

BAR & BENCH

SALT LAKE COUNTY BAR ASSOCIATION

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WINTER 2019

President's Message

by Christopher Hogle
Salt Lake County Bar President

Hello, you've reached the Men's Help Line. My name is Don. How can I help you?

Hi Don, I really need your advice on a serious problem. I have suspected for some time now that my wife has been cheating on me. You know, the usual signs: the phone rings and when I answer, the caller hangs up. Plus, she goes out with "the girls" a lot. I try to stay awake to look out for her when she comes home, but I always fall asleep.

Anyway, last night around midnight, I woke up and she wasn't home, so I hid in the garage behind my boat and waited for her. When she came home, she got out of someone else's car, buttoning her blouse, and then she leaned in and kissed the driver, long and hard, just like she and I used to kiss back when we were dating. It was at that moment, while crouched behind the boat, that I noticed a hairline crack in the outboard motor mounting bracket. Is that something I can weld, or do I need to replace the whole bracket?

A crack in an outboard motor mounting bracket is quite serious. Good thing Don's caller didn't stay in bed and, instead, got engaged.

As lawyers, engagement is our stock and trade. Clients hire us to deal with their problems, and while doing so, we frequently discover other matters that need attention.

It's a situation familiar to parents. My son was having trouble with his school work, and when Yvonne and I investigated the matter, we found out that he's near-sighted

and needs glasses to see the chalk board. (That doesn't mean he actually wears his glasses in class. Apparently, seeing the chalk board isn't as important as looking "cool.")

Maybe we shouldn't have picked out his frames from the Carol Channing Collection.)

Without engagement, we're unable to see what's under the surface. And what's there isn't always a problem. You can find inspiration as well. The SLCBA is a prime example. Engagement with the SLCBA and other bar and community organizations can be rewarding, as your fellow SLCBA members already know.

The enemy of engagement is cynicism, and beyond telling a funny joke, that's the real point of this message. Imagine if Don's caller had been silenced by the notion that the cards were stacked against him and anything he tried would be ineffectual. His boat would be a disaster waiting to happen.

We should resist the urge to be cynical, and that means avoiding sore loserism. Today, we see some politicians blame their defeats, or preemptively bewail possible outcomes, on "rigged" elections, dishonest tactics, or ignorant, incompetent, or "activist" voters, officials, and judges. Lamentably, it seems that this has become a standard tactic. Gracious concession is no longer generally expected and, when withheld, universally condemned. But the tactic is effective only to the extent that it erodes confidence in institutions, which makes a mockery of those engaged with them.



Christopher Hogle

President's Message

C o n t i n u e d

As lawyers, we need to set a good example. We're uniquely situated to chalk up disputes to good faith disagreements and defeats to judges and jurors doing their level best to reach the right outcomes. If we impugn the motives of opponents and decision-makers, we call into question the integrity of the institutions in which they operate. If we truly value inclusion, we need to resist cynicism. Why should anyone waste their time with institutions where the cards are stacked against them, or engage honestly when others don't?

Cynicism runs counter to inclusivity by discouraging universal participation. Rather than sore loserism, we ought to encourage widespread engagement and the good that comes from it.

Just like late night boat inspections.

Clients hire us to deal with their problems, and while doing so, we frequently discover other matters that need attention.

Judicial Profile

J u d g e A m b e r M . M e t t l e r

By Melanie S. Grayson

Appointed by Governor Herbert in November 2017, Judge Amber M. Mettler is a Third District judge based at the Matheson Courthouse. Judge Mettler hails from Pennsylvania, having spent most of her life on the east coast until a federal clerkship brought her to Utah in the early 2000s. She attended Princeton University, earning a B.A. in Politics in 1999 and then attended law school at the University of Pennsylvania. Judge Mettler always knew she wanted to go to law school; growing up, she viewed being an attorney as the epitome of success and job security. Before law school, she worked for two years in finance in Boston. This work experience was a real benefit to her in law school, because she knew right away that she wanted to pursue litigation and because she had some real world experience that other students lacked.

After law school, Judge Mettler wanted to clerk for a federal appellate judge. Initially, she hoped to secure a clerkship with a judge that might one day feed into a clerkship with a United States Supreme Court justice. She was selected for an interview with then Judge John Roberts, but claims she botched the interview. Eventually, she realized that she was just as likely to “get struck by lightning” as to get a feeder clerkship, and so, she began thinking about a “destination clerkship.”

Once Judge Mettler realized how accessible the skiing is in Salt Lake City, she set her sights on Salt Lake. She was very fortunate to secure a clerkship with Judge Michael R. Murphy on the Tenth Circuit Court of Appeals. While living in Utah and clerking for Judge Murphy, she skied as much as she could and had what she described as a “perfect” year.

Following the clerkship, Judge Mettler returned to the East Coast and the law firm of Williams & Connolly in Washington, D.C. She worked there for a year, but quickly determined to return to Salt Lake City. She returned in 2006, where she bought a home, got a puppy, and studied for the Utah bar exam. Once back in the Beehive State, Judge Mettler joined the regional law firm of Snell & Wilmer.

At Snell, Judge Mettler worked in litigation, becoming involved in some of the firm’s bigger cases. She also had the opportunity to do appellate work while working at Snell. She enjoyed the big cases, with lots of discovery and documents, which enabled her to learn the facts of the case through the discovery process. Snell offered excellent training, great people, and great cases. She did not give much thought to becoming a judge, until two other partners in her office were made judges. She decided to apply and was nominated by Governor Herbert after her second attempt.

