
Office of Professional Conduct
Utah State Bar

Utah State Bar[®]

Lawyers working for justice.



Summary of Operations

2014–2015

Vision of the Utah State Bar

A just legal system that is understood, valued, and accessible to all.

Utah State Bar Statement on Diversity & Inclusion

The Bar values engaging all persons fully, including persons of different ages, disabilities, economic status, ethnicities, genders, geographic regions, national origins, sexual orientations, practice settings and areas, races and religions. Inclusion is critical to the success of the Bar, the legal profession and the judicial system.

The Bar shall strive to:

- ▲ Increase members' awareness of implicit and explicit biases and their impact on people, the workplace, and the profession;*
- ▲ Make Bar services and activities open, available, and accessible to all members;*
- ▲ Support the efforts of all members in reaching their highest professional potential;*
- ▲ Reach out to all members to welcome them to Bar activities, committees, and sections; and*
- ▲ Promote a culture that values all members of the legal profession and the judicial system.*

Mission of the Utah State Bar

Lawyers serving the public and legal profession with excellence, civility, and integrity.

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Introduction and Grants of Authority

The Utah State Bar operates under authority granted by the Utah Supreme Court through orders which restate the Court's inherent authority under the Utah Constitution to regulate the practice of law. Those orders confirm the specific purposes, duties and responsibilities of the Utah State Bar as:

- ▲ **Advancing the administration of justice according to law;**
- ▲ **Aiding the courts in carrying on the administration of justice;**
- ▲ **Regulating the admission of persons seeking to practice law;**
- ▲ **Regulating and disciplining persons practicing law;**
- ▲ **Fostering and maintaining integrity, competence and public service among those practicing law;**
- ▲ **Representing the Bar before legislative, administrative and judicial bodies;**
- ▲ **Preventing the unauthorized practice of law;**
- ▲ **Promoting professionalism, competence and excellence in those practicing law through continuing legal education and by other means;**
- ▲ **Providing service to the public, to the judicial system and to members of the Bar;**
- ▲ **Educating the public about the rule of law and their responsibilities under the law; and**
- ▲ **Assisting members of the Bar in improving the quality and efficiency of their practice.**

The Board of Bar Commissioners has been granted all powers necessary and proper to carry out the duties and responsibilities of the Bar and the purposes of the Rules and has all authority not specifically reserved to the Court.

The Bar's internal operations are governed by By-laws and through the establishment of a variety of administrative policies and procedures. Other rules necessary to regulate and manage the practice of law have been promulgated by the Bar and approved by the Court and have been amended from time to time as needs have changed and demands have increased. These other rules include the Rules Governing Admission, Rules of Lawyer Discipline and Disability, Rules of Professional Conduct, Rules for Lawyers' Fund for Client Protection, the Law Student Assistance Rule and the Rules of the Utah State Bar Dispute Resolution Committee. The Court has also established rules governing mandatory continuing legal education. These rules may be found at www.utahbar.org.

Bar Leadership

The Bar is a 501 (c) (6) non-profit Utah corporation governed by a fifteen-member Board of Bar Commissioners, which includes eleven elected lawyer representatives, two elected officers and two court-appointed public members. The Commission also includes ten non-voting ex officio members. The Commission hires an Executive Director to carry out the operations of the Bar and the policies of the Commission. The Executive Director employs and supervises the activities of operations staff, which numbers twenty-nine full-time and nine part-time employees.

During the 2014–2015 year, the Bar Commission included the following:



Elected Officers:

James D. Gilson, President

Callister Nebeker & McCullough – Salt Lake City

Angelina Tsu, President-elect

Zions Management Services Corporation – Salt Lake City

Elected Lawyers and Geographic Area:

Herm Olsen, 1st Division

Box Elder, Cache and Rich Counties
Hillyard Anderson & Olsen – Logan

Kenyon D. Dove, 2nd Division

Weber, Morgan and Davis Counties
Smith Knowles – Ogden

H. Dickson Burton, 3rd Division

Tooele, Salt Lake and Summit Counties
TraskBritt – Salt Lake City

Susanne Gustin, 3rd Division

Tooele, Salt Lake and Summit Counties
Attorney at Law – Salt Lake City

Heather Farnsworth, 3rd Division

Tooele, Salt Lake and Summit Counties
United States District Court – Salt Lake City

John R. Lund, 3rd Division

Tooele, Salt Lake and Summit Counties
Parsons Behle & Latimer – Salt Lake City

Janise K. Macanas, 3rd Division

Tooele, Salt Lake and Summit Counties
Utah Attorney General's Office – Salt Lake City

Robert O. Rice, 3rd Division

Tooele, Salt Lake and Summit Counties
Ray Quinney & Nebeker – Salt Lake City

Thomas W. Seiler, 4th Division

Millard, Juab, Utah and Wasatch Counties
Robinson Seiler & Anderson – Provo

Hon. Michael F. Leavitt, 5th Division

Washington, Iron, Beaver, Sanpete, Sevier, Piute, Wayne,
Garfield, and Kane Counties
5th Judicial District Juvenile Court – St. George

Public Members Appointed by the Supreme Court:

Steven R. Burt, AIA – Public Member

Entelen Design-Build – Salt Lake City

Mary Kay Griffin, CPA – Public Member

Mayer Hoffman McCann – Salt Lake City

Ex Officio Members:

Curtis M Jensen, Immediate Past Bar President
Snow Jensen & Reece – St. George

Robert Adler, Dean
S. J. Quinney College of Law – Salt Lake City

Heather Allen, Paralegal Division Representative
1-800 Contacts, Inc. – Salt Lake City

Nathan D. Alder, Utah ABA Members' Delegate
Christensen & Jensen, PC – Salt Lake City

Margaret D. Plane, Utah State Bar Delegate to the ABA
Salt Lake City Attorney's Office – Salt Lake City

James R. Rasband, Dean
J. Reuben Clark Law School – Provo

Lawrence E. Stevens, Utah State Bar Delegate to the ABA
Parsons Behle & Latimer – Salt Lake City

Katherine Judd, Young Lawyers Division
Clyde Snow & Sessions – Salt Lake City

Jesse Nix, Minority Bar Association Representative
Salt Lake Legal Defenders Association – Salt Lake City

Aida Neimarlija, Women Lawyers of Utah Representative
Burbidge Mitchell & Gross – Salt Lake City

Other Representatives:

Timothy M. Shea, Utah Supreme Court Liaison

2014–2015 Commission Priorities

The Bar Commission annually reviews its long range planning objectives and sets specific goals for the upcoming year within the plan. For the 2014–2015 year, those goals included:

▲ Improving Access to Justice – Pro Bono Commission and Modest Means;

▲ Advocating for the Judiciary;

▲ Reviewing Bar Operations – Office of Professional Conduct, Summer Convention, New Lawyer Training Program, Budget and Finance Process;

