

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

David Ogden Nuffer

2. **Position**: State the position for which you have been nominated.

United States District Judge for the District of Utah

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

350 South Main Street #483
Salt Lake City, Utah 84101

4. **Birthplace**: State year and place of birth.

1952; Portland, Oregon

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1975 – 1978, J. Reuben Clark Law School; J.D. (*cum laude*), 1978
1970, 1973 – 1975, Brigham Young University; B.A. (*cum laude*), 1975

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2003 – present
United States District Court for the District of Utah
350 South Main Street #483
Salt Lake City, Utah 84101
United States Magistrate Judge

2001– present
J. Reuben Clark Law School at Brigham Young University
Provo, Utah 84602
Adjunct Professor of Law

2009 – 2010
American Bar Association Rule of Law Initiative
740 15th Street NW
Washington, DC 20005
Consultant, Lecturer

2008
Ukraine Rule of Law Project
36 Ivana Franka, Third Floor
Kyiv, Ukraine 01030
Consultant, Lecturer

1995 – 2003
United States District Court for the District of Utah
197 East Tabernacle Street
St. George, Utah 84770
United States Magistrate Judge (part-time)

1979 – 2002
Snow Nuffer (formerly Snow, Nuffer, Engstrom, Drake, Wade & Smart, merged into
Durham, Jones & Pinegar on January 1, 2003)
192 East 200 North
St. George, Utah 84770
Member, Officer and Director

1995 – 2000
Sleight Expeditions, Inc.
974 North 1400 West
St. George, Utah 84770
River Guide (part-time)

1977 – 1978
Allen, Thompson & Hughes (firm no longer exists)
149 East Tabernacle Street
St. George, Utah 84770
Law Clerk and Associate

1976 – 1978

Howard, Lewis & Peterson
120 East 300 North
Provo, Utah 84601
Law Clerk

1974 – 1976

Harold B. Lee Library
Brigham Young University
Provo, Utah 84602
Book Shelver

Other Affiliations (uncompensated):

2007 – present

Leavitt Institute for International Development
594 East 800 South, Suite E
Orem, Utah 84097
Board Member

2000 – 2002

SmartUtah Foundation
201 South Main Street, Suite 600
Salt Lake City, Utah 84111
Board Member

1994 – 2001

Utah State Bar
645 South 200 East
Salt Lake City, Utah 84111
President (2000 – 2001)
President Elect (1999 – 2000)
Commissioner (1994 – 1999)

1996 – 2000

Utah Electronic Law Project (no longer in existence)
645 South 200 East
Salt Lake City, Utah 84111
Director

1993 – 1996

Virgin River Land Preservation Association
53 North Main Street
St. George, Utah 84771
Founding Board Member (1993 – 1994)
Chair and President (1995 – 1996)

1994 – 1995

Washington County Democratic Party

No physical address

Secretary

1982 – 1986

St. George Chamber of Commerce

97 East St. George Boulevard

St. George, Utah 84770

Board Member (1982 – 1986)

President (1985)

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the military. I registered for selective service in 1970 at age 18.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Distinguished Service Award, Utah Federal Bar Association (2006)

Honored Alumni Award, BYU Alumni Association J. Reuben Clark Law School (2001)

Academic Scholarship, J. Reuben Clark Law School (1975 – 1978)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Aldon J. Anderson Inn of Court

Member and Master of Inn (2003 – present)

American Bar Association (1990 – 2003)

Midyear Meeting Advisory Committee (2005)

Fifth District Court Judicial Nominating Commission (1984 – 1988; 1992 – 1994)

Southern Utah Bar Association (1995 – 2003)

United States Courts

Chambers Functional Requirements Working Group for Future Case Management System, Administrative Office of the U. S. Courts (2009 – present)

IT Advisory Council, U.S. Courts (2009 – present)

IT Security and Network Management Working Group, U.S. Courts (2008 – 2009)

Federal Judicial Center Judges IT Training Advisory Group (2007 – present)

Magistrate Judges Advisory Group, U.S. Courts (2006 – 2009)

United States District Court for the District of Utah
 Utah District Court Disciplinary Panel (2003 – present)
 Utah District Court Rules Advisory Committee (2003 – present)
 Utah District Court Technology Committee (2001 – present)
 Vice-chair (2003 – present)
 Utah Judicial Conduct Commission (1997 – 2000)
 Vice-chair (1998 – 1999)
 Chair (1999 – 2000)
 Utah State Bar
 President (2000 – 2001)
 President Elect (1999 – 2000)
 Commissioner (1994 – 1999)
 Utah State Bar Membership Services Software Analysis Group (2010 – present)
 Distinguished Paralegal of the Year Nomination Selection Committee (2006 – 2011)
 Utah State Bar Multidisciplinary Practice Task Force (2000)
 Chair, Utah State Bar Long Range Planning Committee (1997 – 1998)
 Chair, Utah State Bar Internet Services Committee (1995 – 2000)
 Chair, Utah State Bar Computer Advisory Committee (1989)
 Utah State Government
 Governor's Impact Fee Resolution Group (1995)
 Team Co-Leader, Utah Attorney General's Safe at Home Program (1995 – 1998)
 Team Leader, Utah Attorney General's Regional Exchange Effort ("AGREE") (1993 – 1995)
 Utah Supreme Court
 Utah State Supreme Court Advisory Committee on Rules of Civil Procedure (2003 – present)
 Utah State Supreme Court Study Committee on Delivery of Legal Services (2001 – 2002)
 Judicial Council Ad Hoc Committee on Access to Electronic Court Records (1995)
 Utah Supreme Court Special Task Force on the Management and Regulation of the Practice of Law (1990 – 1991)

10. Bar and Court Admission:

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Utah, 1978 (inactive status since 2003)
 Arizona, 1989 (resigned in 2003 due to judicial office)

There have been no other lapses in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse

in membership. Give the same information for administrative bodies that require special admission to practice.

United States District Court for the District of Arizona, 1995 (resigned in 2004 due to judicial office)

United States District Court for the District of Utah, 1978 (lapsed in 2004 due to judicial office)

There have been no other lapses in membership.

11. Memberships:

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Boy Scouts of America (various times and positions from 1987 – 2008 and Merit Badge Counselor presently)

The Church of Jesus Christ of Latter-day Saints (various leadership and teaching positions throughout my life)

Kiwanis Club, St. George, Utah (1979 – 1981)

Leavitt Institute for International Development (2006 – present)
Board Member (2007 – present)

SmartUtah Foundation
Board Member (2000 – 2002)

St. George Chamber of Commerce
Board Member (1982 – 1986)
President (1985)

Taxpayers for Washington County
Chair (1988)

Utah Electronic Law Project
Chair (1996 – 2000)

Virgin River Land Preservation Association
Founding Board Member (1993 – 1994)
Chair and President (1995 – 1996)

Washington County Democratic Party
Secretary (1994 – 1995)
Organizer (1978 – 1994)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above

currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

My church, the Church of Jesus Christ of Latter-day Saints, requires one to be a member for certain activities and privileges but the overwhelming majority of activities and events are available to the general public. The church limits its priesthood to male members and, until 1978, barred African-Americans from the priesthood. The Boy Scouts of America limits certain programs to males. I have not taken any action to change the policies of these organizations.