Judge Mettler has a criminal calendar, which she admits she probably would not have picked if given the choice. But, she embraced the dual challenges of becoming a judge and learning the criminal system. After she was confirmed by the Legislature and before she took the bench, she spent six weeks reading the criminal code and rules of criminal procedure; she spoke with judges with criminal calendars and observed court as much as she could. Even now, after a year on the bench, Judge Mettler is candid with attorneys appearing before her, acknowledging that she is still learning.

She has been most surprised by the sheer volume of the court’s calendar. She explained that her court calendar is fully booked for more than three months. She has had to adjust to the fast pace and become as efficient as possible in her court room and in her learning process. Judge

Mettler has a few tips for practitioners, too. She stressed the need to be on time. She also stressed the importance of communicating with the court when adjustments need to be made to scheduled events. She advised contacting the court as soon as a practitioner knows that a motion need not be heard or that a hearing should be continued. Otherwise, the judge is likely to waste time now preparing for a hearing that will only be continued and for which the judge will have to prepare again at a later date.

When asked about the most rewarding part of being a judge, Judge Mettler explained that she understands the impact she and the courts have on someone’s life.



J u d g e A m b e r M .
M e t t l e r

Judicial Profile

C o n t i n u e d

She is frequently asked whether it is depressing to have a criminal calendar. Judge Mettler's time on the bench has actually made her think more positively about life, how hard people are trying to do good and right in their lives, and how fortunate many of us are.

In her spare time, Judge Mettler serves on the Utah Supreme Court's Advisory Committee on the Rules of Civil Procedure, remains involved in the Federal Bar Association, and enjoys skiing at Alta.

Staying calm
and being
responsive is the
most effective
way to advocate
for your client
during oral
arguments.

Judicial Profile

J u d g e A d a m M o w

By Michael Young

Judge Adam Mow recently firmly believes that every person should have his or her day in court. For this Third Judicial District Judge this means that everyone who appears in his courtroom is treated with fairness and dignity. Judge Mow is sensitive to the fact that many who appear in his courtroom can feel intimidated if they are not an attorney.

This philosophy might be explained, in part, by the calendar Judge Mow was asked to manage. Prior to moving to the bench, Judge Mow was a civil litigator that focused on construction and complex commercial matters. As a new Judge, Mow manages a predominantly criminal calendar, which has brought its own challenges.

“I began with a criminal calendar, which is about 80% criminal and 20% civil,” Mow notes. “Becoming knowledgeable on criminal procedure [and] case law has been challenging. That said, I very much enjoy handling criminal matters and I cannot imagine ever transitioning to a purely civil calendar.”

Judge Mow graduated magna cum laude with a Bachelor of Architecture from Ball State University in Muncie, Indiana in 1999. He obtained a Juris Doctor from the S.J. Quinney College of Law at the University of Utah in 2005, where he was a William H. Leary Scholar and the Executive Editor of the Utah Law Review.

After graduating from law school, Judge Mow was an attorney at the law firm of Babcock Scott & Babcock until 2011. From 2011 to his judicial appointment, Judge Mow was a shareholder at Jones Waldo Holbrook & McDonough, where he also served on its Board of Directors. He is a former architect and a past president of the Utah Chapter of the American Institute of Architects.

Prior to joining the bench, the S.J. Quinney College of Law graduate was often hired as a mediator or arbitrator. Working as a neutral party helped prepare Judge Mow for his role today. “Those opportunities allowed me to be in the role of a neutral—listening carefully, cutting to the heart of an issue, and evaluating a suitable outcome.” Judge Mow received Utah Dispute Resolution’s mediator of the year award and he served on its Board of Trustees.

He is also a past chair of the Dispute Resolution Section of the Utah State Bar.

At the end of the day, Judge Mow enjoys interacting with players in the courtroom. The interplay between defendants, counsel, staff, and others is interesting as each has a role to play and the personalities of each can affect the courtroom dynamic. Each day brings variation, “[o]ne moment I may be handling an uncontested adoption and the next I may be determining whether to grant a defendant the privilege of probation.”

Judge Adam T. Mow was appointed to the Third District Court in January 2018 by Governor Gary R. Herbert. He serves Salt Lake, Summit, and Tooele counties.



J u d g e A d a m
M o w

Judicial Profile

J u d g e R i c h a r d E . M r a z i k

By **Melanie S. Grayson**

In April of 2018, Governor Herbert appointed Judge Richard E. Mrazik to the Third District Court. Prior to his appointment to the bench, Judge Mrazik worked in private practice for Salt Lake City-based Parsons Behle & Latimer. Born and raised in Connecticut, Judge Mrazik attended Bowdoin College in Brunswick, Maine where he majored in biology and sociology. After graduating from Bowdoin in 1999, Salt Lake City's Fourth Street Clinic brought him to Utah, where he worked as an AmeriCorps volunteer. Once in Utah, Judge Mrazik discovered Alta Ski Area and never looked back. He called his mother, still living on the east coast, and told her "it'll be a while" before he came home. Nearly two decades later, Judge Mrazik is proud to call Utah home.

Judge Mrazik originally intended to go to medical school. While working as an AmeriCorps volunteer, however, he watched patrons of the Fourth Street Clinic come in sick and homeless, leave a little less sick, and then return—sick again and still homeless. Judge Mrazik knew in that moment that medicine was not the answer for him. He began thinking about the bigger tools needed to solve the problems of homelessness. This experience prompted him to go to law school.

Although he had opportunities to go to law school on the east coast, Judge Mrazik chose to stay in Utah and attend the S. J. Quinney College of Law. After graduating from law school in 2005, Mrazik decided to pursue litigation in private practice. He worked for a couple of local firms before finding a home at Parsons Behle & Latimer in 2007.

