

BAR & BENCH

SALT LAKE COUNTY BAR ASSOCIATION

SALT LAKE COUNTY BAR ASSOCIATION

WINTER 2011

President's Message

by Trina Higgins
Salt Lake County Bar President

Rumor has it there will be several judicial openings in the third district this year. Having recently finished a term on the Third District Judicial Nominating Commission, I've decided to share some thoughts about the process. The purpose of this article is not to tell you what you need to know to become a district court judge. That is really quite simple: be smart and hard working and likeable. If you are not smart, if you are lazy, or if people just don't like you, you should reconsider whether you ought to apply at all. This article is simply a guide through the process with some thoughts and suggestions from someone who has participated in the process on the other side.



Trina Higgins

The Commission on Criminal and Juvenile Justice (CCJJ) now oversees the process and gathers all the necessary information for the Judicial Nominating Commission in each district. Each Judicial Nominating Commission consists of seven voting and one nonvoting commissioners. The nonvoting commissioner is a member of the Judicial Council appointed by the chief justice of the Utah Supreme Court. The commission must include two commissioners from a list provided by the Utah State Bar and may not include more than four commissioners who are members of the Utah State Bar. Each commissioner serves a four-year term and may not serve a successive term. For more on this fascinating topic, see Title 78A Chapter 10 of the Utah State Code.

The whole process begins with an application. This may seem like a very obvious piece of advice but please make sure you are using the current version of the judicial application. It can be found here: http://www.justice.utah.gov/ccjj_judicialvacancies.html. The time consuming job of reviewing every application is

easier when they all contain the same information in the same place.

One of the first requests on the application is for you to state why you want to be a judge. There are plenty of people who will tell you what you should or should not say and how best to express yourself to sound impressive. I'll just give you two small pieces of advice from having read over a hundred of these. First, the answer to this question matters. The commissioners read it, they consider it, and they discuss it. Second, be brief. This is not the place to write your life story. This is the place to explain why you are seeking the job. Write down the truth. If it sounds lame, write down something that sounds better. No, actually, if your reason for applying is no good, don't

apply. If your reason for applying is good, write it down and send it in. Don't waste a bunch of space trying to dress it up.

Along with the application, the Judicial Nominating Commission receives reference forms submitted about each applicant. The CCJJ sends out forms to people you list on your application as references and some of those people fill them out and send them back. The reference forms are a very important part of the process. To all lawyers and judges: If you receive a reference form from the CCJJ, please take the time to fill it out. Be honest. Be thorough. The commissioners rely on these references to determine the applicants' qualifications and suitability.

In addition to the more formal reference forms sent out by CCJJ, the commission receives references about applicants in the form of letters, emails and phone calls from people inside and outside the legal community. (Continued on Page 8)

Restaurant Review

The Copper Onion

The Copper Onion
111 E Broadway
Salt Lake City, Utah 84111
(801) 355-3282
www.thecopperonion.com

Lunch: Monday – Friday: 11:30 a.m. – 3 p.m., Dinner:
Sunday – Thursday: 4 p.m. – 10 p.m., Friday – Saturday:
4 p.m. – 11 p.m., Brunch: Saturday & Sunday: 10:30
a.m. – 4 pm.

The Copper Onion is a fantastic new addition to the downtown Salt Lake food scene. Former NYC chef (and native Utahn) Ryan Lowder and his wife Colleen opened the restaurant in January of 2010 to rave reviews, including this year's best new restaurant as featured in this month's Salt Lake Magazine's 2011 Dining Awards. The Copper Onion serves amazing regional American fare in a contemporary, casual atmosphere, conveniently located next to the Broadway Theatres.

The lunch menu offers small plates and entrees as well as an array of tasty sides that can be shared family style. My favorite small plate is the ricotta dumplings with lemon, sage and brown butter – they are light, airy and delicious. The mussels in a creamy black pepper sauce and served with

toast points is likewise amazing. The entrees include many options that incorporate local fresh ingredients. Among the favorites were the trout filet with fennel salad, olive tapenade and chili oil, the copper onion burger (the sausages and burgers are ground daily) with steak fries or arugula salad, and the pasta carbonara featuring house-made fettuccine in a creamy sauce with Niman Ranch smoked bacon and a raw egg on top. For the sides, I highly recommend the shishtos peppers with olive oil and sea salt and the sautéed spinach with cashews and raisins. The Copper Onion is a great place to have lunch with colleagues or to entertain clients. The service is fast, friendly and you can enjoy a great, reasonably priced meal in less than an hour.