Otherwise, to the best of my knowledge, none of the organizations listed in response to 11a above currently discriminates or has ever discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies.

12. Published Writings and Public Statements:

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

TechNews for Judges and Chambers (last updated June 28, 2011) (blog on U.S. Courts' intranet). Copies of my posts are supplied.

Posting on Ukraine Kiev Mission message board, Aug. 8, 2010. I have also written a short personal profile for the site. Copies supplied.

In April 2010, I created posts on a Twitter account, but only maintained it for about two days. Copy supplied.

Utah District Court CMECF Updates (last updated Jan. 6, 2010) (discontinued), <http://utd-cmecf.blogspot.com/>. Copies of my posts are supplied.

American Legal Education, 2010 American Studies Journal (Американські Студії) 101. Copy supplied.

The Ukraine – Utah Connection, Federal Bar Association Utah Chapter Newsletter, Spring 2008. Copy supplied.

Useful Computer Skills in the CM/ECF Environment, U.S. District Court for the District of Utah, 2005. Copy supplied.

Multiple Monitor/Large Monitor Computer Systems, U.S. District Court for the District of Utah, 2005. Copy supplied.

The View from the Electronic Bench, 17 Utah B.J. 8 (June/July 2004). Copy supplied.

Motions Flow Chart, U.S. District Court for the District of Utah, 2003. Copy supplied.

O Sistema Jurídico nos Estados Unidos – A Competência do U.S. Magistrate Judge, 21 Direito Federal 39 (2003). Copy supplied.

Preparing for Practice in 2010, 14 Utah B.J. 6 (June/July 2001). Copy supplied.

Protecting the Best Interests of Our Children by Ensuring that All have the Benefits of the Rule of Law, The Intermountain Commercial Record, May 4, 2001. Copy supplied.

Choosing the Future of the Bar, 14 Utah B.J. 6 (May 2001). Copy supplied.

Strange Opposition, Salt Lake Tribune, Mar. 11, 2001. Copy supplied.

Sharing, Selecting and Supporting, 14 Utah B.J. 6 (Mar. 2001). Copy supplied.

Working with Utah's Legislature, 14 Utah B.J. 8 (Jan./Feb. 2001). Copy supplied.

Circles and Lines, 13 Utah B.J. 10 (Dec. 2000). Copy supplied.

Should We Be Able to Practice Law Everywhere We Can Drive a Car?, 13 Utah B.J. 6 (Dec. 2000). Copy supplied.

Pick Your Next Partner: Social Worker? CPA? Insurance Agent? Engineer?, 13 Utah B.J. 7 (Nov. 2000). Copy supplied.

A New Paradigm for a Season of Change, New Hampshire Bar News, Oct. 6, 2000. Copy supplied.

Consider Legal Profession's 'Core Values' in Context, New Hampshire Bar News, Sept. 22, 2000. Copy supplied.

Improve the Bottom Line – Serve on a Committee!, 13 Utah B.J. 7 (Aug./Sept. 2000). Copy supplied.

The Future of Legal Systems, the Legal Profession and the Rule of Law: A New Paradigm for A Season of Change, 13 Utah B.J. 9 (May 2000). Copy supplied.

Candidate Statement for President of Utah State Bar election, published in 12 Utah B.J. 29 (Apr. 1999). Copy supplied.

Are Lawyers the Railroad of the Future?, 11 Utah B.J. 7 (Nov. 1998). Copy supplied.

The Seven Surprising Signs of Highly Successful Litigators, 10 Utah B.J. 7 (Aug. 1997). Copy supplied.

David Nuffer, Rolen Yoshinaga and Eric Leeson, *Is Electronic Court Filing in Your Future?*, 10 Utah B.J. 15 (Apr. 1997). Copy supplied.

Utah State Bar Commission Candidate Statement, published in 10 Utah B.J. 31 (Apr. 1997). Copy supplied.

Workflow and Groupware, 9 Utah B.J. 35 (Dec. 1996). Copy supplied.

Imaging for Attorneys, 9 Utah B.J. 18 (Oct. 1996). Copy supplied.

The Convergence of Law and Technology, 9 Utah B.J. 6 (Aug./Sept. 1996). Copy supplied.

Adversarial or Conciliatory?: What Litigators Should Know About Mediation, 51 Disp. Resol. J. 24 (Jan./Mar. 1996). Copy supplied.

David Nuffer and Bruce C. Jenkins, *Qualifying Senior Communities Under the Fair Housing Act's New Rules*, 12 Practical Real Estate Lawyer, No. 2, 41 (Mar. 1996).

E-Mail for the Office and the World, 9 Utah B.J. 12 (Mar. 1996). Copy supplied.

Surfing (the Net) in the Desert, 8 Utah B.J. 6 (Oct. 1995). Copy supplied.

Utah's 1995 Impact Fee Legislation, 8 Utah B.J. 12 (Aug./Sept. 1995). Copy supplied.

Editorial Misconstrued Use of Impact Fee, Salt Lake Tribune, Feb. 23, 1995. Copy supplied.

Brief Notices – Rocky Mountain Divide: Selling and Saving the West by John B. Wright, 35 BYU Studies 251 (1995). Copy supplied.

The Second Computer Revolution, 7 Utah B.J. 34 (Dec. 1994). Copy supplied.

Non-Lawyer Legal Technicians, 7 Utah B.J. 6 (Oct. 1994). Copy supplied.

An Introduction to Land Trusts and Conservation Easements, 7 Utah B.J. 12 (Aug./Sept. 1994). Copy supplied.

Do I Need a Compact Disk Reader for My Computer?, 7 Utah B.J. 32 (Apr. 1994). Copy supplied.

In 1992, I released a flyer and brochure for my state Senate campaign. Copies supplied.

In 1992, I also released a flyer for my County Attorney campaign. Copy supplied.

Fast Microsoft Word 3.0, InfoWorld, June 15, 1987. Copy available at <http://tinyurl.com/NufferInfoWorld>.

Laptops for Lawyers, Utah Lawyer Alert, Dec. 10, 1986. Copy supplied.

Considerations in Implementing a Time and Billing System, Utah Lawyer Alert, Dec. 10, 1986. Copy supplied.

A Computer Primer, Utah Lawyer Alert, Oct. 25, 1986. Copy supplied.

Software Every Lawyer Should Consider, Utah Lawyer Alert, Oct. 25, 1986. Copy supplied.

Suggestions for Further Reference, Utah Lawyer Alert, Oct. 25, 1986. Copy supplied.

On the Horizon, Utah Lawyer Alert, Oct. 25, 1986. Copy supplied.

President's Message, St. George Chamber of Commerce, Jan. 31, 1985. Copy supplied.

In 1979, I released a flyer for my City Council campaign. Copy supplied.

Straining at Gnats; Swallowing Camels, Clark Memorandum, Dec. 1976. Copy supplied.

Brigham Young on Lawyers, Clark Memorandum, 1976. Copy supplied.