At Parsons, Judge Mrazik pursued a diverse civil practice, representing both plaintiffs and defendants in personal injury, product liability, and real property matters, and also representing the Town of Alta. Notwithstanding the rewards of a diverse litigation practice and his bond to his adopted family at Parsons, as the years passed, Judge Mrazik longed to return to public service.

So, he began applying for a district court position, ultimately being appointed to fill the vacancy left by Justice Paige Peterson's elevation to the Utah Supreme Court. When Mrazik was confirmed, he brought his 4-year old son to the

Legislature to witness—and participate shyly—in the important occasion.

Judge Mrazik has a calendar consisting primarily of civil cases. Faced with myriad subject areas that he never encountered in private practice, Judge Mrazik reserves time in his schedule to educate himself while preparing for hearings. Judge Mrazik's goal is to be prepared to provide a cogent oral ruling from the bench. But he acknowledges that some cases are too complicated to allow a ruling on the day of the hearing, and sometimes issues arise at the hearing that require additional consideration. Judge Mrazik observed that oral argument has been a surprisingly valuable part of his decision-making process.



J u d g e R i c h a r d
E . M r a z i k

Judge Mrazik also observed that the most challenging part of the job is making decisions that will have a real impact on the parties, such as in child custody disputes. He works hard to avoid treating routine matters as routine, knowing that seemingly minor issues are often a harrowing experience for the parties. According to Judge Mrazik, the most rewarding part of his job is helping at-risk members of our community, such as transgender people seeking changes to their name and gender marker. He explained that, because these populations feel marginalized by many of the institutions in our community, it is incredibly rewarding to make the district court an institution they can trust and feel safe in.

Despite his relatively short time on the bench thus far, Judge Mrazik can already identify practice pointers for attorneys that appear before him. He encourages practitioners to avoid overstating how settled the law is in a particular area. If the law is unsettled, attorneys should point this out, and then explain why he should follow one line of cases over another. When a brief overstates the law, or the strength of a party's position in general, Judge Mrazik explains, it calls into question whether the brief should be viewed as trustworthy. He also prefers that practitioners provide citations, even if in a footnote, to key statutes governing a particular issue.

Judge Mrazik is married and has one four-year old son. His wife works as an account executive at a marketing agency. As a family, they enjoy skiing, biking, fishing, and being outside in Utah with their adopted dog Annie.

Practitioner Profile

J a c e y S k i n n e r

By: Kristen Olsen

By my count, Jacey Skinner—former general counsel to Governor Herbert and newly minted Ballard Spahr attorney—is only one degree away from Kevin Bacon. I learned, during my interview with Skinner last month, that she grew up in Payson, Utah where the major motion picture *Footloose* was filmed—at the same time that *Footloose* was filmed. While Skinner does not appear in the film, her fellow Paysonites were extras.

Perhaps motivated by Kevin Bacon's dance moves, as a teenager, Skinner worked as a dance teacher for young girls in Payson. Fortunately, no laws were broken.

She also worked at a craft store, sorted cherries in the summer, and enjoyed reading stories of brave and adventurous characters in books. "Sacagawea was always a hero of mine and Anne Shirley of *Anne of Green Gables* was the voice in my head—and still is if I'm being honest," she laughed. From a very young age, Skinner wanted to be an astronaut and aerospace engineer when she grew up. When she was 15 years old, Skinner was accepted to the Space Academy at NASA's Goddard Space Center in Birmingham, Alabama. It was a pivotal experience in her life, and afterwards, she went on to briefly study engineering at Utah State University.

In her first year of college, she came to the realization that her interest in policy work was stronger than her interest in engineering. "When I told my Dad that I was going to change my major from engineering to political science, he made me promise to go to law school." Skinner explained. She kept that promise and attended the J. Reuben Clark Law School at Brigham Young University. "I really enjoyed law school," Skinner said, "Many of my best friends are from my law school class." During law school, Skinner was the Chair of the Trial Advocacy Team, a member of the moot court team, and she worked at the career services center during her second and third years of law school. Not surprisingly, upon graduation, she received an award for Significant Contributions to the Law School.

"I didn't originally plan to practice law, I just knew a law degree would be a good background for the policy work that I wanted to do," she said. In law school, however,

Skinner discovered she enjoyed trial work. Upon graduation, she landed a job at the Salt Lake County District Attorney's office. Skinner remembers, "I didn't really have any expectations about becoming a lawyer, so I didn't know what to expect—almost everything has been a pleasant surprise." She learned a lot working at the D.A.'s office. After prosecuting in juvenile court, for example, she said she realized how difficult it can be for children who face disadvantages and challenges. Overall, she said she appreciated "the opportunity to argue motions and try cases, and the opportunity to support law enforcement."

Since leaving the D.A.'s office, Skinner has had a varied career in policy-related positions. She worked as the

Director of the Sentencing Commission where, she said, she got to help bring about many significant changes and reforms in sentencing policies for juveniles. "The work of the Commission in these areas," Skinner explained, "is one of the things that I am most proud of in my career."

Her most high-profile position was working as general counsel to Governor Herbert. She said it was an honor to work for the Governor and Lieutenant Governor for four years. "Public service is always rewarding, but it is especially so when you have the opportunity to work with people who really want to do the right things for the right reason," she said. "It was such an honor to get to advise a Governor that wanted to get things right." Skinner said she was especially impressed with

Governor Herbert's dedication to understanding issues, his careful approach to decision making, and his commitment to getting things right in all instances.

As his counsel, Skinner explained that her job often entailed delivering difficult or unwanted news to the Governor or to work through very difficult and high stakes issues on his behalf. She said, "I always knew he would back me up, even in the most difficult situations—he still does."