The dinner menu is also impressive and includes exceptional cured meats and cheeses as starters, and array of plates and pastas as entrees such as the house meatloaf with lamb, beef and pork, the tri-tip steak with a béarnaise sauce, and roasted Niman Ranch chicken mushroom brodo. Take note, however, that the menu changes daily to highlight fresh, seasonal and many local Utah farmed ingredients. In short, food enthusiasts will not be disappointed!

The Copper
Onion serves
amazing regional
American fare in
a contemporary,
casual
atmosphere



Save the Date!
*The Salt Lake County
Bar Association Annual
Spring Dinner will be
held on
June 3, 2011. Watch
for your invitation.*

Recent Precedents

New Lawyers and Judges Reception



The Salt Lake County Bar Association's New Lawyers and Judges Reception to welcome the 2010 Utah State Bar admittees was held on Thursday, Nov. 4, 2010 at The Alta Club



Judicial Profile

Judge J. Frederic Voros, Jr

by Chandler Thompson

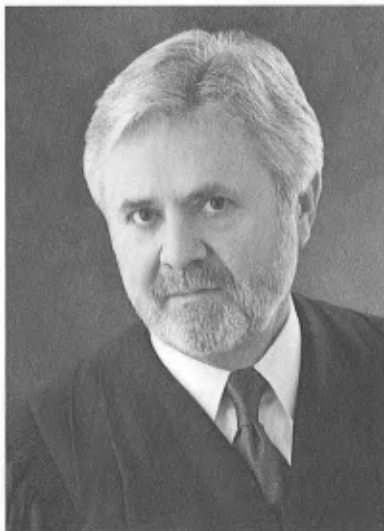
Judge J. Frederic Voros, Jr., holds a special place of honor amongst the Utah Judiciary as the first BYU law school graduate to sit on either of the Utah Appellate Courts. His ascension to the bench of the Utah Court of Appeals was the culmination of a rigorous childhood immersed in the art of argument and logic, a few crucial mentors in his legal education, a successful career in appellate advocacy, and simple determination.

Judge Voros's judicial philosophy was honed from early childhood, through the Socratic education he received from his mother, a debate team coach in the California University system, who challenged him early and often in the arts of persuasion and rhetoric. His father was a first generation Hungarian immigrant who made up for his lack of a formal education with an autodidactic immersion in the intellectualism permeating the New England States of the early twentieth century.

After obtaining his undergraduate degree from BYU in 1976 as an English major, Voros was steered away from seeking a Ph.D in literature by the buzz of the new law school on campus and the guidance of a trusted undergraduate professor, Bruce Hafen. Upon his graduation from the J. Reuben Clark School of Law, Voros was invited by Hafen to join him at Ricks College (now BYU-Idaho), where he served as general counsel until he received an offer to become a law clerk for Justice Dallin H. Oaks on the Utah Supreme Court. Following his time with Justice Oaks, and a brief stint as a commercial litigator at Prince, Yeates & Geldzahler, Voros found the best fit between his abilities and interests in the Criminal Appellate Division of the Attorney General's office. The ethical obligation to zealously advocate for societal justice, as opposed to the singular interest of a client, was a better match for Voros's idealistic outlook, and the appellate work better suited his natural abilities than did the day-to-day practice of law. Voros was eventually promoted to serve as Chief of the Criminal Appeals Division, where he remained until his recent appointment to the Utah Court of Appeals.

Judge Voros views his role on the Utah Court of Appeals as that of a problem-solver, and the problems facing the Utah

Court of Appeals are almost always bigger than the problems facing the litigants themselves. His advice to the attorneys practicing before him would be to always keep an eye on the forest through the trees so that the problem at issue can be presented from the perspective that is most meaningful to the judges. Successful appellate attorneys must illustrate how any conflicting precedent, statutory provisions, or unique factual circumstances can be reconciled to achieve both a favorable result for their client and a workable, logical, and fair rule to be applied in the undefined disputes that will follow. The attorney whose proposed solution honestly recognizes and resolves any such conflicts, while simultaneously creating the best and most viable rule for the similar, hypothetical problems of the future, will usually emerge victorious.



Judge J. Frederic Voros, Jr.

In his time away from the Court, Judge Voros is a music lover and a family man. He has spent many happy days hiking with his family in the great outdoors of Utah and the Canadian Rockies, and pursuing his musical interests, which include both playing in his own bands as well as attending live concerts. Although Judge Voros is a dedicated Bob Dylan fan, attending at least eight of his concerts between 1965 and the present, he does his best to stay current, listening to the music of modern talents like What Made Milwaukee Famous, Brandi Carlile, The Raconteurs, and The Black Keys.