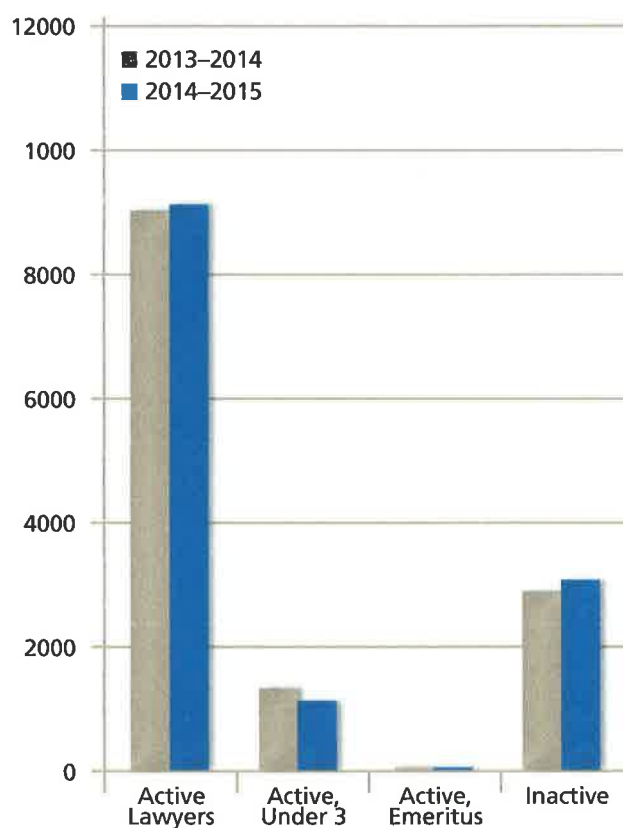
▲ Planning for the Future of the Legal Profession;

▲ Celebrating Magna Carta/Rule of Law; and

▲ Supporting Diversity.

Licensing Statistics

	2013-14	2014-15	Change
ACTIVE STATUS	9,054	9,148	94
Active Lawyers	7,505	7,762	257
Active, Under 3 Years	1,353	1,192	(161)
Active, Emeritus	146	144	(2)
In House Counsel	50	50	0
ACTIVE STATUS BY LOCATION			
1st Judicial District	147	145	(2)
2nd Judicial District	674	666	(8)
3rd Judicial District	4,505	4,560	55
4th Judicial District	707	732	25
5th-8th Judicial Districts	333	330	(3)
Out of State	761	736	(25)
No Division Designated	1,923	1,976	53
	8,785	9,054	313
INACTIVE LAWYERS	2,583	2,690	107
Inactive, Full Service	735	737	2
Inactive, No Service	1,585	1,678	93
Inactive, Emeritus	263	275	12
TOTAL INACTIVE & ACTIVE	11,637	11,838	201



Bar Programs & Services

Regulatory Services

Special Admissions

Special admissions include reviewing and processing Military Lawyers, House Counsel, Admission on Motion and Pro Hac Vice applications. During the Fiscal 2014-2015 year, we had the following special admissions applications:

	Applications	Admitted	Pending	Denied	Withdrawn
Military	0				
House Counsel	13	8	7	0	0
Motion	72	59	30	0	5
Uniform Bar Transfers	58	40	18	0	1
Pro Hac Vice	284				

Admissions

Admissions includes the application process, character and fitness file reviews and hearings, Bar exam question drafting and selection, preparation and administration, grading essay exams, the Admissions Ceremonies and all reciprocal admissions. Committees include the **Admissions Committee** (Steven T. Waterman and Judge James Z. Davis, Co-chairs), **Character and Fitness Committee** (Kimberly A. Neville and Andrew M. Morse, Co-chairs), **Bar Examiner Committee** (Tanya N. Peters and David K. Broadbent, Co-chairs), and the **Test Accommodation Committee** (Joan M. Andrews, Chair).

July 2014 Bar Examination Statistics

290 Took the July Bar Exam | 236 Passed the July Bar Exam | Pass Rate for the July 2014 Bar Exam: 81%

Essay Scores
50 Points Possible
Average Score: 29

Multistate Scores
200 Points Possible
Utah Average: 145
National Average: 142
(51,005 tested)

Combined Scores
Utah Mean Score: 290
Passing Score: 270

February 2015 Bar Examination Statistics

129 Took the February Bar Exam | 103 Passed the February Bar Exam | Pass Rate for the February 2014 Bar Exam: 80%

Essay Scores
50 Points Possible
Average Score: 30

Multistate Scores
200 Points Possible
Utah Average: 144
National Average: 136
(22,396 tested)

Combined Scores
Utah Mean Score: 288
Passing Score: 270

Professional Conduct Enforcement

The Office of Professional Conduct investigates complaints of unethical conduct; provides ethics education seminars; provides informal ethics guidance by telephone; and either resolves or prosecutes cases before hearing panels, the district courts and the Utah Supreme Court. Committees that the Office of Professional Conduct interacts with include the **Ethics and Discipline Committee of the Utah Supreme Court** (Terri T. McIntosh, Chair); the **Utah Bar's Ethics Advisory Opinion Committee** (John A. Snow, Chair); the **Supreme Court Rules of Professional Conduct Committee** (Stephen G. Johnson, Chair); the **Supreme Court Advisory Committee on Professionalism** (Justice Thomas R. Lee, Chair); and the **Supreme Court Diversion Committee** (Perri A. Babalis, Chair). The office has prepared a separate report on its operations, which is available at www.utahbar.org/opc/.

Continuing Legal Education

In the past year, the CLE Department coordinated or presented 211 events (113 luncheons and 98 seminars) in 39 general practice areas. Forty-three of these events were broadcast via the web. Attorneys can participate via teleconference in any CLE seminar held at the Law & Justice Center. A total of 1,632 video replays and webcasts from outside CLE providers were viewed online. The CLE Department coordinates with the **CLE Advisory Board** (Jonathan O. Hafen, Chair).

General Bar Management and Operations

General Bar management includes annual licensing, maintenance of databases, personnel, financial controls, inventory, equipment, governance organization and support, long range and planning. Bar staff manages policy implementation and operations through various voluntary leadership committees, including: **Bar Commission**, **Bar Commission Executive Committee**, and the **Bar Commission Budget & Finance Committee** (Ray O. Westergard, CPA, Chair). A copy of the 2014–2015 audit by Tanner, LLC is available at www.utahbar.org/bar-operations/.

"Group" Services

Fall Forum, Summer & Spring Conventions

Conventions provide opportunities for lawyers to network in congenial, social and informal settings to renew friendships, to learn and to facilitate the administration of justice, foster professionalism and engender a collective identity through familiarity with fellow professionals. These events provide unique seminars and speakers, educate lawyers about issues facing the Bar, the profession and the judiciary, permit interaction with judges, and are budgeted to break even.

Events were coordinated by the **Fall Forum Committee** (William H. Christensen and Sammi Anderson, Co-chairs), the **Summer Convention Committee** (Hon. Dee V. Benson and Hon Paul M. Warner, Co-chairs), the **Spring Convention Committee** (Patrick Burt and Hon. Eric A. Ludlow, Co-chairs).



The 2015 Summer Convention was held in Sun Valley, Idaho

409 judges, lawyers, paralegal and law students attended;
16 hours of CLE available.



The 2014 Fall Forum was held in Salt Lake City

474 judges, lawyers and paralegals attended;
148 attended the "Meet Your Judges Mixer" and 250 attended the CLE Thursday evening.



The 2015 Spring Convention in St. George, Utah

431 judges, lawyers and paralegals attended;
11 Hrs. CLE available.

Member Benefit Programs

The Utah State Bar has contracted with benefits administrator **Beneplace** to radically expand offerings and services to bar members at no cost to Bar members. Beneplace, in partnership with the Bar, researches and recruits benefits providers and places them in the Utah State Bar benefits catalog <http://www.beneplace.com/utahbar>. Programs range from office supplies, to discounted membership programs, to vacation planning, to legal specific vendors, to ticket offers for sports and recreational opportunities. New vendors and discounts arrive each month with a summary of recent additions being provided online at <http://communications.beneplace.com/utahstatebar/>.