When Skinner retired as his counsel in December of 2017, Governor Herbert tweeted, "Grateful to Jacey Skinner for her brilliance and hard work in serving my administration for the past four years."



J a c e y S k i n n e r

Practitioner Profile

C o n t i n u e d

While working as general counsel for the Governor, Skinner also developed a better appreciation for the judicial nominating process. She explained, “It was particularly rewarding to observe [Governor Herbert’s] dedication to the appointment process. He was committed, above all, to appointing the best person for the job in every instance.” She feels that his commitment to the process has resulted in increasing qualified applicants to Utah’s judiciary. She said it is a state court bench “we can all be very proud of.”

Throughout her legal career, Skinner said she has been very fortunate to have had incredible legal mentors, from Judge Steven Hansen at the Fourth District Court to Robert Stott and Paul Boyden at the DA’s office, to Judge Robert Yeates.

She said she also very much appreciates Justice John Pearce who she had the “unenviable and impossible task of replacing as the Governor’s Counsel.” She is also grateful for the support and examples of Judge Fred Voros, Judge Linda Jones, Judge Susan Eisenman, and David Jordan. “I have been so fortunate to work with so many exceptional people, I really could go on and on in answering this question,” she said.

Most recently, Skinner worked as the Deputy State Court Administrator for the State of Utah where she facilitated policy development and managed relations with the state legislature, executive branch agencies, and the judiciary. Skinner is excited to join Ballard Spahr in private practice starting in January 2019. Her practice will focus on government relations, regulatory affairs, and political and election law.

Skinner explained that her commitment to policy work and fighting injustice is unchanged. In addition to private practice, Skinner volunteers at the Homeless Youth Resource Center and she serves on the board of the Utah Center for Legal Inclusion. She said, “I’ve always been proud to help remove injustice where I can—whether it is protecting civil liberties or healthy workplaces, I am grateful to be in a position to help correct imbalances and provide protection where it is needed.”

“Public service is always rewarding, but it is especially so when you have the opportunity to work with people who really want to do the right things for the right reason,”

Dear Justice Tongue,

I hope this letter finds you well. More importantly, I hope this letter finds you in! Your clerks are brilliant but I want you to field this question. The question is this: why does it take so damn long to get a case to trial? All the new rules in the world, along with the courts' threats to be tough on lawyers who violate them or otherwise drag their feet and obstruct, have had little effect. Threats don't work. What we need is sound policy, and there isn't much of that, and what we have isn't enforced. What is the answer, dear Justice Tongue? What is the answer?

Signed,

Delay Deny

Dear "Delay,"

Your letter, more than most, has me wishing I had settled in on a longer retreat. This question has been asked over and over, ad nauseam. There is a reason for that. The reason is that no one has offered anything approaching satisfactory answers. And not surprisingly, the fault for that is spread across the board, and everyone asking the question is, undoubtedly, one of those who bears some of the fault. By the way, I did not see a single suggestion in your letter. In truth, it is not the most difficult question mankind faces.

Let us start with fundamentals. We know that most cases ultimately settle. Everybody mourns the vanishing jury trial (including this Justice); sadly, it is a modern reality. That said, I have observed that cases usually settle when both parties are satisfied they have leveled the field of information, and/or the matter has reached the point of disposition, namely summary judgment or trial. That is when someone other than the parties, namely, judge or jury, will soon decide who gets what, if anything. The larger goal, then, should be to compel the matter to that juncture.

Well, you might ask, by what magic can we conjure up to compel the kind of cooperation in discovery that avoids endless motion practice and interminable delays on the way to the courthouse? I do not believe in magical thinking, and frankly there has been too much talk on this subject and too little action. Therefore, no use unduly expanding the volumes of ignored blather. What I will do is explain what we did, to good effect, when serving on the trial bench. Two fundamental strategies were employed. First, we mandated prompt and full disclosure by both sides. What was not disclosed timely was excluded and any party required to produce documents pursuant to motion (which motions we heard on an expedited schedule), paid the full freight for the cost of bringing on the motion. The payment of those fees was not delayed until resolution of the case in chief, and the fees were not paid back, irrespective of which party ultimately prevailed. Second, we held early pretrial conferences with intense grilling of both parties concerning the matters at issue. A schedule for discovery was set and, most importantly, a trial date was set. We held that trial date, absent certified notes from an ICU or a morgue.

Our system was tested six or seven times when parties sought temporary restraining orders and wisely opted for an expedited trial on the merits instead of just an expedited evidentiary hearing on the preliminary injunction. In those instances, expedited disclosure of material documents and other relevant evidence was mandated with a severely limited discovery (usually two or three depositions) and a trial on the merits, that was completed within a few months of the filing of the action. Comparing those results, to trial results in similar cases after years of discovery, convinced our chambers that less is more. This procedure focused attention to the core issues and the main players. The few determinative documents provided the trier of fact (in this case, the bench) with ample evidence with which to arrive at a just result.

In fact, we also studied the results of evidentiary hearings associated with an application for preliminary injunction, and the ultimate jury trial results. The court's determination on the preliminary injunction correlated, stunningly, with the jury's verdict.

Justice Tongue

T h e M o s t E f f e c t i v e A r g u m e n t

My sense is that if the lawyers cannot express self-discipline, it should be imposed. There is no reason for this process to bog down. If lawsuits are filed, whoever filed them should know the reason, and what information they need. Full, voluntary disclosure is required by the rules and that should happen promptly.

As Pogo put it, “We have met the enemy and he is us.”

I’m just saying.