I have created several online presentations on technology for my official judicial web site as resources for attorneys. Links to the presentations are listed below:

Hyperlinks to Cited Authorities:

<http://www.utd.uscourts.gov/judges/Hyperlinks.htm>

Copying & Pasting from Westlaw:

<http://www.utd.uscourts.gov/judges/Copying text from Westlaw.htm>

Copying & Pasting from Lexis:

<http://www.utd.uscourts.gov/judges/Copying text from Lexis.htm>

E-Research in Westlaw:

<http://www.utd.uscourts.gov/judges/E-Research.htm>

E-Research in Lexis:

<http://www.utd.uscourts.gov/judges/E-Research Lexis.htm>

The list of writings above includes all those that I was able to locate after diligent review of my records and online searches. There may be other publications I have been unable to identify.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

Proposed Rules Governing Civil Discovery, Utah Supreme Court Advisory Committee on the Rules of Civil Procedure, June 1, 2010. Copies of the draft rules and briefing paper are supplied.

In addition to the 2010 civil procedure rules changes, the committee has considered a number of other rules changes since I began serving in 2003. A copy of all the proposed and approved rule amendments are available at <http://www.utcourts.gov/resources/rules/comments/>.

Report to the Utah Supreme Court of the Supreme Court Study Committee on the Delivery of Legal Services, Sept. 5, 2002. Copy supplied.

Utah State Bar Multidisciplinary Practice Task Force Report, Nov. 1, 2000. Copy supplied.

Utah State Bar Long Range Plan, 1998. Copy supplied.

Final Report of Utah Supreme Court Special Task Force on the Management and Regulation of the Practice of Law, Nov. 1, 1991.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal

interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

September 11, 2001: Testimony as Past President of Utah State Bar before Utah House Judiciary Committee regarding Unauthorized Practice of Law. I have been unable to obtain a transcript or recording, but an August 31, 2001 letter that I wrote to Representative Stephen Urquhart, which states substantially what was said in my testimony, is supplied.

September 10, 1999: Testimony before Utah Constitutional Revision Commission regarding proposed changes in Utah's retention election laws regarding judges. Outline and meeting minutes supplied.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

Since 2003, I have served on the Utah Supreme Court Advisory Committee on Rules of Civil Procedure. In this capacity, I have occasionally discussed my views on rule changes and proposals. Copies of these meeting minutes are available at <http://www.utcourts.gov/committees/civproc/>.

June 8, 2011: Training for Chambers IT Trainers, Federal Judicial Center, Cincinnati, Ohio. Presentation slides supplied.

May 13, 2011: The Effective Advocate, Federal Bar Association Utah Chapter, St. George, Utah. Handouts supplied.

May 12, 2011: The Lawyer as Citizen, Federal Bar Association Utah Chapter, Ivins, Utah. Presentation slides, remarks and notes supplied.

April 1, 2011: The American Legal Education System, Izmir Turkey. Presentation slides supplied.

March 24, 2011: Co-Mediation, Utah Law and Justice Center, Salt Lake City, Utah. Notes supplied.

February 24, 2011: Judicial Discretion, Delegating Judicial Duties and the Vanishing Trial, Judicial Process course, University of Utah College of Law. Handout supplied.

In 2011, 2010 and 2008, I judged approximately twenty rounds of mock trial competitions in Ukraine for the Leavitt Institute program, including the final round in 2010. During the preliminary rounds, I offered advice to competitors and in the final round I addressed the entire group present. I have no notes, transcripts or recordings. The address of the Leavitt Institute is 594 East 800 South, Suite E, Orem, Utah 84097.

November 19, 2010: Sixty Tips in Sixty Minutes (Panel Member), Utah State Bar Fall Forum, Salt Lake City, Utah. Presentation slides supplied.

November 19, 2010: Deposition Boot Camp (Panel Member), Utah State Bar Fall Forum, Salt Lake City, Utah. I answered questions from a presenter. I have no notes or transcript, and have been unable to obtain a copy of the recording. The address of the Utah State Bar is 645 South 200 East, Salt Lake City, Utah 84111.

November 8-11, 2010: Presenter (Legal Ethics, Computers in the Law Office – slides and notes supplied) and Panel Member (Gender in the Law – I have no notes, transcript or recording), Baçeşehir University, Law Practice Management Seminar, Antalya, Turkey. The address of the American Bar Association Middle East Law – North Africa Initiative is 740 15th Street, NW Washington, DC 20005 and Baçeşehir University, Yıldız Mh., Çırağan Caddesi 47, Istanbul, Turkey.

October 7, and 20, 2010: The World of U.S. Magistrate Judges, New Social Security Administrative Law Judge Orientation, Fairfax, Virginia. Presentation slides supplied.

September 11, 2010: E-Discovery Best Practices: Pointers, Pitfalls & Ethical Dilemmas (Panel Member), Federal Bar Association Utah Chapter Tri-State Seminar, Park City, Utah. Handout supplied.

September 11, 2010: Litigation Before U.S. Magistrate Judges: Procedure and Professionalism (Panel Member), Federal Bar Association Utah Chapter Tri-State Seminar, Park City, Utah. Handout supplied.

August 11, 2010: Tools for Case Management, District CM/ECF Operational Practices Forum, Washington, DC. Handouts supplied.

August 5-6, 2010: New Magistrate Judge IT Orientation, San Antonio, Texas. Curriculum handout supplied.

July 13-15, 2010: Training for Chambers IT Trainers, Federal Judicial Center, Seattle, Washington. I participated most in presenting pages 5-17. Curriculum handouts supplied.

May 12, 2010: JIT: Judges' Hands on Training, Automation Trainers Community of Practice, San Antonio, Texas. Handout supplied.

May 11, 2010: Judges IT Training: Local Strategies, Automation Trainers Community of Practice, San Antonio, Texas. Outline and presentation slides supplied.

April 30, 2010: Ethical Issues for Defense Lawyers (panel member), Utah Federal Defender Seminar, Salt Lake City, Utah. I have no notes, transcript or recording. The address of the Utah Federal Defender's Office is 46 West Broadway, Suite 110, Salt Lake City, Utah 84101.

April 18-22, 2010: Panel Member and Moderator, International Courts and Society Summit, Kyiv, Ukraine. Outline supplied.

April 12-14, 2010: Judge, Mock Trial Competition, BUILD Initiative, Kyiv, Ukraine. I have no notes, transcript or recording. The sponsoring organization was the Leavitt Institute for International Development, 594 East 800 South, Suite E, Orem, Utah 84097.

March 11-12, 2010: New Magistrate Judge IT Orientation, San Antonio, Texas. Materials supplied in response to August 5-6, 2010 event.

February 24, 2010: Decision Making/Crowded Trial Courts, Judicial Process course, University of Utah College of Law. I used the same materials supplied in response to the Feb. 24, 2011 event.

January 20, 2010: Professionalism and Civility in Society, Utah State Bar, Salt Lake City, Utah. Presentation slides supplied.

Between 2008 and 2010, I have judged roughly six rounds of mock trial or appellate competition rounds at the University of Utah, Brigham Young University and McGeorge Law Schools. I have offered evaluations and comments at the end of some rounds, but have never spoken to participants in a large group setting. I have no notes, transcripts or recordings. The address of the University of Utah College of Law is 332 South 1400 East, Salt Lake City, Utah 84112. The address of the Brigham Young University Law School is P.O. Box 28000, Provo, Utah 84602. The address of the McGeorge School of Law is 3200 Fifth Avenue, Sacramento, California 95817.