The Utah State Bar Commission continued its successful relationship with **Casemaker** – a legal research service that provides unlimited access at to all active and inactive full service attorneys of the Utah State Bar and all current members of the Paralegal Division. Casemaker includes services that drive the legal research industry.



Utah State Bar members also have access to **Utah Lawyers Helping Lawyers** which renders confidential assistance to any member Bar whose professional performance is or may be impaired because of mental illness, emotional distress, substance abuse or any other disabling condition or circumstance. Currently, LHL matches those whom it assists with one-on-one volunteer peer mentors and conducts support groups and continuing legal education.

Additionally, Bar members have access to **Blomquist Hale**, which provides trained counselors for face-to-face help with family problems, stress, depression, anxiety, personal cash management difficulties, elder care challenges, assessment of drug/alcohol dependence, and any other issues impairing work or personal lives. All counseling services are free of charge to lawyers on active status and their eligible dependants. The Bar offers these additional services because we believe that

dealing effectively with personal problems is one of the best ways to prevent ethical violations, reduce disciplinary actions and to protect the public. Information about Utah Lawyers Helping Lawyers and Blomquist Hale may be found at <http://www.utahbar.org/members/lhl-blomquist-hale/>.

Utah State Bar member benefits are overseen by the **Member Resource Committee** which is chaired by former Bar President, **Robert L. Jeffs**.

Committee Support – Unrelated to Other Programs

Stand-alone committees have been charged to provide professional leadership and study of designated issues. A current listing of all Bar committees can be found at www.utahbar.org/bar-operations/.

Section & Division Support

Staff provides support services to 34 Sections and 2 Divisions which are independent and financially self-sustaining. Activities include section meetings, CLE luncheons, social events, dues collection, general administrative and financial services, email and newsletter communications, and the maintenance of websites and blogs. A listing of all Bar sections and divisions can be found at <http://www.utahbar.org/bar-operations/leadership/>.

Bar Journal

The *Utah Bar Journal* provides information on professional issues, law office management, legal education and law related opportunities. The *Utah Bar Journal*, which was published six times this past year by the **Bar Journal Committee** (**William D. Holyoak**, Chair) was provided to members and subscribers. This year, the *Utah Bar Journal* was available online in e-book formats with fully searchable text and clickable links. Access to past issues of the *Utah Bar Journal* can be found at www.utahbar.org.



Public Outreach

With the 800th anniversary year of Magna Carta, the Bar had the perfect focus for teaching people about the rule of law. Many offline and online news stories, op-eds, and photos appeared throughout Utah. The ABA/Library of Congress traveling exhibit helped provide additional opportunities, from a medieval music, food, and beverage kick-off at the Bar to a capacity crowd for a talk by the Law Library of

Congress rare books curator at the Matheson Courthouse in Salt Lake City, with stops in St. George, Orem, Logan, and Ogden in between. A school essay and video competition culminating in a gala dinner further enhanced awareness. Magna Carta was the theme for the Law Day Special Edition in the *Deseret News* and *The Salt Lake Tribune*, with a more comprehensive editorial focus than previous editions. (**Magna Carta Celebration Committee**, **Doug Haymore**, Chair)



Constitution Day 2014

Two-hundred lawyers, law students, and law school staff celebrated the 225th anniversary of the U. S. Constitution. The volunteer instructors taught 300 classes throughout Utah on and around Constitution Day, September 17. This was the third year of the teach-in sponsored by the **Utah State Bar's Civics Education Committee** (**Benson Hathaway**, Chair). For the 2014–2015 year, we had a 34% increase in volunteers who taught half again as many classes as the previous year. Volunteers used lesson plans developed by the committee which included mock trials.

New Lawyer Training Program

New Lawyer Training Program participants work with an approved mentor during their first year of practice. The mentor and new lawyer are required to meet at least once a month for twelve months to discuss the new lawyer's legal work, professional development and adjustment to the practice of law. They are also required to discuss the Rules of Professional Conduct as a means of more effectively teaching and fostering professionalism, ethics and civility.

Since it began in 2009, the New Lawyer Training Program has helped over 1,400 new lawyers acquire skills to practice as competent and professional attorneys. The NLTP has also fostered long-term mentoring relationships and has helped new attorneys network with other established members of the Bar.

In 2014, the **Utah State Bar Committee on New Lawyer Training** was formed to approve mentors, develop resources, and help implement program initiatives.

As of July 31, 2015, there are 995 approved mentors. Between July 2014 and June 2015, 66 new mentor applicants were approved.

As of July 31, 2015, 1,433 new lawyers have completed the NLTP since the Program's inception in 2009. There are 167 new lawyers participating in the January 2015 mentoring term and 97 participating in the July 2015 mentoring term for a total of 264 current participants.

1,433
new lawyers have
completed the NLTP
since the Program's
inception in 2009.



Public Services

Access to Justice Programs

In the 2014–2015 fiscal year, the Access to Justice department continued to assist the **Utah State Bar Pro Bono Commission** (Judge Michele M. Christiansen and Judge Royal I. Hansen, Co-Chairs) and the **Modest Means Lawyer Referral Program** (Judge Su Chon and John L. Lund, Co-Chairs) and supported the Senior Center Clinics started by the Elder Law Section in 2010, the Tuesday Night Bar Program put on by the Young Lawyers Division of the Bar, the Debtor's Counseling Clinic put on in conjunction with the University of Utah Pro Bono Initiative, and the **Disaster Legal Response Committee** (Brooke Ashton and Andrea Valenti Arthur, Co-Chairs).

The Pro Bono Commission currently has a roster of over 1,200 active attorneys to provide *pro bono* services. In addition to the placement of cases, the Pro Bono Commission has expanded its signature projects with the goal of representing more people through limited scope assistance. The current signature projects include: The Adoption and Termination of Parental Rights Project; the Guardian ad Litem Project; the Adult Guardianship and Conservatorship Project; the ORS Contempt Hearing Calendars in the First, Second, and Third Districts; the Debt Collection and Eviction Calendars in the Second and Third Districts; and the Pro Se Calendar in the Third District.



In all eight judicial districts, the Pro Bono Commission established committees co-chaired by a district court judge and a local attorney. The Commission and the Committees work together to recruit and recognize attorneys, place cases for representation with volunteer attorneys, and determine the legal needs of the local community.

The Modest Means Lawyer Referral Program provides the average Utahn with the opportunity to acquire affordable legal

600

clients were placed with approximately 150 attorneys through the Modest Means Lawyer Referral Program.

assistance and connects Utah attorneys to new clients through a referral service by agreeing to provide services at a lower cost. In the 2014–2015 fiscal year, over 600 clients were placed with approximately 150 attorneys through the Modest Means Lawyer Referral Program.

The Disaster Legal Response Committee made significant strides in organizing a strategy to coordinate services and materials to provide pro bono legal assistance to victims in the event of a disaster. The Committee is also working diligently on preparing members of the Utah State Bar to provide service in the event of a disaster.

Fund for Client Protection

The Fund for Client Protection Committee

(Hon. David R. Hamilton, Chair) has 10 attorney members. There were 13 claims made to the Utah State Bar Fund for Client Protection against 7 attorneys during the 2014–2015 fiscal year totaling \$55,115. Of these claims, 10 were approved for awards totaling \$140,270.13. A large number of cases in fiscal 2011–2012 regarding one attorney had to be heard over a three-year period.