Fondly,

Justice Tongue

By: Julie M. Emery

On November 18, 2015 the Supreme Court Task Force to Examine Limited Legal Licensing (“Task Force”) identified gaps in access to justice in Utah in three areas - family law, debt collection, and eviction. These three areas contain the highest concentration of self-represented parties in the state of Utah. Utah’s 2017 court records show 56% of petitioners and 69% of respondents were self-represented in family law matters. Respondents in debt collection and eviction matters are largely self-represented – 98% and 95%, respectively, while nearly all petitioners had legal representation. As one solution to support access to justice the Utah Supreme Court accepted the Task Force’s recommendation to create a limited legal license to help fill the gaps in access to justice in the following areas:

- Specific family law matters, such as temporary separation, divorce, parentage, cohabitant abuse, civil stalking, custody and support, or name change;
- Debt collection matters in which the dollar amount at issue does not exceed the statutory limit for small claims cases; and
- Forcible entry and unlawful detainer.

A steering committee was formed to identify and affect the details necessary for making Utah’s Licensed Paralegal Practitioner (“LPP”) profession a reality. The LPP Steering Committee created subcommittees to complete tasks related to education, admissions and administration, and professional conduct and discipline. Since February 2016 the LPP Steering Committee has met regularly to review and discuss work completed by the subcommittees. Committee members spent countless hours thoughtfully developing criteria and drafting rules, all of which were subject to approval by the Utah Supreme Court and the Judicial Council. The rules governing Licensed Paralegal Practitioners went into effect on November 1, 2018.

What is the scope of the LPP practice?

Rule 14-801 of the Rules Governing the Utah State Bar contains an exception that authorizes LPPs to practice law in the area(s) in which they are licensed. The narrow scope of LPP’s practice is based on the use of court-approved forms. If there is a court-approved form related to the client’s needs, the LPP can assist the client.

Within the limits of Rule 14-802 the LPP may enter into a contractual relationship with an individual to provide legal services, interview the client, review documents of another

individual and explain those documents to the client, review a court’s order and explain the order to the client, select appropriate court-approved forms, advise the client about the forms, gather facts and information related to the completion of the forms, sign, file and serve the forms, communicate with an opposing lawyer on behalf of the client, advocate for the client in mediation, and assist with settlement of claims, including completing a settlement agreement form.

The following fictional scenario illustrates how an LPP can assist a client.

Facts:

Client initiates divorce proceedings against his wife. Emotions run high, the parties are unable to communicate effectively, and several mediation attempts fail. As a result, over the span of 12 months both parties incur extraordinary legal fees. Temporary orders are in place specifying obligations for child support and alimony. Client hires an expert witness to determine the value of client’s sole proprietorship, which is a major point of contention in the proceedings. Client’s lawyer moves to Colorado and provides client with a referral to another lawyer and tells him about the new LPP profession. The parties, now being more reasonable, meet and negotiate a settlement. Client meets with an LPP seeking help to complete the divorce case.

Client: Can you help write up our settlement agreement?

LPP: Yes. Rule 14-802(c)(1)(C) allows "interviewing the client to understand the client’s objectives and obtaining facts relevant to achieving that objective" and Rule 14-802(c)(1)(J) permits "filling in, signing, filing and completing service of a written settlement agreement form in conformity with the negotiated agreement."

Client: My wife and I did not discuss the portion in the temporary orders dealing with the “right of first refusal.” Can you explain what that means and clarify how it affects me?

LPP: Yes. Rule 14-802(c)(1)(L) allows "explaining a court order that affects the client’s rights and obligations." The LPP may advise the client about the meaning of right of first refusal.

Client: My wife agreed to give me half of her retirement account. We discussed this option during one of our mediations and my lawyer told me I would need to obtain a qualified domestic relations order (“QDRO”). Can you help me get that done?

LPP: No. QDRO work must be referred to a lawyer. There is not a Utah court-approved form associated with QDRO, which is a complicated process based on tax law.

Client: I have a few questions about my company. 1) Will you please call my expert witness and ask if she needs more information, and see when she can get the report finished? 2) I am willing to pay you 10% of the value of my company if you can make sure my wife doesn't get additional alimony; and 3) Are you willing to also represent my company and advise me about how to restructure after the divorce is final?

LPP: 1) Yes. 14-802(c)(1)(K) allows "communicating with another party or the party's representative regarding the relevant form and matters reasonably related thereto." 2) No. Contingent fee contracts are forbidden pursuant to LPP Rule of Professional Conduct 1.5(f). 3) No. This request must be referred to a lawyer. LPPs are not permitted to represent corporations. Additionally, giving legal advice on corporate matters does not fall within the three LPP practice areas.

The most important aspect of the LPP's practice is to know and communicate to the client the boundaries of the scope of practice and when a lawyer must be engaged.

How will LPPs impact lawyers?

When the LPP program was first introduced many lawyers expressed concern about losing clients to newly licensed LPPs. Over the past two years I have heard this question less frequently. The LPP profession is a market-based approach to help provide access to justice to unrepresented parties. The Task Force identified the potential LPP market as individuals who do not, for whatever reason, call upon lawyers. There are many ways the LPP profession will also benefit lawyers, including:

- LPPs will refer clients who would not otherwise call a lawyer;
- LPPs will provide a new source of revenue for law firms that hire LPPs or establish an LPP group;
- LPPs will serve markets in rural areas that are not currently viable for law firms;
- Lawyers will communicate with an LPP in lieu of an opposing pro se party; and
- Lawyers will have access to the updated court-approved LPP forms.

Will LPPs be qualified to provide limited legal advice?