Annually for the past four years (2007-2010), I have acted as professional host for delegations of Ukrainian judges and court staff who visit the United States. The visits are sponsored by Open World and the Administrative Office of the U.S. Courts. Presentation handouts and slides supplied.

December 9, 2009: Advanced Legal Writing (Panel Member), Litigation Section of the Utah State Bar, Salt Lake City, Utah. I have no notes, transcript or recording. The address of the Utah State Bar is 645 South 200 East, Salt Lake City, Utah 84111.

November 6, 2009: Cooperative Discovery and Understanding Muslims, Utah Federal Bar Seminar, Salt Lake City, Utah. Notes and handouts supplied.

November 1-5, 2009: Creating and Administering a Continual Legal Education Program (Law Practice Management), Cairo, Egypt. Outline, handouts and presentation slides supplied.

October 29-30, 2009: Designing and Delivering Judicial Education, United Arab Emirates Institute of Training and Judicial Studies, Sharjah, UAE. Presentation slides, handout and ABA coverage are supplied.

October 23, 2009: The Present and Future of the Federal Courts in Southern Utah (panelist) and Best Practices in Federal Court Discovery (panelist), Federal Bar Association Utah Chapter, St. George, Utah. I have no notes, transcript or recording. The address of the Federal Bar is c/o Benson L. Hathaway, Jr., President, 60 East South Temple, #1800, Salt Lake City, Utah 84111.

October 19-22, 2009: Training for Chambers IT Trainers, Federal Judicial Center, Baltimore, Maryland. Presentation slides supplied.

September 22-25, 2009: Training for Chambers IT Trainers, Federal Judicial Center, Denver, Colorado. Presentation slides supplied.

August 13-14, 2009: New Magistrate Judge IT Orientation, San Antonio, Texas. Materials supplied in response to August 5-6, 2010 event.

June 22, 2009: The Work of Judges, 5th and 10th Circuit IT Conference, Denver, Colorado. Notes and presentation slides supplied.

May 28 – June 1, 2009: Judicial Performance Evaluation (Interviews and discussions with legal community and government officials), Bahrain. Report of the discussions is supplied.

April 24, 2009: Civility and Stress, Utah State Bar, Salt Lake City, Utah. Notes and handouts supplied.

April 20-21, 2009: Best Practices in Continuing Legal Education for Judges (Judicial Education for New Judges in the United States; Methods of Distance Education; Teaching Judicial Ethics: Why and How; Introduction to Advanced Education Techniques; Mentoring Programs and Peer Evaluations for Members of the Judicial Authority) (Co-presenter with Mira-GurArie and Valerie Armand), Abu Dhabi, UAE. I have no notes, transcript or recording. The address of the American Bar Association Middle East Law – North Africa Initiative is 740 15th Street, NW Washington, DC 20005.

March 5-6, 2009: New Magistrate Judge IT Orientation, San Antonio, Texas. Materials supplied in response to the August 5-6, 2010 event.

January 27, 2009: Judicial Selection and Retention, Judicial Process course, University of Utah College of Law. I have no notes, transcript or recording. The address of the College of Law is 332 South 1400 East, Salt Lake City, Utah 84112.

September 26, 2008: Federal Court Update, Federal Bar Association, St. George, Utah. Presentation slides supplied.

August 12, 2008: Judges' IT Awareness and Training Program, Automation Trainers Conference, San Antonio, Texas. Handouts supplied.

August 7-8, 2008: New Magistrate Judge Automation Orientation, San Antonio, Texas. Handouts supplied.

June 6, 2008: Geek Chic, Jackrabbit Bar, Salt Lake City, Utah. Presentation slides supplied.

May 22-23, 2008: New Magistrate Judge Automation Orientation, San Antonio, Texas. Handouts supplied.

April 30, 2008: Best Practices for Judges & Attorneys Working with Electronic Case Files, Third Circuit Judicial Conference, Cambridge, Maryland. Handouts supplied.

March 5, 2008: State Court E-Filing is Coming: Are You Ready?, Utah State Bar Litigation Section, Salt Lake City, Utah. I have no notes, transcript or recording. The address of the Utah State Bar is 645 South 200 East, Salt Lake City, Utah 84111.

February 11-22, 2008: Evidence, Kyiv, Ukraine. Curriculum and handouts supplied.

January 30, 2008: IT Issues in Federal Courts, University of Utah IT Class, Salt Lake City, Utah. Presentation slides supplied.

January 10, 2008: A Practical Guide to Practice under the New Federal and State E-Discovery Rules, Logan, Utah. Handouts and presentation slides supplied.

December 20, 2007: E-Ethics, Manexa WebCast. Handout and presentation slides supplied.

November 16, 2007: Expert Reports and Discovery, Utah State Bar Fall Forum, Salt Lake City, Utah. Presentation slides supplied.

November 2, 2007: Expert Discovery: How to Get What You Want, Manexa WebCast. Presentation slides supplied.

October 19, 2007: World Jury Systems, Utah Federal Bar Association, Salt Lake City, Utah. Handouts supplied.

October 13, 2007: Ethics of Electronic Discovery Panel Discussion, University of Utah College of Law and Utah State Bar. Video supplied.

September 17-28, 2007: Introduction to the American Court System, Leavitt Institute for International Development, Kyiv, Ukraine. Curriculum supplied.

September 15, 2007: Discovery in the Electronic Age, Federal Bar Association Tri-State CLE Program, Park City, Utah. I have no notes, transcript or recording. The address of Federal Bar is c/o Benson L. Hathaway, Jr., President, 60 East South Temple, #1800, Salt Lake City, Utah 84111.

July 13, 2007: IT Tips for Judges, Tenth Circuit Judicial Conference, Vail, Colorado. Handouts supplied.

July 2007: Expert Witness Discovery Issues, Utah State Bar Annual Meeting, Sun Valley, Idaho. Outline supplied.

June 8, 2007: A Practical Guide to E-Discovery, Arkansas Bar Annual Meeting, Hot Springs, Arkansas. Handout and presentation slides supplied.

June 8, 2007: E-Ethics, Arkansas Bar Annual Meeting, Hot Springs, Arkansas. Handout and presentation slides supplied.

April 9, 2007: Basic Federal Court Practice, St. George, Utah. Handouts supplied.

March 15, 2007: Lay Participation in Criminal Justice, Ukraine National Law Academy, Kharkiv, Ukraine. Handout and remarks supplied.

March 12-23, 2007: Trial Preparation, Evidence and Witnesses. The Leavitt Institute for International Development, Kyiv, Ukraine. Outline of my lessons supplied.

January 4, 2007: Constitutional Law Primer for New Utah State Legislators, Salt Lake City, Utah. Outline and handout supplied.

December 5, 2006: IT Tips for Judges, Federal Judicial Center Workshop for District Judges of the 11th Circuit, Key West, Florida. Outline and handouts supplied.

November 3, 2006: Electronic Discovery Panel, Utah State Bar Fall Forum, Salt Lake City, Utah. I have no notes, transcript or recording. The address of the Utah State Bar is 645 South 200 East, Salt Lake City, Utah 84111.

November 3, 2006: Ethical Issues in Complex Criminal Cases (Panel Member), Utah Federal Defender Seminar, Salt Lake City, Utah. I have no notes, transcript or recording. The address of the Utah Federal Defender is 46 West Broadway, Suite 100, Salt Lake City, Utah 84101.