Attorney	# of claims made to the fund	# of claims recommended for approval	total \$ claimed	total \$ paid from the fund
A	1	1	\$1,500.00	\$1,500.00
B	1	1	\$959.00	\$700.00
C	3	3	\$14,708.00	\$8,125.00
D	1	1	\$1,500.00	\$1,500.00
E	2	2	\$17,667.00	\$17,667.00
F	4	2	\$15,781.13	\$10,778.13
G	1	0	\$3,000.00	\$0
TOTAL	13	10	\$55,115.00	\$40,270.13

Unauthorized Practice of Law

During the 2014–2015 fiscal year, the **Unauthorized Practice of Law Committee** (Jonathan Rupp and Sarah Spencer, Co-Chairs) and staff received 42 complaints. Three of the complaints were assigned to outside counsel for formal legal action in District Court. Ten of the complaints were against attorneys licensed in Utah or other jurisdictions and were transferred to the Office of Professional Conduct. The Committee is actively investigating 25 matters.

Tuesday Night Bar

Tuesday Night Bar is a free legal clinic in Salt Lake City hosted by volunteers from the Utah State Bar's Young Lawyers Division. The clinic is held in the Utah State Bar approximately 40 weeks of the year. Clients call in to make appointments and on average 25 people are helped during each clinic session by volunteer attorneys. There are other Tuesday Night Bars held in locations throughout the state which are usually sponsored by the local bar association.

Young Lawyers Division

The Young Lawyers have video mentoring on their web site, promote Law Day Activities, and provide numerous service projects, including Wills for Heroes. Their web site is <http://younglawyers.utahbar.org/>.



Joint "Group" & Public Services

Consumer Assistance Program

Through the informal process of the Consumer Assistance Program (CAP), the Utah State Bar offers support to both consumers and attorneys who request assistance in their communication with each other. The CAP attorney addresses consumers' questions regarding the management of their legal matters and concerns about their lawyers and then strives to facilitate communication between consumers and their lawyers so that minor issues can be resolved. The CAP attorney also offers guidance to consumers to help them understand what they may reasonably expect from their counsel and the legal process.

CAP eases the load for the Office of Professional Conduct (OPC) by dealing with minor complaints submitted by consumers whose concerns usually include wanting timely return calls from their attorneys, routine updates about their cases, regular billing statements, and copies of their client files. Complaints which rise to the level of ethical concerns are handled exclusively by OPC.

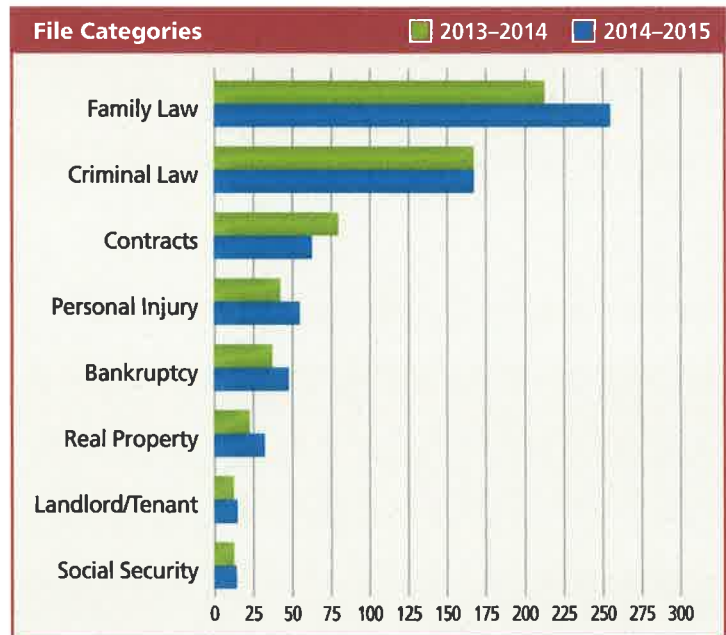
During the 2014–2015 fiscal year, the CAP attorney handled 1306 telephone conferences and opened 878 files. This is an increase of 268 phone conferences and 115 files from the previous fiscal year.

Disciplinary Process Information Office

In January 2015, the Board of Bar Commissioners created the Disciplinary Process Information Office (DPIO). The new office is designed to assist those attorneys who find themselves the subject of a Bar complaint, complainants, and the public. The DPIO attorney is able to answer questions about the complaint process, refer attorneys to the appropriate procedural rules at various stages of the process, and inform them about the progress of their individual cases with the Office of Professional Conduct (OPC).

The DPIO attorney handled her first call from an attorney on January 5, 2015. 42 files were opened from then through June 30.

Action Taken by CAP Attorney	2013–2014	2014–2015
Lawyer involved was contacted about client's concerns	196 (26%)	234 (27%)
Referred to Fee Dispute Resolution	17 (2%)	36 (4%)
Referred to Tuesday Night Bar	1 (0%)	11 (1%)
Referred to OPC	120 (16%)	141 (16%)
CAP unable to assist	225 (29%)	218 (25%)
Referred to Modest Means	8 (1%)	57 (6%)
Consumer informed of other Utah State Bar/community resources	8 (1%)	57 (6%)

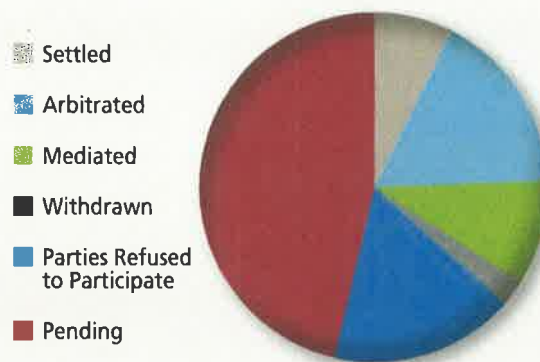


DPIO – the first six months

42	files – opened
29	files – Respondent made initial contact with DPIO
2	files – attorney wondering if complaint had been filed against him/her made initial contact
9	files – Complainant made initial contact
1	file – attorney who represented Complainant in OPC case made initial contact
1	file – out-of-state attorney wanting to submit support for Respondent made initial contact
22	file maintenance
51	telephone conferences
22	file maintenance

Fee Dispute Resolution Program

In the last fiscal year, the **Fee Dispute Resolution Committee** (**William M. Jeffs**, Chair) and staff prepared and conducted hearings with a volunteer lawyer or panels of volunteer lawyers, judges and lay people to resolve disputes about legal fees in a process through which parties voluntarily agree to be bound. Last year, the committee opened 41 cases, settled 3, arbitrated 7, and mediated 4. One case was withdrawn by the claimant. The committee and staff were unable to resolve 7 cases because parties refused to participate. Nineteen cases are still pending. A link to more information may be found at www.utahbar.org/public-services/fee-dispute-resolution-service/.



Law & Justice Center Operations

The Utah State Bar owns and operates the 33,000 square foot building known as the Utah State Bar Law & Justice Center. The Center provides low cost meeting room space and, in *pro bono* cases, no cost meeting room space. Services by the Center staff include organization of events, audio-visual rental, catering, low cost leases, tenant support, interior and exterior grounds maintenance and security. During the 2014–2015 fiscal year, the building rented space for over 700 meetings. Groups using the meeting space included bar committees, bar section continuing legal education luncheons and seminars, mediations, arbitrations, charitable and non-profit entities, educational organizations, public interest groups, and association trainings.