The LPP Steering Committee established high standards for qualifying applicants. Each applicant must meet certain educational requirements. Applicants who do not have a law degree must also obtain a national certification and have experience working as a paralegal under the supervision of a licensed lawyer or LPP. Applicants must also receive additional training through online courses offered by Utah Valley University. The courses include ethics, family law, debt collection, and eviction. Each course was deliberately developed to teach the scope of the LPP practice in addition to the subject matter for each practice area. See Rule 15-703 of the Utah Supreme Court Rules of Professional Practice for a complete explanation of the requirements.

When will the first LPPs be licensed in Utah?

The Bar is currently working with a professional testing company and Utah practice-area experts to craft the licensure exams. We anticipate that the required courses will be available online through Utah Valley University in the spring and the exams will be offered near the end of the summer 2019. We expect to see the first licensed practitioners in Utah by the end of 2019. The Utah Supreme Court is working on an informational website for the LPP program to make the rules, timeline, and announcements available to the public.

Recent Precedents

Second Annual Homeless Youth Prom

By Dani N. Cepernich

On October 10, World Homelessness Day, the Volunteers of America (the VOA) Homeless Youth Resource Center located in Salt Lake City hosted the second annual homeless youth prom. The prom is the brainchild of Kate Conyers, who previously served as the co-chair of the Utah Young Lawyers Division Cinderella Boutique (among the many other positions she holds and has held with various organizations within the Bar).

The Cinderella Boutique collected donated prom dresses and made them available to low-income high school students through various “boutiques” held on campus to enable the students to attend prom. Over time, and after about eight years of hosting the project, the need for these dresses diminished and was filled by another organization, Celebrate Everyday. At this time, a new idea began to take hold with Kate, who was not quite ready to see the Cinderella Boutique end and wanted to continue providing services to low-income youth through YLD.

Kate had recently begun volunteering at the Homeless Youth Resource Center as part of the VOA and YLD Homeless Youth Legal Clinic, where she had the opportunity to get to know several of the youth who utilized the Center. Many of the youth, defined as those ages fifteen to twenty-two, either would not be able to attend their school prom or had not been able to do so while in school. Kate saw a perfect way to continue the legacy of the Cinderella Boutique and for YLD to make a difference for a different population. Plus, as anyone who knows Kate can attest, she will never turn down the opportunity to throw a great party!

In 2017, Kate approached the VOA about the possibility of hosting a prom, and it immediately gained traction. She later invited Celebrate Everyday to provide support and dresses for the prom. Celebrate Everyday fortunately found Heather Chadwick, owner of Belle of the Ball, who has numerous contacts in the wedding industry, including caterers, decorators, event rental companies, and other event planning support. Together, these entities, coordinated by Kate, hosted Utah’s first homeless youth prom.

The inaugural prom, an “Autumn Masquerade Ball,” was a huge success. More than fifty youth attended. It was immediately clear that this would not be a one-time event. By spring 2018, a second prom was already on the calendar for the fall.

Planning for the prom began in earnest approximately six weeks before the event, when the “Prom Committee” was formed. The committee included representatives from the VOA, YLD, Celebrate Everyday, Kate, Heather Chadwick, and several youth from the YRC. Together, as with last year, these entities and individuals organized a full-service prom for the youth.

In the days leading up to the prom, youth could attend a prom “boutique” at the Homeless Youth Resource Center, where they could peruse the formal wear and jewelry that had been donated for the event. The youth tried on and reserved the dresses or suits of their choice. On the day of the prom, the youth were able to pick up their reserved outfits and get ready at the Center, where hair and makeup services were available at no cost. The prom kicked off with dancing, during which appetizers were served, and was complete with a photo booth outside. Volunteers, primarily from the legal community, later served a formal three-course catered dinner.

Again, more than fifty youth attended the prom. Many expressed their gratitude for the opportunity to partake in a symbolic teenage experience that “typical kids” get to have, but they felt they never would. One of the youth dedicated the prom to “all of those who are homeless, or have been; those in recovery; and those that have passed.” He closed his dedication with, “Love you all and have a good night. Have fun!” A particular high point during the evening was a marriage proposal that occurred on the dance floor with the assistance of the DJ as the two youths’ friends surrounded them. (She said yes!)

In addition to the excitement and fun of attending a fabulous prom, the youth had the opportunity to interact with members of the Salt Lake legal community, including judges such as Judge Michele Christiansen Forrester (Utah Court of Appeals) and Judge Laura Scott (Third District Court), and practitioners such as City Councilwoman Amy Fowler and Laurie Abbott, the YLD chair of the Homeless Youth Legal Clinic. The prom would not be possible without these individuals and the many others who volunteered their time prior to and on the night of the prom; the VOA, which provided immense support in addition to the amazing venue; YLD, which provided financial support, spearheaded a suit drive, and coordinated volunteers; Celebrate Everyday, which provided support and made dresses available to the youth; Belle of the Ball, which assisted with absolutely everything, including hair and makeup, decorations, and lighting; and, of course,

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Kate, the prom's original mastermind.

We look forward to seeing what is in store for next year, and encourage all members of the Salt Lake County Bar to volunteer or contribute to the 2019 prom in one form or another!

For more information about the VOA Homeless Youth Resource Center, please visit <https://www.voaut.org/homeless-teen-services>. Additional information about the Homeless Youth Legal Clinic can be found at https://www.voaut.org/pdf_files/hylc. And, for information on how to get involved with the 2019 homeless youth prom, contact Kate Conyers at kate@conyersnix.com.