November 3, 2006: 15 Tech Tips in 15 Minutes, Utah State Bar Fall Forum, Salt Lake City, Utah. Handouts enclosed.

October 27, 2006: Advanced Tips for CM/ECF Users, Federal Bar Association Seminar, Salt Lake City, Utah. Handouts supplied.

August 17-18, 2006: New Magistrate Judge Automation Orientation, San Antonio, Texas. Presentation outline and handouts supplied.

August 8, 2006: IT Tips for Judges, Federal Judicial Center National Workshop for District Judges, Denver, Colorado. Agenda supplied. I have no notes, transcript or recording. This presentation was very similar to those given July 26 and December 5, 2006. The address of the Federal Judicial Center is Thurgood Marshall Federal Judiciary Building, One Columbus Circle, NE, Washington, DC 20002.

July 26, 2006: IT Tips for Judges, Federal Judicial Center National Workshop for Magistrate Judges, New York City, New York. Event description and handouts supplied.

May 3, 2006: IT Tips for Judges, Federal Judicial Center National Workshop for District Judges, Arlington, Virginia. I have no notes, transcript or recording. This presentation was very similar to those given July 26 and December 5, 2006. The address of the Federal Judicial Center is Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Washington, DC 20002.

April 5, 2006: IT Tips for Judges, Federal Judicial Center National Workshop for Magistrate Judges, San Francisco, California. I have no notes, transcript or recording. This presentation was very similar to those given July 26 and December 5, 2006. The address of the Federal Judicial Center is Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Washington, DC 20002.

February 7-8, 2006: I was filmed by the Federal Judicial Center in a technical training video for the federal judiciary entitled *Judges' Tech Tips*. Video supplied.

2006: I gave brief acceptance remarks upon receiving the Distinguished Service Award, Utah Federal Bar Association. I have no notes, transcript or recording. The address of the Utah Federal Bar is c/o Benson L. Hathaway, Jr., President, 60 East South Temple, #1800, Salt Lake City, Utah 84111.

December 5, 2005: Electronic Discovery, Utah State Bar (Panel Member), Salt Lake City, Utah. Handouts supplied.

November 2005 and September 14, 2005: Choosing Civility and CM/ECF Information, Utah Federal Bar Association, Salt Lake City, Utah. I used the same handouts at each presentation. Handouts supplied.

September 29, 2005: IT Tips for Judges, Federal Judicial Center Workshop for Judges of the 1st and 7th Circuits, Chicago, Illinois. I have no notes, transcript or recording. This presentation was very similar to those given July 26 and December 5, 2006. The address of the Federal Judicial Center is Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Washington, DC 20002.

July 2005: Attorney Document Retention and Destruction (Panel Member), Utah State Bar, Sun Valley, Idaho. Handout supplied.

July 2005: Motions to Compel, Utah State Bar (Panel Member), Sun Valley, Idaho. Outline and handout supplied.

February 11-15, 2005: Administrative Law Presentation – Social Security Mock Hearing, Administrative Law and Regulatory Practice Section, American Bar Association (Panel Member), Salt Lake City, Utah. I have no notes, transcript or recording. The address of the Administrative Law and Regulatory Practice Section, American Bar Association is 740 15th Street NW, 8th Floor Suite 885, Washington, DC 20005.

February 11, 2005: The Perils of Electronic Filing, Tort Trial and Insurance Practice Section, American Bar Association (Panel Member), Salt Lake City, Utah. I have no notes, transcript or recording. The address of the Tort Trial and Insurance Practice Section, American Bar Association is 321 North Clark Street, Floor 18, Chicago, Illinois 60654.

October 22, 2004: The Proposed Federal Rules and ABA Standards for Electronic Discovery, Federal Bar Association, Salt Lake City, Utah. Outline, handouts and presentation slides supplied.

September 2004: CM/ECF (Case Management/Electronic Case Files), Utah State Bar, Salt Lake City, Utah. I have no notes, transcript or recording. The address of the Utah State Bar is 645 South 200 East, Salt Lake City, Utah 84111.

July 2004: CM/ECF (Case Management/Electronic Case Files), Utah State Bar, Sun Valley, Idaho. I have no notes, transcript or recording. The address of the Utah State Bar is 645 South 200 East, Salt Lake City, Utah 84111.

April 2004: A Judge's View of ADR, Utah Dispute Resolution Summit, Salt Lake City, Utah. Outline and handout supplied.

March 12, 2004: CM/ECF (Case Management/Electronic Case Files), Utah State Bar, St. George, Utah. I have no notes, transcript or recording. The address of the Utah State Bar is 645 South 200 East, Salt Lake City, Utah 84111.

March 12, 2004: A Practical Introduction to Electronic Discovery, Utah State Bar, St. George, Utah. Handouts supplied.

February 2004: Electronic Filing, National Conference of Bar Presidents (Panel Member), San Antonio, Texas. I have no notes, transcript or recording. The address of the National Conference of Bar Presidents is 321 North Clark Street, Chicago, Illinois 60654.

October 2003: Utah Standards of Professionalism and Civility, Federal Bar Association, Salt Lake City, Utah. Handouts supplied.

March 7, 2003: I gave remarks during my investiture ceremony. Outline of my remarks supplied.

October 18, 2002: A Practical Introduction to Electronic Discovery, Federal Bar Association, Salt Lake City, Utah. Curriculum handout supplied.

September 10, 2002: I spoke to a high school history class on rights of U.S. citizens, "Dialogue on Freedom" program, Utah State Bar. I have no notes, transcript or recording, but press coverage is supplied. The address of the Utah State Bar is 645 South 200 East, Salt Lake City, Utah 84111.

June 2002: O Sistema Jurídico nos Estados Unidos – A Competência do U.S. Magistrate Judge (The Jurisdiction of the Magistrate Judge in the United States Judicial System), Ribeirão Preto, Sao Paulo, Brasil. Remarks and presentation slides supplied.

May 29, 2002: Electronic Discovery, Federal Bar Association, Salt Lake City, Utah. Presentation slides supplied.

March 22, 2002: Making a Federal Magistrate Judge Happy, Utah State Bar, St. George, Utah. Outline supplied.

October 12, 2001: CM/ECF (Case Management/ Electronic Case Files), Federal Bar Association, Salt Lake City, Utah. Presentation slides supplied.

July 7, 2001: How to Act Not React to Technology, Utah State Bar, Annual Convention, Sun Valley, Idaho. I have no notes, transcript or recording. The address of the Utah State Bar is 645 South 200 East, Salt Lake City, Utah 84111.

July 5, 2001: Report on the Utah State Bar, Utah State Bar Annual Convention, Sun Valley, Idaho. I have no notes, transcript or recording. The address of the Utah State Bar is 645 South 200 East, Salt Lake City, Utah 84111.

June 27, 2001: Presentation on the regulation of the practice of law in Utah and delivery of legal services, Judicial Rules Review Committee. Meeting minutes supplied.

April 2001: Useful Technology, Broadcast International (Internet broadcast-on-demand). Presentation slides supplied.

March 15, 2001: Judicial Council Meeting, importance of cooperation between the courts and the Utah State Bar. Meeting minutes supplied.