In his still sparsely decorated chambers, Judge Voros's most prominent adornment is a portrait of Abraham Lincoln that hangs on the wall behind his desk. Judge Voros views Lincoln as the foremost prose stylist of American public life, and a model for attorneys and judges alike. Lincoln's elegant, simple, and unadorned prose was achievable only because of his clarity of thought ("If slavery is not wrong, nothing is wrong."), and Judge Voros believes that the best attorneys of today reveal the clarity of their own thinking in their ability to crystallize complex arguments into simple, understandable language.

Justice Tongue

“Anything goes” amoralism?

Dear Justice Tongue:

I recently completed the third CLE program that has belabored the issue of civility. In a word, “I get it.” I’ll spot you civility has its place, but we are “fiddling while Rome burns.” While we’re sitting in seminars learning to play “patty-cake” with one another, there is a widespread, gathering, ominous trend in litigation practice wherein lawyers are raising lying, cheating and stealing to high art. It is my less than rare burden anymore, in both motion and trial practice, to watch members of the bar systematically misrepresent evidence and wholly and completely misrepresent the holding of cases. In fact, a colleague of mine reports that a lawyer from a big firm from LA showed up in a hearing and actually cited as controlling law the minority opinion of a case. This trend is beyond concerning and an increasing number of disinterested judges are blithely standing by (or sitting, if you please) while one of the most sophisticated, elegant systems of justice this world has known deteriorates toward our popular culture of “anything goes” amoralism. We seem to be more interested in good manners than the truth.

Tell me I’m too cynical.

Sincerely,
Let’s Invent Evidence

Dear LIE:

Let me get this straight. In the “Grace L. Ferguson Storm Door and Law School” that you apparently attended there were no courses on Dissembling, Evidence Tampering, Deceptive Redaction, or Sophistry 101? Are the bullies in the courtroom too much for your prissy notions of procedural and substantive due process? Remember, you are out in the west – the wild west – to be more precise. Lying, cheating and stealing is what made America great. Just ask the Native Americans. Where would we be if everyone had played it straight with those folks?

This is a competitive culture. What you seem to be saying is that lying, cheating and stealing have no part of the competition in court. What do you think litigation is all about? Oh, let me guess what you are thinking – fair play and substantial justice? Are you suggesting that in a court of law rules should be followed and adhered to by the

participants? If that caught on, pretty soon you will have citizens suggesting that lawyers be sworn officers of the court with a duty to uphold the rules, to fairly and accurately present the facts and evidence, and to conscientiously cite and fairly argue the law. Where would all that meddling lead? Next thing, someone will suggest rules of professional conduct and other meddlesome nuisances.

Why make a big deal out of learned California counsel citing a minority opinion in a case as though it were the controlling legal authority? What are you implying; that minorities do not count? Put on your civility hat for a minute and try to look at it through rose-colored glasses. Perhaps he was just simply trying to give the judge who

wrote the minority opinion his or her day in the sun. Maybe he was just trying to plant a seed so that the majority in that case might hear of the argument and see the error of their ways.

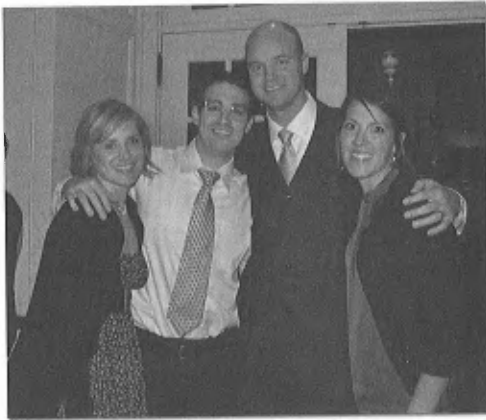
And if we start following rules, imagine the impairment to creativity and imagination. You are almost suggesting that distributive justice should be based upon what actually occurred and not what might be deceptively sold to the unwitting. Imagine what could happen. Why, the ripple effect could be uncontrollable. It might even bring an end to multi-level marketing and send Utah County into a recession that no treasury printing-press could correct.