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Future Lawyers Association: The West High Mock Trial Team

On October 25, 2018, the Salt Lake County Bar Association (SLCBA) hosted its annual New Lawyers and Judges Reception at Pierpont Place. Over 150 attorneys and judges attended the event. Also in attendance were eight students from West High School, representing the WHS Mock Trial Team (Team). The students were at the event as part of a joint effort by SLCBA and Utah Center for Legal Inclusion (UCLI) to help the team fundraise money needed so they could participate in an invitation-only, international mock trial competition in New York City weeks later. That evening, the Team presented to the packed room of attorneys about the competition and offered personal statements. The once-rowdy room calmed as the students explained that they receive no school credit for being on the Team and no school funding. The students also provided personal statements and listed their other school involvements: All of the students participate in the International Baccalaureate (IB) Program, a very intense program, as well as many other extracurricular activities including student body government, debate team, martial arts, and swim team. Everyone was so impressed that the night's silent auction and direct donations netted the team almost \$3,500!



The West High Mock Trial Team is a group of eleven students. Last year, the Team was the first Utah mock trial team invited to participate in the Empire Mock Trial Competition in San Francisco, CA. The Team did so well that they were invited to participate in this year's Empire Mock Trial Competition in New York City in November 2018 (Competition), where they competed with other students from across country and the globe. To participate, the Team was responsible not only for preparing both sides of the court case, but also raising the funds necessary to attend, over \$25,000. The Team made it a priority to fundraise enough money so that no student had to pay to participate. As the Team is made up of a diverse range of students, not every teammate was able to financially contribute. Thanks in large part to the SLCBA and UCLI and its members, the Team was able to raise all the funds they needed!

In addition to fundraising, the Team worked hard to prepare for the Competition. They started working on the case when it was released in early July, 2018. They prepared both sides of a criminal case, using twenty-seven exhibits, over one

hundred pages of witness affidavits, rules, pleadings, case law, and other materials. The Team prepared openings, closings, witness examinations (directs and crosses), and motion arguments. At competition, the Team would present at least six trials (each three hours long with two trials each day).

The Team did well at the Competition and it is likely they will be invited back to participate in Empire Mock Trial Competition in the future. Each of the students put together a personal statement for fundraising purposes which is followed by a short reflection they wrote following the Competition.

Student Statements:

Marleigh Anderson (Senior) - This year I am one of the co-captains of the West High Mock Trial Team. I have two learning disabilities: dyslexia and auditory processing disorder. These disabilities made it difficult to succeed in school and the International Baccalaureate program, which is a highly competitive and academically challenging. Through my participation in Mock Trial, I have been able to boost my confidence as an individual in and out of the courtroom....I love Mock Trial and want to be a future attorney because of my amazing experiences in this program and my team.

Post Competition: I loved how Lizzie and I were able to lead the team towards success. We finally got to see the results of months of practice. I loved feeling confident in our presentation of the case when facing other teams.

Elizabeth "Lizzie" Peterson (Senior) - This year I have had the honor as serving as a co-captain for the Utah State competition and now for the Empire New York competition. I've been competing as a mock attorney for three years and have gone to two international competitions already: Empire San Francisco 2017 and Gladiator 1-1 2018...I admire Mock Trial because of the speaking and strategizing skills I have developed and will continue to develop. I love the strategizing and how similar it is to real trial work. I am constantly inspired and supported by our coaches, Ed Wall and Sadé Turner, and look up to them as mentors. I enjoy being part of an amazing team that I'm grateful to call my friends. I'm proud to be Asian American- my dad grew up in Utah and my mom grew up in Kauai, Hawaii after

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emigrating from the Philippines in the 70s.

Post Competition: Empire brought so many new opportunities— I loved visiting New York for the first time and defending the importance and necessity of free speech. Even though this was my last year competing at Empire, I look forward to volunteering there during college.

Vinay Bandiatmakur (Junior) - My parents are both from India...I love competing in Mock Trial because it serves as a way for me to form coherent, logical arguments and helps me refine my public speaking skills. Because of Mock Trial, I am able to think quickly on my feet and respond well under pressure. I enjoy the dynamic of having team members who all push each other to be better, and I admire our coach, Ed, who always guides us to be the best that we can be.

Post Competition: My favorite part about Empire was going up against the best teams in the world. I enjoyed the competition and learned so much from it and through that I was able to better myself.

Alfredo Barrera (Senior) - My family moved to Utah from California about four years ago. My parents are originally from Guerrero, México. I recently got elected as the Student Body President at West. I like to volunteer in community service, one of them being Salt Lake Peer Court. I am the Vice-President of the Peer Court Club at West. I also carry out community service work with National Honors Society, a club at West. I have been in the swim team at West for two years now, and I will continue my Senior year. It is safe to say that my participation in Mock Trial is one of the best decisions I've ever made. It has helped me cooperate well with others, think critically, and understand complex situations. Outside of the club, Mock Trial has provided me with the skills to speak up for myself and my beliefs.

Post Competition: My favorite part of Empire was using different types of case law to make an argument before a judge. This was a totally new experience that helped me understand different parts of a trial.

Kenneth Nelson (Senior) - I do Mock Trial, debate, Peer Court, and history tutoring in my free time. I'm very dedicated to Mock Trial. In fact, I'm staying in Utah to participate in Mock Trial, even though my family moved.



Recently, my dad lost his job in Utah and moved to Colorado to start a new one. Mock Trial has taught me how to think critically and construct arguments which convey that thinking. I must think on my feet when composing a closing statement or when responding to opposing counsel's objections, synthesizing legal knowledge and witness statements into a coherent defense of my arguments. Because of my participation in Mock Trial, I want to become a lawyer. The law is the only profession which emphasizes these analytical and research skills, which I have found to be personally rewarding.