February 2001: Managing Change, National Conference of Bar Presidents (Panel Member), San Diego, California. I have no notes, transcript or recording. The address of the National Conference of Bar Presidents is 321 North Clark Street, Chicago, Illinois 60654.

February 2001: Making Technology Relevant, National Conference of Bar Presidents, San Diego, California. Outline supplied.

Winter 2001 and Fall 2000: The Future of the Legal Profession, Utah State Bar, various locations across Utah. Presentation slides supplied.

July 20, 2000: Presentation to Multidisciplinary Practice Task Force, Utah State Bar, Salt Lake City, Utah. Minutes supplied.

July 3, 1999: The Challenge of Multidisciplinary Practice, Utah State Bar, Sun Valley, Idaho. Presentation slides supplied.

July 3, 1999: Fifty Ways to Use the Internet Today, Utah State Bar, Sun Valley, Idaho. Outline supplied.

July 2, 1999: Advocacy in Mediation, Utah State Bar, Sun Valley, Idaho. I have no notes, transcript or recording. The address of the Utah State Bar is 645 South 200 East, Salt Lake City, Utah 84111.

May 17, 1999: discussion of pro-tem judges in Utah, Judicial Council. Meeting minutes supplied.

April 1999: Advocacy in Mediation, Utah State Bar, Salt Lake City, Utah. I have no notes, transcript or recording. The address of the Utah State Bar is 645 South 200 East, Salt Lake City, Utah 84111.

July 31, 1998: Leading Your State to the (Paperless) Future, National Conference of Bar Presidents, Toronto, Ontario, Canada. I have no notes, transcript or recording. The address of the National Conference of Bar Presidents is 321 North Clark Street, Chicago, Illinois 60654.

July 4, 1998: Utah Electronic Law and Commerce Partnership Update, Utah State Bar, Sun Valley, Idaho. I have no notes, transcript or recording. The address of the Utah State Bar is 645 South 200 East, Salt Lake City, Utah 84111.

July 2, 1998: Fifty Internet Sites in 50 Minutes, Utah State Bar, Sun Valley, Idaho. I have no notes, transcript or recording. The address of the Utah State Bar is 645 South 200 East, Salt Lake City, Utah 84111.

November 4, 1997: Leveraging with Legal Assistants, Utah State Bar, Salt Lake City, Utah. The content was identical to the July 3, 1997 presentation for which presentation slides were supplied.

August 1, 1997: Bar Association Web Sites, National Conference of Bar Presidents, San Francisco, California. Outline supplied.

July 4, 1997: Utah Electronic Law Project, Utah State Bar Annual Meeting, Sun Valley, Idaho. I have no notes, transcript or recording. The address of the Utah State Bar is 645 South 200 East, Salt Lake City, Utah 84111.

July 3, 1997: Leveraging with Legal Assistants, Utah State Bar Annual Meeting, Sun Valley, Idaho. Presentation slides supplied.

August 19, 1996: Connecting to the World, Utah State Bar Annual Meeting, Price and Vernal, Utah. I have no notes, transcript or recording. The address of the Utah State Bar is 645 South 200 East, Salt Lake City, Utah 84111.

August 16, 1996: Connecting to the World, Utah State Bar Annual Meeting, Sun Valley, Idaho. I have no notes, transcript or recording. The address of the Utah State Bar is 645 South 200 East, Salt Lake City, Utah 84111.

July 4, 1996: Connecting to the World, Utah State Bar Annual Meeting, Cedar City and St. George, Utah. Presentation slides supplied.

March 15, 1996: Utah's 1995 Impact Fee Legislation, Utah Public Works Association, St. George, Utah. I have no notes, transcript or recording. The address of the Utah Public Works Association is c/o Michael Gladbach, City Engineer, Sandy City, 8775 South 700 West, Sandy, Utah 84070.

March 8, 1996: How Small Firm/Solo Practitioner Can Use the Internet to Level the Field with Larger Firms, Utah State Bar Mid-Year Bar Meeting, Panel Member, St. George, Utah. I have no notes, transcript or recording. The address of the Utah State Bar is 645 South 200 East, Salt Lake City, Utah 84111.

February 16, 1996: Utah State Bar Internet Seminar, Co-presenter with Howard Roberts and Blake Miller, Salt Lake City, Utah. I have no notes, transcript or recording. The address of the Utah State Bar is 645 South 200 East, Salt Lake City, Utah 84111.

January 24, 1996: Utilization of Legal Assistants, Legal Assistants Association of Utah, Salt Lake City, Utah. I have no notes, transcript or recording. The content was similar to the July 3, 1997 presentation. The address of the Utah State Bar is 645 South 200 East, Salt Lake City, Utah 84111.

November 17, 1995: Mediation Advocacy, Co-presenter with Jim Holbrook, Utah Administrative Office of the Utah Courts, Salt Lake City, Utah. I have no notes, transcript or recording. The address of the Administrative Office of the Utah Courts is 450 South State Street, Salt Lake City, Utah 84111.

October 18, 1995: Mediation Advocacy, Co-presenter with Jim Holbrook, Administrative Office of the Utah Courts, Salt Lake City, Utah. I have no notes, transcript or recording. The address of the Administrative Office of the Utah Courts is 450 South State Street, Salt Lake City, Utah 84111.

June 12, 1995: Alternative Dispute Resolution Overview, Co-presenter with Diane Hamilton, Salt Lake City, Utah. I have no notes, transcript or recording. The address of the Administrative Office of the Utah Courts is 450 South State Street, Salt Lake City, Utah 84111.

1992: I gave a number of campaign speeches and participated in debates while running for the state Senate. I believe I participated in approximately twenty such events during my state Senate bid. I have no notes, transcripts or recordings.

1985 – 1986: I participated in two client interview scenarios to be taped for Professor Constance Lundberg's law classes at Brigham Young University. She is now retired but showed them for many years to her students. Video supplied.

1982: I gave a number of campaign speeches and participated in debates while running for County Attorney. I believe I participated in approximately ten such events during this campaign. I have no notes, transcript or recording, but press coverage is supplied.

1979: I gave roughly five speeches during my campaign for the St. George City Council. I have no notes, transcripts or recordings.

From 1994 to 2001, I served as a Commissioner (1994 – 1999); President-Elect (1999 – 2000); and President (2000 – 2001) of the Utah State Bar. In these capacities, I occasionally gave presentations during Board of Bar Commissioners meetings. I have no notes, transcripts or recordings of these meetings, but Bar coverage is supplied.

As Utah State Bar Commissioner and President, I also spoke to numerous groups, often in connection with other programs. I do not have copies of any notes or reports of these presentations. The address of the Utah State Bar is 645 South 200 East, Salt Lake City, Utah 84111.

As a judge, I often speak to visiting groups of foreign judges and school students who visit the court about the court, the court building and the American judicial system. I do not have any notes or reports of these presentations. The address of the United States District Court for the District of Utah is 350 South Main Street, Salt Lake City, Utah 84101.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Bryan J. Pattison, *Writing to Persuade*, 24 Utah B.J. 10 (Mar./Apr. 2011). Copy supplied.

Tami Kamin-Meyer, *'Nothing is Invisible'*, Utah CEO, May 2008. Copy supplied.

Jonathan O. Hafen, *Magistrate Judge David O. Nuffer*, FBA Newsletter, Oct. 2003. Copy supplied.