Public Education, Services and Special Projects

The Bar Commission regularly provides public education projects including participation with the American Bar Association, makes appointments to Utah State Boards and Committees, helps to fund the Law Related Education Project, and sponsors the **Law Day Celebration with the Law Day Committee (Young Lawyers Division)**, among other things.

Governmental Relations

The Bar hires a legislative representative and supports the activities of the **Governmental Relations Committee** (**John H. Bogart** and **Paxton R. Guymon**, Co-chairs) which makes recommendations for action on bills and provides assistance to legislators with specific questions on legislation.

2014–2015 Section Leadership

Tracy Gundersen, Chair
Administrative Law Section

Jay Gurmankin, Chair
Antitrust & Unfair Competition Section

Bridget Romano, Chair
Appellate Practice Section

Dave Heinhold, Chair
Banking & Finance Section

Ted Cundick, Chair
Bankruptcy Section

Brent Clayton, Chair
Business Law Section

Ed Parry, Chair
Collection Law Section

Sharon Bertelsen, Chair
Communications Law Section

Scott Young, Chair
Constitutional Law Section

Mark Morris, Chair
Construction Law Section

Jacob Ong, Chair
Corporate Counsel Section

Chris Bown, Chair
Criminal Law Section

Jeremy Rowley, Chair
Cyber Law Section

Carolyn Camp, Chair
Dispute Resolution Section

Doug Larson, Chair
Education Law Section

Scott Hansen, Chair
Elder Law Section

Mike Johnson, Chair
Environmental Law Section

Hugh Cawthorne, Chair
Estate Planning Law Section

James Hanks, Chair
Family Law Section

Kara Martin, Chair
Franchise Law Section

James Ahlstrom, Chair
Government Law Section

Bill Stilling, Chair
Health Law Section

Perry Clegg, Chair
Intellectual Property Section

Nikki Davis & Casey Jones, Co-Chairs
International Law Section

Pamela Vickrey, Chair
Juvenile Law Section

Christina Jepson, Chair
Labor & Employment Law Section

David Castleberry, Chair
Litigation Section

Ezra Glanzer, Chair
Military Law Section

Christopher Nelson, Chair
Non-Profit/Charitable Law Section

Sara Bouley, Chair
Real Property Law Section

Jennifer Korb, Chair
Securities Law Section

Tony Allen, Chair
Senior Lawyers Section

Christian Kesselring, Chair
Solo, Small Firm & Rural Law Practice Section

Paul Jones, Chair
Tax Law Section

2014–2015 Division Leadership

Katherine Judd, Chair
Young Lawyers Division

Heather Allen, Chair
Paralegal Division

2014-2015 Utah State Bar Awards



Judge of the Year
Hon. James L. Shumate



Lawyer of the Year
Charlotte L. Miller

Committee of the Year
Civics Education Committee

Section of the Year
Intellectual Property Section



Community Member
Steven R. Burt



Heart and Hands Award
Jenifer L. Tomchak



Dorathy Merrill Brothers Award for
the Advancement of Women in the
Legal Profession
Patrice Arent



Raymond S. Uno Award for the
Advancement of Minorities in the
Legal Profession
Andrea Martinez Griffin



Pro Bono Lawyer of the Year
Kate Conyers



Outstanding Mentor Award
Timothy J. Larsen



Outstanding Mentor Award
Debra M. Nelson



Outstanding Mentor Award
Tupakk G. Renteria

Utah State Bar
Ethics Advisory Opinion Committee
Proposed EAO 15-04
Issued September 30, 2015

ISSUE

1. When may a lawyer directly contact a *former* employee who had been within the control group of an adverse party such as a corporation?

OPINION

2. A lawyer may contact a former employee who had been within the control group of an adverse party, but may not communicate about any matters that are covered by the attorney-client privilege. The lawyer may only communicate about the former employee's observations that were not communicated to corporate counsel, and may not ask about any communications with the corporate counsel or discuss any work product that resulted from those communications.

FACTS

3. Lawyer represents client in employment discrimination case. The proposed witness to be interviewed is the former Human Relations Director (HRD) of the adverse corporation. The former HRD was the client contact for the adverse corporation. The former HRD tells client that he has all of the information needed to support client's case and knows of several more employment discrimination cases against the adverse corporation. Witness specifically asks the lawyer to contact him prior to his deposition. Lawyer does not have permission of opposing counsel to speak with the proposed witness and in fact was told to have no extra-judicial contact with the former HRD.

ANALYSIS

4. RPC 4.2(a) provides: “In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer.”

5. As EAOB Opinion 04-04 explains, Rule 4.2 “does not bar a lawyer’s unauthorized contact with *former* employees of a represented corporate defendant except in very limited circumstances. . . .”(emphasis added). Comment 19 similarly provides: “In general, however, a lawyer may, consistent with this Rule, interview a former employee of an organization without the consent of the organization’s lawyer.” However, because the HRD was a member of the control group, any interview of the HRD must be carefully circumscribed to avoid inquiring into privileged communications or work product.

6. Pursuant to Rule 504(d) of the Utah Rules of Evidence, the former HRD was a representative of the client.¹ He was a person who obtained professional legal services on behalf of the client. He was expected to act on the advice of counsel and most importantly, he was the individual selected and specifically authorized to communicate with opposing counsel concerning the legal matters involved in the ongoing lawsuit.

¹ Evidence Rule 504(d)(4) “Representative of the client” means a person or entity having authority:

- (A) to obtain professional legal services;
- (B) to act on advice rendered pursuant to legal services on behalf of the client; or
- (C) person or entity specifically authorized to communicate with the lawyer concerning a legal matter.

7. The advice and directions of opposing counsel to former HRD are communications under Evidence Rule 504(d)(5).² They are also “confidential communications” pursuant to Evidence Rule 504(d)(6).³

8. It is irrelevant that HRD was a natural person seeking legal advice and representation on behalf of the now defendant corporation. The Utah Supreme Court defined the scope of corporate representation in *Moler v. CW Management Corp.*, 190 P.3d 1250 (Utah 2008):

We begin and end our analysis with a plain-language review of Utah Rule of Evidence 504:

A client has a privilege to refuse to disclose and to prevent any other person from disclosing *confidential communications* made for the purpose of facilitating the rendition of professional legal services to the client *between the client and the client's representatives*, lawyers, lawyer's representatives, and lawyers representing others in matters of common interest, and among the client's representatives, lawyers, lawyer's representatives, and lawyers representing others in matters of common interest, in any combination.

9.. It is irrelevant that the person who received the confidential communications is no longer within the control group of the opposing party. The 1995 Revisions of the Model Rules of Professional Conduct replaced the prohibition of lawyer contact with a “party” to contact “with a person.” Rule 4.2(a).⁴

² Evidence Rule 504(d)(5) provides “Communication” includes:

(A) advice given by the lawyer in the course of representing the client; and
(B) disclosures of the client and the client's representatives to the lawyer or the lawyer's representatives incidental to the professional relationship.

³ Evidence Rule 504(d)(6) provides: “(6) “Confidential communication” means a communication not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.

⁴ Geoffrey Hazard, W. William Hodes & Peter Jarvis, THE LAW OF LAWYERING (3d) Section 38.6 at 38-10.