Post Competition: When I practiced my pre-trial oral argument, I asked "does the court have any questions?" [Team Coach Ed Wall] responded: "no." It took me thirty seconds to realize I should proceed with my argument.

Luckily, I know not to make that mistake again.

Gideon Gomm (Junior) - West's extracurriculars represent the opportunity to do well outside of an elite school or institution, especially in activities like Mock Trial that have traditionally favored the wealthy. I participate in Debate, Mock Trial and Peer Court in order to gain a heuristic view of the legal system and how I can help others, specifically those overlooked in the status quo. The

team has given me a unique opportunity to interact and learn procedures of the legal system in an attempt to have more influence in my community.

Post Competition: Separately from having the opportunity to travel to New York City for the first time, it was really an incredible experience to be able to meet and compete against teams coming from all over the world.

Kiyan Banuri (Senior) - As a Muslim Pakistani-American, I often face issues regarding xenophobia and Islamophobia. In order to compromise my cultural and racial differences, I have dedicated my life to become an agent of change within my community. Being in Mock Trial has taught me how to cultivate the necessary speaking skills that allow clear, precise communication. Additionally, my interest in law has driven me toward participating Mock Trial, because it allows me to learn the intricacies of the law, what is needed to become a good speaker, and what it takes to win a trial. Mock Trial has also introduced me to a fantastic group of dedicated students

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that appreciate law as much as I do.

Post Competition: Empire was exciting because of the international presence. Arguing the federal rules of evidence against an opponent raised across the world makes every trial more unique and interesting.

Kishan Thambu (Junior) - My parents are from India and always dreamed of coming to the United States to pursue a better lifestyle and work. I have developed a passion for Mock Trial because of the critical thinking involved that a classroom or other clubs do not provide as well as the speaking skills, persuasion skills, and various other skills being tested. All of this is wrapped around the concept of working as a team and collaborating with your peers to best succeed. I am continually inspired and improving my skills by not only my fellows peers but also my great coach, Edwill Wall. Being a strongly diverse team, I love the strong chemistry and bond that is present in the team that makes Mock Trial so much fun and great for me.

As to the Competition, Kishan stated, “My favorite part of this trip was being able to explore the city of New York as a team. Not only that but I also loved competing against internationally ranked teams to gain skills in mock trial as a team and individually.”

Tejita Agarwal - My parents moved here from India and I grew up in Utah...Being around these outstanding people has been in itself an amazing learning experience. This year I am a rising junior and I participate in Mock Trial, Model UN, HOSA: Future Health Professionals, Debate, Science Fair and play and teach piano.... I originally joined Mock Trial for the delicious cookies provided, but I have grown to love preparing for competitions and trials themselves. I have watched my team rise up to the challenge of analyzing and successfully trying all the cases we have come across so far, which is an experience that may not have been easy but that was definitely worth it. I have amazing team members and coaches to look up to and I know they have helped me to become a better competitor and person. Mock Trial has taught me how to advocate for myself and others and given me confidence inside and outside of the courtroom.

After the Competition, Tejita provided, “My favorite part of the Empire experience was the facing and hearing our opponents cases. They showed me a different perspective, and it was exciting to see how our own case stood against theirs.”

Andrea Olta Alonso - I’m in the International Baccalaureate program at West High School, and I’ll be a senior this upcoming fall. All of my family is from Spain...Now I live in Layton and go on a thirty minute trip on the front runner train every day to do the International Baccalaureate program in Salt Lake City, since education is really critical for me... I’ve been doing mock trial since eighth grade, and I love the new perspective I’ve gotten into the law world and the new opportunities I have received from being in Mock Trial. This club has also helped me improve my ability to write and give speeches. Other than Mock Trial, I also play tennis, and I’m a part of the West High Diversity Board and National Honors Society.

As to the Competition, Andrea provided, “One of my favorite things about Empire was meeting really good teams from around the world. The skills we learned from competing at Empire will really help us in our state competition. Another thing I loved about Empire was the team work and time we spent practicing which brought our team a lot closer.”

Ciara Khor-Brogan - I’m in the International Baccalaureate program at West High School. I’m sixteen-years-old and half Malaysian, half Irish. My dad was born in Donegal, Ireland, and my mom was born in Kuala Lumpur, Malaysia... I am currently an assistant ski instructor, have joined the student body, and take part in the National Honors Society (volunteering). The most important part of my school life, however, has been my participation in Mock Trial. I find it very captivating and have loved every second of it. My team has made it to semifinals three years in a row. By going to the Empire Mock Trial Competition in New York, we hope to increase our skill level as a team and win State for West High School in 2019. Mock Trial has opened up the invaluable opportunity for me to learn about our legal system and consider going into the legal profession.

As to the Competition, Ciara provided, “My favorite part of empire was meeting teams from all around the world. It was so interesting to learn about their mock trial experiences and realize that they weren't so different from our own.”

Congratulations to the West High Mock Trial Team for its invitation to the elite Empire Mock Trial Competition and for doing such a great job representing Utah! And thank you to all of those SLCBA and UCLI members who donated as part of the fundraiser held at the SLCBA New Lawyers and Judges Event benefiting the Team!

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2018 Holiday Party



You are cordially invited to attend
the Salt Lake County Bar
Association's
Annual Holiday Dinner
Friday, December 7, 2018
The Country Club
2400 East Country Club Drive
Salt Lake City, Utah

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The Salt Lake County Bar is on Facebook.
Check us out to connect with other members,
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Check out back issues of the Bar and Bench, a calendar of upcoming events, and other helpful information on the Salt Lake County Bar's website.