And about that nasty swipe at judges. Certainly a small number of my colleagues fit your characterization, but it does not escape my notice that you have violated six or seven tenets of civility with your wide-eyed slap. Think of all the hurt feelings if judges played it tough with lawyers that lied about the facts or law. [Well, just listen to me, I used that nasty “L” word.] And look at how harsh a judge would appear if he or she were to call counsel out in public because they grossly misrepresented a fact or an exhibit or a holding of a case. Do you think it’s really worth all those frowny faces just to preserve the integrity of our legal system? If you think lawyers would be unhappy with stern finger-wagging from a judge, imagine how stressed they would be if they had to know and understand the Rules of Civil Procedure and the tenets and principles of our time-honored jurisprudence, much less follow them. Are you suggesting that lying is uncivil? (Continued on page 7)

Are the bullies in the courtroom too much for your prissy notions of procedural and substantive due process?

Recent Precedents

Holiday Party



You are cordially invited to attend
the Salt Lake County Bar Association's annual
Holiday Dinner Dance

Friday, December 3, 2016
The Country Club
2400 East Country Club Drive
Salt Lake City, Utah

RSVP to Ms. Alison Hansen
alohansen@slcba.com • (801) 323-3436

Cost: \$60 per person
Dinner 7:30-9:00 pm
Dancing (starting around 9:30 pm) to follow
Thank You!

SLCBA members and guests
\$75 per person to non-members
Cash bar only
RSVP required by December 23

Who Am I?

Last Issue's Answers

Here are the answers from our last issue. Thanks to our panel of attorneys for being good sports about the desecration of their portraits.

I have a wild boar head mounted on my wall that I shot with a pistol in the swamps of Savannah, Georgia. I worked in the White House as Associate Counsel to the President of the United States, clerked for Robert H. Bork, and have appeared in court in a seersucker suit and a bow-tie.



Brent Hatch

In 1965, I won first prize at the Salt Lake County Fair as the best pig raiser in the County. I was the mayor of Riverton from 1981-1989 and, in 1986, I was the Democratic candidate for the U.S. House of Representatives for the 3rd District of Utah. I am an avid antique car restorationist and my law practice focuses on litigation involving local governments across Utah.



Dale Gardiner

I was born and raised in rural Montana, where I spent my summers working on various cattle ranches and in the local gold mine. I enjoy sea kayaking on the Great Salt Lake in my spare time. In addition to my litigation practice, I have been a small claims judge for the past three years.



D.J. Williams

Justice Tongue

Continued

(Continued from page 5)

Well, what if it is done in a soft tone and with a smile?

Maybe you are just not in step with a new world that is free of stress, discipline, sacrifice and integrity. Why be concerned about whether the process lacks substance? When people come visit these proceedings, everyone will be smiling and happy, speaking in soft tones, using cuddly, warm and fuzzy words and polite gestures toward one another. Why, it will be like the happy cartoons we watched when we were kids. "Th-th-th-th, that's all folks!"

Fondly,

Tongue

Clerk's Post Script:

With all due respect, I believe (actually, I know) the good Judge lifted a few too many sniffers while he penned this reply. Be assured he knows the liars and cheats (oh, forgive my uncivil tongue), and they pay – trust me, sooner or later, they pay.



2 405
*****AUTO**5-DIGIT 84111
LAUREN SHURMAN
STOEL RIVES LLP
201 S MAIN ST STE 1100
SALT LAKE CITY UT 84111-2208



Continued from Page 1) Anyone can comment on an applicant. (If you know someone who is applying for judicial office, and you have an opinion regarding that person's ability to do the job, write a letter or contact one of the commissioners and share your thoughts.

Once the commissioners have had the opportunity to review all of the applications and references, the commission meets. The first portion of the meeting is open for public comment. Often a judge will appear at this portion of the meeting to answer questions from the commission. The second part of the meeting is closed. During this portion of the meeting the commission reviews and discusses the applicants and determines how to proceed with the nominating process, which may include setting up interviews.

The interview format and length vary from one Judicial Nominating Commission to the next. There are no set rules about how long they should be or what information should be elicited. Surely different commissions and different commissioners are looking for different things. There is no way to guess what will happen, and you should not waste time preparing answers. Be confident. Be concise. Advocate for yourself – you are a licensed professional advocate after all. At some point following the interviews,

and no later than 45 days after the first meeting, the commission will send a list of five applicants to the governor.

One final piece of advice: don't read too much into the outcome. The fact that your name was not on the list means very little aside from the fact that your name was not on that particular list on that particular day. There are so many variables at play during this process. The very same commissioners with the very same list of applicants could easily agree on a different outcome. The smallest change in facts or circumstances could make a difference. If you want to be a judge and you think you have what it takes, apply again and again and again if necessary. Unless, of course, you are not smart, you are lazy, or people just don't like you.