10. Commentators Hazard, Hodes and Jarvis provide guidance with respect to former employees covered by the attorney client privilege and work product doctrine.

Yet it seems clear that *some* former employees continue to personify the organization even after they have terminated their employment relationship. An example would be a managerial level employee involved in the underlying transaction who is also conferring with the organization's lawyer in marshalling the evidence on its behalf. This kind of former employee is undoubtedly privy to privileged information, including work product, and an opposing lawyer is not entitled to obtain such information without a valid waiver by the organization.⁵

11. The corporation did not give up its attorney client privilege when the HRD left its employ. The normal attorney client privilege which attached to communications between opposing counsel and the former HRD still exist. Work product produced by the former HRD at the request of opposing counsel does not lose its protection by reason of the resignation. Lawyer may not make extra judicial inquiry into communications with counsel or work performed at the direction of counsel relevant to prospective or on-going litigation.

12. Conversely, the corporation has no rightful expectations of prohibiting the former HRD from sharing his observations of events not covered by the attorney client privilege or the work product doctrine. Such inquiry would be proper under Rule 4.2(d), as the former HRD is not a current member of the control group, a person whose acts or omissions could be attributed to the corporation, nor a representative of the corporation who could bind the corporation by his admissions.

⁵ The Law of Lawyering: A Handbook on the Model Rules of Professional Conduct (3d ed. 2000, § 38.7 (Supp. 2011)). *See also, Polycast Technology Corporation v. Uniroyal, Inc.*, 129 F.R.D. 621, 629 (S.D.N.Y. 1990) (Ex Parte contact allowed without a showing of access to privileged information by the former employee)

13. It is incumbent upon the inquiring lawyer to make clear to the former control group member that the lawyer is only inquiring about matters OUTSIDE those covered by the attorney-client privilege.

14. Finally, while the results of receiving improper communications are not within the scope of this request, as an additional cautionary note, we reiterate what was recently observed in EAO 15-02. Practitioners should bear in mind that a violation of 4.2, while serious, can perhaps generate more damaging consequences than an ethics complaint. “(T)he most common setting for application of the no-contact rule has been in litigation, not in disciplinary proceedings. The courts have recognized, for example, that statements obtained in violation of rules like 4.2 may be excluded as evidence. More seriously, violation of the no-contact rule can result in disqualification of the offending lawyer.” *Id.* ¶ 15, quoting *The Law of Lawyering*, § 41.02, 41-4.

Ethics Advisory Opinion Committee
Opinion Number 15-05
Issued September 30, 2015

ISSUE

1. May an attorney pay an internet service company a nominal fee to bid on potential legal work? May an attorney seek clients through an internet business that provides the attorney with limited client information in order to permit the attorney to bid to provide the needed legal services?

OPINION

2. Payment of a nominal fee to the internet forum service provider described herein, thereby enabling the attorney to offer a bid for legal services to a potential client, does not violate: (a) Rule 7.1, *Communications concerning a Lawyer's Services*; (b) Rule 7.2, *Advertising*, or (c) Rule 7.3, *Direct Contact with Prospective Clients*. Using such an internet business to seek new clients does not violate Rule 1.18 or other rules of professional conduct provided the attorney does not undertake representation for which he has a conflict of interest and the attorney protects the confidentiality of the information received from the prospective client.

BACKGROUND

3. A new internet service provider website has emerged for Utah business market consumers, including potential clients who need and/or seek legal services. The website is an internet forum designed to help all consumers, obtain bids or quotes on various professional services, including legal services, in the geographic area where the potential consumer or client lives or where the potential services are needed. Professionals, including attorneys, may create a profile on the service website (free of

charge both to the consumer and to the professional). These professionals may respond in writing to consumer requests for bids or quotes on proposed services. Consumers, including potential legal clients, are allowed to review the professionals/potential attorneys' submissions, such as attorney biographies, other client analysis of such attorney services, and attorney case summaries. The consumer/potential client may then leave comments or recommendations on the website for separate consumer access.

4. This internet forum service is akin to the popular *Angie's List* website, www.angieslist.com, which also allows consumers to find professional services the consumer either wants or requires in an identified geographic area. Yet a critical difference between *Angie's List* and the internet forum service provider described in this Opinion is that the *Angie's List* service charges consumers to become *Angie's List* "members" in order to take advantage of *Angie's List* services. In contrast, the internet service described in this Opinion is available cost-free to consumers. Instead, the internet service charges the professionals, including attorneys, for this internet service when the professionals submit bids to the consumer with respect to the consumer's requested service. In order for an attorney to submit a bid to the potential client for requested legal services, the attorney must pay a nominal fee of approximately \$3.00 - \$5.00 per bid to the internet service provider. The attorney must pay this fee for each bid, regardless of whether the bid actually results in any work for the consumer/client.

5. Any Utah lawyer can register on the internet forum service provider described herein and submit a resume and/or listing of attorney qualifications for designated legal services. The internet service confirms that the Utah State Bar has in fact licensed the bidding attorney. The attorney, who has registered with the internet service,

selects a category of requests he/she would like to receive, such as tax litigation, contract law, criminal law, etc. The attorney also sets a travel geographic area to specify the maximum distance the professional would limit his/her services.

6. To secure an attorney service bid, the consumer/potential client first completes a form application on the internet, identifying the area of law and the type of service and providing a short narrative about the issue. The potential client is essentially requesting the internet service to provide via the internet the names of attorneys capable of providing the designated professional service, such as hypothetically "attorneys" who handle "taxation" matters. Potential clients' first names and requests for legal services are instantly transmitted by email to all attorneys who have registered with the internet service, and who match the requested service category and geographic area. The internet service then provides the consumer/potential client applicant the names and bids of the first five attorneys who have submitted bids. Each attorney's bid includes a price estimate, a business profile (possibly including links to the attorney's website), a personalized message, customer reviews and contact information. A customer/potential client's request is only active for twenty-four hours or until five professionals/attorneys have submitted bids, whichever comes first.

7. The customer/potential client information is contractually deemed a confidential communication to the bidding professional/potential attorney. The customer/potential client information submitted to a professional/potential attorney is not public information, consistent with the internet service contract between the internet service and the potential client. Hence, such information cannot lawfully be shared with anyone but the professional/potential attorney applicant who is invited to submit a bid.

8. After the potential client receives the bids from up to five attorneys, it is up to the potential client to take the next step. The potential client may undertake communication with one or all of the bidding attorneys, and may at that point share his complete name, further confidential information about the matter, and additional contact information including a telephone number. Any use of this information by anyone, except for the intended recipient professional/potential attorney as the potential client deems appropriate, is contractually prohibited. The internet service provider informs the professional/potential attorney that if he/she has received the potential client transmission in error, the professional/professional attorney should immediately reply to the sender and delete such information from the professional/potential attorney internet system.

9. After the bid, there may be no further communication from the potential client to the professional/potential attorney bidding for the job. Alternatively, after the potential client initiates contact with an attorney, there may be back and forth communication until the client has decided to hire the attorney.

ANALYSIS

10. With respect to the internet forum service provider, and the potential attorney participation therein, the most relevant provisions of the Utah Rules of Professional Conduct ("URPC") are Rules 7.1, 7.2, 7.3 and 1.18. Rule 7.1, *Communications Concerning a Lawyer's Services*, prohibits "false or misleading communication" about a lawyer or a lawyer's services. Rule 7.2(b), *Advertising*, prohibits giving "anything of value to a person for recommending the lawyer's services[.]" and Rule 7.3(a) *Direct Contact with Prospective Clients*, prohibits a lawyer "in-person" and by "real-time electronic contact," from soliciting "professional employment from a

prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain," unless the lawyer participates "with a [separately owned] prepaid legal services plan."