Robert O. Rice, *Magistrate Judge David Nuffer*, Utah State Bar Profile, Apr. 2003. Copy supplied.

Wells to be Named Fed Magistrate, Salt Lake Tribune, Feb. 28, 2003. Copy supplied.

C.G. Wallace, *Bar Still Won't Be Able to Go After Those Illegally Practicing Law*, Associated Press, June 21, 2001 [quote re-printed in multiple outlets]. Copy supplied.

Paul Beebe, *Utah Companies' Digital-Signature Technology Expands E-Commerce Options*, Salt Lake Tribune, June 1, 2001. Copy supplied.

Press release, *Zions Bank Facilitates Online License Renewal for 7,200 Utah State Bar Members*, Zions Bancorporation, May 31, 2001. Copy supplied.

Law Alum David Nuffer Serves as Utah Bar President, Clark Memorandum, Spr. 2001. Copy supplied.

Telephone interview with Bryn T. Infanger on Feb. 15, 2001, published in *Case Retrospective: In re W.A.T. and the State of Adoption in Utah*, 4 J.L. & Fam. Stud. 167 (2002). Copy supplied.

Anna Cekola, *Utah Bar Panel Backs Proposal for Lawyers to Partner with Other Professionals*, Salt Lake Tribune, Jan. 27, 2001. Copy supplied.

Bar Considers Allowing Lawyers to Team with Nonlawyers, Associated Press, Dec. 28, 2000. Copy supplied.

Anna Cekola, *Utah State Bar Considers Allowing Lawyers to Team with Other Professionals*, Salt Lake Tribune, Dec. 24, 2000. Copy supplied.

Max Knudson, *Law Firms Seeking Partners*, Deseret News, Dec. 18, 2000. Copy supplied.

Karen Van Splawn, *Tell It to the Judge*, The Spectrum, June 3, 1999. Copy supplied.

Phil Sahm, *Utah's Legal Community Ponders Paralegal Certification*, Salt Lake Tribune, May 25, 1999. Copy supplied.

Anna Marie Kukec, *Bars Should Hone Web Site Strategies to Fully Serve Their Members and Public*, 23 B. Leader 14 (Fall 1998). Copy supplied.

Robert Mims, *Privacy Battles Likely to Focus on the Internet*, The Intermountain Commercial Record, Oct. 24, 1997. Copy supplied.

Chip Parkinson, *Panel Sidesteps a Stand on Opening Judge Files*, Deseret News, Feb. 13, 1997. Copy supplied.

Brent Israelsen, *Nonprofit Trust Organizes to Protect Lands in S. Utah*, Deseret News, Jan. 10, 1994. Copy supplied.

2 Representatives Challenge 2 Senators, Deseret News, Oct. 29, 1992. Copy supplied.

Dixie Politicians Caught in Environmental Debate, Deseret News, Aug. 9, 1992. Copy supplied.

Kanab Council Votes 3-2 for City Attorney, Deseret News, May 19, 1992. Copy supplied.

County Attorney Faces Prosecution in DUI Case, Salt Lake Tribune, Feb. 27, 1992. Copy supplied.

Kane County Attorney Cited for Second DUI, Salt Lake Tribune, Feb. 11, 1992. Copy supplied.

In 1992, I released several radio spots for my County Attorney campaign. Scripts supplied.

2 Sue Over Legality of Mayor's Orders, Deseret News, Aug. 25, 1991. Copy supplied.

Jerry Spangler, *Human Discord Shatters Nature's Harmony in S. Utah*, Deseret News, Apr. 30, 1991. Copy supplied.

Utah Polygamists Allowed to Adopt, New York Times, Mar. 29, 1991. Copy supplied.

Lisa Riley Roche and Jerry Spangler, *Polygamy Doesn't Make Couple Ineligible to Adopt*, Deseret News, Mar. 27, 1991. Copy supplied.

General media interview after oral argument on July 12, 1989 at the Utah Supreme Court in *In the Matter of the Adoption of W. A. T., et al.* I have been unable to obtain a transcript, but two articles based on my interview are listed below:

Chris Jorgensen, *Attorneys Argue Merits of Polygamy as High Court Hears Adoption Case*, June 13, 1989. Copy supplied.

Attorney: Polygamy Offense against Family, The Spectrum, June 13, 1989. Copy supplied.

Phillip Swift, *Graf, Nuffer Square Off* Nov. 2, The Spectrum, Oct. 20, 1982. Copy supplied.

Boyack, Nuffer Filed for County Attorney, The Spectrum, Apr. 30, 1982. Copy supplied.

In 1979, I released a radio spot for my City Council campaign. Script supplied.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

1995 – 2003: United States Magistrate Judge (part-time), United States District Court for the District of Utah, St. George, Utah. I was appointed by the court on May 1, 1995. This is a federal court whose jurisdiction is defined by 28 U.S.C. § 636. As a part-time Magistrate Judge, I exercised jurisdiction over federal petty offense cases arising in Zion National Park, Bryce Canyon National Park and Bureau of Land Management administered lands in Southern Utah. I also handled occasional preliminary felony matters such as issuance of warrants and initial appearances. In 1998, at the request of the court, I also began to handle non-felony criminal matters that arose in Northern Utah, in sessions in Salt Lake City.

2003 – present: United States Magistrate Judge, United States District Court for the District of Utah, Salt Lake City, Utah. I was appointed by the court on January 17, 2003 and reappointed on January 17, 2011. This is a federal court whose jurisdiction is defined by 28 U.S.C. § 636. As a full-time Magistrate Judge, I exercise jurisdiction over federal civil and criminal cases. I handle all preliminary criminal proceedings including issuing arrest and search warrants, pen register and trap and trace orders, initial appearances, appointments of counsel and detention hearings.

I am responsible for resolving discovery disputes in civil cases which are referred to me, and for making reports and recommendations in all civil and criminal matters referred to me for that purpose, including hearing and ruling on motions to dismiss and to suppress evidence/statements when requested by the district judges. I also serve as a mediator in cases pending before the district court. I handle any other matter referred from district court judges.

Civil cases are assigned to me to preside in the same proportion as the district judges. Upon the consent of the parties, I preside over all civil jury and non-jury matters in those cases. I hear and rule on Social Security Administrative Appeals.

As Chief Magistrate Judge since January 1, 2009, I also handle administrative matters in the court as directed by the district judges, including coordination of the work of the magistrate judges, establishment and adjustment of policies affecting magistrate judges, policy recommendations of general concern to the court, and responses to outside requests for cooperation on matters affecting others who work with the court.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? 30

- i. Of these, approximately what percent were:

jury trials:	<1%
bench trials:	>99%
civil proceedings:	0%
criminal proceedings:	100%

- b. Provide citations for all opinions you have written, including concurrences and dissents.

As a Magistrate Judge I prepare Reports and Recommendations on dispositive matters (e.g., Motions for Summary Judgment, Motions to Dismiss, Motions to Suppress Evidence) referred to me by the District Judges of this Court, who remain the presiding judge in the case. I also prepare orders on motions referred to me, which are not dispositive. From time to time, parties will consent to my jurisdiction, and in such cases, I am the presiding judge over the case. When I am the presiding judge, I do not prepare Reports and Recommendations. Instead, I enter orders for all motions adjudicated in the case. I am attaching a list of the

Reports and Recommendations that I have prepared for matters that have been referred to me by the District Judges on this Court as well as orders I have entered when acting as the presiding judge.