11. The EOAC has frequently concluded in previously issued opinions that "[t]he U. S. Supreme Court has made it clear that public communication concerning a lawyer's services (including any for advertising) is commercial speech, enjoys First Amendment protection, and can be regulated only to further substantial state interests, and only in the least restrictive manner possible. The cardinal rule concerning all public communication about a lawyer and her services is that the communication not be false or misleading." Ethics Advisory Opinion No. 14-04 (also quoted in Ethics Advisory Opinion 00-02 and 09-01). Similarly, the Utah Supreme Court has found that "[t]he state obviously has a substantial and compelling interest in protecting the public from false, deceptive, or misleading advertising." *In re Utah State Bar Petition*, 647 P.2d 991, 993 (Utah 1982). Deceptive advertising in the legal profession poses a particular risk because "the public lacks sophistication concerning legal services, [and therefore] misstatements that might be overlooked or deemed unimportant in other advertising may be found quite inappropriate in legal advertising." *Bates v. State of Arizona*, 433 U.S. 350, 383 (1977).

12. With respect to the internet forum service provider for attorneys, as described above in detail, Rule 7.1 has application to applicant attorneys, but not to the internet forum service provider. That is because the internet forum service provider itself makes no representations to the public or to the consumer/potential clients except that "interested and available professionals" will send "custom quotes." The internet forum service simply facilitates attorney bids (including price quotes, biographies, and customer

reviews) being sent to potential clients. However, if the internet service provider includes any false or misleading statements about the bidding attorneys, then Rule 7.1 will be violated by the attorney.

13. The potential attorney bids to a client for legal representation are not publicly available, but rather are available only to the potential client. Although Rule 7.1 "governs all communications about a lawyer's services, including advertising permitted by Rule 7.2[.]" the Rule applies only to a "lawyer's communication" and/or "An advertisement that truthfully reports a lawyer's achievements on behalf of clients or former clients [that] may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case." It is theoretically possible that a potential attorney's submission to the internet forum service provider could be misleading if the attorney's submitted resume or case summary were false or misleading. Similarly, it is possible that a customer review could be false or misleading if it were "presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters." URPC Rule 7.1 cmt. 3. When that customer review is sent with the attorney's bid, the lawyer will be seen to be making that communication under Rule 7.1. Yet there is no violation of Rule 7.1 by lawyer submission of such documents, again assuming they include no attorney misrepresentation.

14. Rule 7.2(a) provides that "Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media." Comment 2 to Rule 7.2 explains:

This Rule permits public dissemination of information concerning a lawyer's name or firm name, address and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language ability; names and references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.

Accordingly, the attorney information the Utah lawyer submits to the internet forum service provider precisely complies with the "Advertising" permissible by Rule 7.2.

15. Rule 7.2 further prohibits giving "anything of value to a person for recommending the lawyers' services" except to "pay the reasonable costs of advertisements or communications permitted by this Rule" or to "pay the usual charges of . . . a lawyer referral service." URPC Rule 7.2(b)(1) & (b)(2). Thus, if the internet service provider "recommends" a bidding attorney in any manner or indicates that the bidding attorney has been vetted or approved, then the attorney will be in violation of Rule 7.2. Provided the internet service provider simply indicates the bidding attorney is "available" and "interested," Rule 7.2 is not violated.

16. Comment [5] to Rule 7.2, entitled *Paying Others to Recommend a Lawyer*, with respect to advertising, provides that "A lawyer may compensate employees, agents and vendors who are engaged to provide marketing or client-development services], such as publicists, public-relations personnel, business-development staff and website designers." Similarly, Comment [6] to Rule 7.2 defines a "lawyer referral service" as "an organization that holds itself out to the public to provide referrals to lawyers with appropriate experience in the subject matter of the representation." Hence, the minimum fee an attorney must pay the internet forum service provider, as described above, complies with ethically permissible advertising services or lawyer referral services

available to attorneys.

17. Rule 7.3 (a) provides that "A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted (a)(1) is a lawyer; or (a)(2) has a family, close personal, or prior professional relationship with the lawyer." This ethical prohibition against lawyer solicitation was upheld as constitutional in *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447, *reh'g denied*, 439 U.S. 883 (1978), where the Court stated:

Unlike a public advertisement, which simply provides information and leaves the recipient free to act upon it or not, in-person solicitation may exert pressure and often demands an immediate response without providing an opportunity for comparison or reflection. . . . There is no opportunity for intervention or counter-education by agencies of the Bar, supervisory authorities, or persons close to the solicited individual.

Ohralik at. 534.

18. With respect to the Utah internet forum service provider described herein, the attorney application and bid for a potential client does not violate Rule 7.3 for these reasons. First, the attorney does not communicate with the client by "in-person live telephone or real-time electronic contact" but submits a bid and other written materials that are forwarded to the client. Second, it is the client, not the lawyer, who has solicited attorney representation. Third, it is the client who initiates further conversation about the representation, including possibly by telephone, after receiving the attorneys' bids. The one caution is that the client may include a telephone number in the initial written account of the situation that is distributed to all qualified attorneys. In such a case, the attorney bidding for the client's business may not initiate a telephone call to the client without running afoul of Rule 7.3's prohibition of "real time ... contact."

19. The attorney's relationship with this potential client is also governed by Rule 1.18 *Duties to Prospective Client*, Utah Rules of Professional Conduct. This rule defines a "prospective client" as "a person who consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter." This rule applies whether or not the prospective client ultimately retains the attorney. Because the consumer soliciting bids will be a "prospective client," the attorney bidder who learns information from that prospective client must not "use or reveal that information except as Rule 1.9 would permit with respect to a former client." URPC Rule 1.18(b). Similarly, an attorney bidder may not represent another client "with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter" with certain limited exceptions. URPC Rule 1.18(c). Consequently, it would be wise for the attorney submitting the bid to limit the information he receives from the prospective client.

20. At some point the prospective client must decide whether to retain the attorney. The attorney must also decide whether representation of this client will involve a "conflict of interest" in violation of Rule 1.7, Rule 1.9, Rule 1.10 or Rule 1.11. If there is no conflict of interest, the attorney could represent the client. Typically an attorney will screen for a conflict of interest using the names of the client and the opposing parties prior to any communication about the legal matter. Here, the attorney will learn something about the prospective client's legal matter before discovering the client's or the opposing party's names. In some cases the attorney who has submitted a winning bid

will be unable to accept the representation once the attorney learns the identities of the parties, as there will be an impermissible conflict of interest.



UTAH JUDICIAL CONDUCT COMMISSION ANNUAL REPORT FY 2015

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Creation and Authority of the Judicial Conduct Commission

Although it existed previously as a legislatively created body, Utah's Judicial Conduct Commission (JCC) was constitutionally established in 1984. Constitution of Utah, Article VIII, Section 13. The constitution authorizes the Legislature to statutorily establish the composition and procedures of the JCC. Those provisions are found in Utah Code Ann., Title 78A, Chapter 11.

The JCC is empowered to investigate and conduct confidential hearings regarding complaints against state, county and municipal judges throughout the state. The JCC may recommend the reprimand, censure, suspension, removal, or involuntary retirement of a judge for any of the following reasons:

- action which constitutes willful misconduct in office;
- final conviction of a crime punishable as a felony under state or federal law;
- willful and persistent failure to perform judicial duties;
- disability that seriously interferes with the performance of judicial duties; or
- conduct prejudicial to the administration of justice which brings a judicial office into disrepute.

Prior to the implementation of any such JCC recommendation, the Utah Supreme Court reviews the JCC's proceedings as to both law and fact. The Supreme Court then issues an order implementing, rejecting, or modifying the JCC's recommendation.

Number of Complaints Received in FY 2015

Of the 70 complaints received in FY 2015, 69 have been resolved and 1 is still pending.

Complaints Received in FY 2015			
Judge Type	Number of Judges	Number of Complaints Received	Number of Judges Named in Complaints
Supreme Court	5	0	0
Court of Appeals	7	1	3
District	71	39	30
Juvenile	30	6	6
Justice Court	98	17	14
Pro Tempore	67	7	7
Active Senior	66	0	0
Total	344	70	60

Confidentiality of JCC Records and Proceedings

Except in certain limited circumstances specified by statute, all complaints, papers and testimony received or maintained by the JCC, and the record of any confidential hearings conducted by the JCC, are confidential, and cannot be disclosed.

Sanctions and Other Resolutions

Sanctions Implemented by the Utah Supreme Court

There were no public sanctions implemented by the Utah Supreme Court during FY 2015.

Dismissals with Warnings Issued by the Judicial Conduct Commission

Dismissal with a Warning. On September 16, 2014, the JCC dismissed a complaint filed against a justice court judge who had acted impatiently toward an individual who interrupted court proceedings. The JCC found that the judge's actions violated Rule 2.8(B), which requires judges to act with patience, dignity and courtesy. However, the JCC also found that the misconduct was troubling but relatively minor misbehavior for which no public sanction was warranted.

Dismissal with a Warning. On November 18, 2014, the JCC dismissed a self-reported complaint against a justice court judge who, while wearing a judicial robe, participated in the ALS ice-bucket challenge and challenged other judges and court administrators to participate. The judge posted a video of his participation and challenges online, but immediately removed the video when he became aware of the violation. The JCC found that the judge's actions violated Rule 3.7(A), which prohibits judges from engaging in many fund-raising activities. However, the JCC also found that the misconduct was troubling but relatively minor misbehavior for which no public sanction was warranted.

Dismissal with a Warning. On January 20, 2015, the JCC dismissed a complaint filed against a relatively new district court judge who had engaged in a few minor ex parte communications about a pending civil case. The JCC found that the judge's actions violated Rule 2.9(A), which prohibits most ex parte communications. However, the JCC also found that the misconduct was troubling but relatively minor misbehavior for which no public sanction was warranted.

Dismissal with a Warning. On March 17, 2015, the JCC dismissed a self-reported complaint against a new district court judge who had, during the judicial appointment process, publicly endorsed a candidate for public office. The JCC found that the judge's actions violated Rule 4.1(A), which prohibits judges and judicial candidates from participating in many political activities. However, the JCC also found that the misconduct was troubling but relatively minor misbehavior for which no public sanction was warranted.

UTAH JUDICIAL CONDUCT COMMISSION – COMPLAINT RESOLUTION PROCESS

INITIAL SCREENING	PRELIMINARY INVESTIGATION	FULL INVESTIGATION	FORMAL PROCEEDINGS	SUPREME COURT
<p>Executive Director reviews each "complaint" to determine whether it is a complaint within the JCC's jurisdiction.</p> <p>Staff returns non-JCC complaints (i.e., complaints against bar members or court employees) to complainant with appropriate instructions.</p> <p>For JCC complaints, staff prepares electronic and hard-copy files, sends acknowledgment letter to complainant, and returns hard-copy file to Executive Director.</p> <p>Executive Director assigns investigator.</p> <p><i>Note: Anonymous complaints are submitted directly to JCC members, who review and discuss the complaint and vote to either take no action or to have staff conduct a preliminary investigation.</i></p>	<p>Investigator conducts preliminary investigation, writes preliminary investigation report, and recommends whether to dismiss or to proceed to full investigation as to some or all allegations.</p> <p>Executive Director reviews preliminary investigation report and recommendation, and may revise either.</p> <p>Staff distributes preliminary investigation report and recommendation, along with pertinent materials, to JCC members.</p> <p>JCC meets, reviews and discusses preliminary investigation report and votes to dismiss, to have staff conduct additional preliminary investigation, or to proceed to full investigation as to some or all allegations.</p>	<p>Staff provides judge with copy of complaint and other pertinent materials and asks judge to respond in writing to identified allegations.</p> <p>Investigator conducts additional investigation, if necessary, as to issues raised in judge's response. Investigator may write supplemental investigation report and may make recommendation whether to dismiss or to proceed to formal proceedings.</p> <p>Staff distributes judge's response and any supplemental investigation report and recommendation materials, to JCC members.</p> <p>JCC meets, reviews and discusses judge's response and any supplemental investigation report and votes to dismiss, to have staff conduct additional investigation, or to proceed to formal proceedings as to some or all allegations.</p>	<p>Staff prepares formal complaint and serves same upon judge via certified mail.</p> <p>Judge may file written response.</p> <p>Matter may be resolved by dismissal, stipulated resolution or confidential hearing.</p> <p>A stipulated resolution may recommend: Reprimand Censure Suspension Removal from Office Involuntary Retirement</p> <p>After a confidential hearing, the JCC may dismiss the matter or may recommend: Reprimand Censure Suspension Removal from Office Involuntary Retirement</p>	<p>Staff files JCC's findings of fact, recommendation and other statutorily required materials with Supreme Court.</p> <p>JCC's recommendation becomes public upon filing. All other materials become public only upon Supreme Court order.</p> <p>Supreme Court reviews JCC's proceedings as to both law and fact, and implements, modifies or rejects JCC's recommendation.</p> <p><i>Note: JCC dismissals are not reviewed by the Supreme Court.</i></p>

Administrative Affairs

Meetings

The JCC meets as needed on the third Tuesday of each month at the Utah Law & Justice Center in Salt Lake City. The JCC met 8 times during FY 2015.

Administrative Rules

The JCC's administrative rules are available online at www.rules.utah.gov.

JCC Commissioners

Robert Behunin
James Jardine
Rep. Brian King, Chair
Tami King
Sen. Karen Mayne
Rep. Kraig Powell
Lois Richins
Hon. Stephen Roth
Hon. Todd Shaughnessy
Sen. Stephen Urquhart, Vice-Chair
Terry Welch

Judge Deno Himonas, who had served on the JCC since 2012, became a member of the Utah Supreme Court in February 2015. In March 2015, Judge Todd Shaughnessy was appointed to fill the vacancy.

JCC Staff

Colin Winchester, Executive Director
Aimee Thoman, Investigative Counsel
Sara Sherman, Office Technician

Website

The JCC's website, www.jcc.utah.gov, contains in-depth information, links to related sites, annual reports, copies of public discipline documents, and downloadable complaint forms.

JCC Statutes

The statutes governing the JCC are located in Utah Code Ann., Title 78A, Chapter 11.

Budget

Most of the JCC's budget is appropriated annually by the Legislature. For FY 2015, the legislative appropriation was \$244,119. JCC expenses for FY 2015 were \$240,613, leaving a balance of \$3,506.