See attached list of opinions and orders.

- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *Winderlin v. Kunz*, 2:08-cv-00512-DN, 2009 WL 224486 (D. Utah Jan. 29, 2009), 2009 WL 1124473 (D. Utah Apr. 23, 2009). Winderlin alleged that excessive force was used in his arrest which aggravated his pre-existing shoulder injury. I presided over the case by consent of the parties. I entered preliminary orders regarding discovery. I was preparing to decide several motions in limine and preside over a jury trial when the case settled. Copies of the opinions in this case are attached.

Counsel for Plaintiff: Alyson E. Carter
Robert B. Sykes
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Counsel for Defendants: Allan L. Larson
Heather S. White
Snow Christensen & Martineau
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Salt Lake City, UT 84145
(801) 521-9000

2. *Mathis v. Perriraz*, No. 2:08-cv-507 DN, 2010 WL 56073 (D. Utah Jan. 6, 2010). The parties to this dispute about ownership of land and a hotel consented that I preside over the case. I entered summary judgment quieting title in favor of Plaintiff, as to a one-half interest in the property.

Counsel for Plaintiff: Darren G. Reid
David K. Broadbent
Holland & Hart
222 South Main Street, Suite 2200
Salt Lake City, UT 84101
(801) 799-5800

Counsel for Defendant: Joshua L. Lee
Bennett Tueller Johnson & Deere PC
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Salt Lake City, UT 84121
(801) 438-2000

3. *Heimerdinger v. Collins*, No. 2:07-cv-844 DN, 2009 WL 1743764 (D. Utah June 18, 2009). This dispute about ownership of copyrighted works between two former business associates was assigned to me and the parties consented that I preside over the case. I determined several early procedural issues, including unsealing many documents which the parties had sealed. An early sealed order dismissed several of plaintiff's state law claims, and the final order rejected several theories advanced by the plaintiff.

Counsel for Plaintiff: Douglas B. Thayer
Jordan K. Cameron
Hill, Johnson & Schmutz, L.C.
RiverView Plaza, Suite 300
4844 North 300 West
Provo, UT 84604
(801) 375-6600

Counsel for Defendant: John A. Snow
Cassie J. Medura
Van Cott, Bagley, Cornwall & McCarthy
36 South State Street, Suite 1900
P.O. Box 45340
Salt Lake City, UT 84111
(801) 532-3333

4. *Webster v. Gower*, No. 2:07-cv-00888 DN, 2010 WL 520522 (D. Utah Feb. 8, 2010). The suit against a jail and jailers alleged civil rights violations leading to the death of plaintiff's son. I presided over the case by the parties' consent. My order dismissing the claims was appealed, but the parties later stipulated to the dismissal of the appeal and the case.

Counsel for Plaintiff: Damian W. Kidd
Driggs Bills & Day
331 South 600 East
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(801) 363-9982

Counsel for Defendants: Frank D. Mylar
Mylar Law, P.C.
6925 South Union Park Center, Suite 600
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(801) 858-0700

5. *Loafer Rim Prop., L.C. v. United States*, No: 2:08-CV-798 DN, 2009 WL 1796977 (D. Utah June 22, 2009). The plaintiff sought to quiet title against a governmental easement. The parties stipulated that I would preside over the case. My decision denied the government's motion to dismiss on the basis of the statute of limitations, finding that the factual issues decisive of the motion were the same issues which would decide the case. The parties later stipulated to resolve the case.

Counsel for Plaintiff: Russell D. Collings
Collings Law PC
75 East 7200 South, C-139
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(801) 380-6815

Counsel for Defendant: Jared C. Bennett
U.S. Attorney's Office
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Salt Lake City, UT 84111
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6. *Smith v. Union Pac. R.R. Co.*, No. 2:08-cv-81 DN. Railroad employee brought suit under 45 U.S.C. § 51 for injuries sustained on the job due to employer's negligence. I handled the initial scheduling of the case. Upon request of the parties and their consent under 28 U.S.C. § 636(c), I handled all contested pretrial motions, including motions to exclude certain deposition testimony and objections to jury instructions. I conducted the final pre-trial conference and all trial preparations. The case settled shortly before trial was set to begin.

Counsel for Plaintiff: Heather M. Sneddon
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Richard A. Haydu
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Chicago, IL 60605
(312) 939-1212

Counsel for Defendants: E. Scott Savage
Kyle C. Thompson
Savage Yeates & Waldron PC
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7. *Forbes v. Wal-Mart Stores, Inc.*, No. 2:08-cv-00008-DN, 2010 WL 988492 (D. Utah Mar. 15, 2010). This removal case was before me by consent of the parties under 28 U.S.C. § 636(c). The plaintiff, who slipped on ice and injured himself while repairing a garage door at Wal-Mart, asserted a claim for negligence. I granted Wal-Mart's motion for summary judgment. The plaintiff appealed to the Tenth Circuit, but the appeal was dismissed by stipulation.

Counsel for Plaintiff: Kevin K. Robson
Bertch Robson
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Salt Lake City, UT 84124
(801) 424-3800

Counsel for Defendant: Mitchel T. Rice
Stephen F. Edwards
Morgan Minnock Rice & James
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Salt Lake City, UT 84101
(801) 531-7888

8. *Conlin Enterprises Corp. v. SNEWS, LLC*, No. 2:07-cv-00922-DN, 2008 WL 803041 (D. Utah Mar. 24, 2008). I presided over this case by consent of the parties under 28 U.S.C. § 636(c). Plaintiffs filed suit in Utah Third District Court asserting claims of defamation, interference with business relationships and civil conspiracy. The case was removed to federal court. Defendants then filed a motion to dismiss for lack of personal jurisdiction over the defendants, improper venue, and failure to state a claim for civil conspiracy. I found that the defendants were properly served with process, the court had personal jurisdiction over the defendants, venue was proper, and the civil conspiracy claim should be dismissed for failure to state a claim. The case eventually settled.

Counsel for Plaintiffs: Brian W. Steffensen
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Counsel for Defendants: Adam Strachan
Strachan Strachan & Simon
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(435) 649-4111

9. *Thomas v. Oreck Vacuums*, No. 2:09-cv-737 CW, 2010 WL 1064436 (D. Utah Mar. 18, 2010); 2010 WL 2671382 (D. Utah June 30, 2010); 2010 WL 2868844 (D. Utah July 20, 2010). In this case involving allegations of wrongful termination, I adjudicated pending dispositive motions at the request and consent of the parties under 28 U.S.C. § 636(c). The motions I handled included Defendant's Motion for Summary Judgment, Plaintiff's Motion for Partial Summary Judgment, and two of Plaintiff's Motions to Strike. The case eventually settled before trial.

Counsel for Plaintiff: Bruce M. Franson
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Counsel for Defendants: Jeremy G. Knight
Kristin A. VanOrman
Strong & Hanni
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Salt Lake City, UT 84180
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10. *United States v. Goold*, No. SG-96-mj-0033-DN (tried March 10, 1997). The case alleged three counts against two defendants including Operating a Vehicle Without Due Care, Exceeding Group Size, and Interfering with Agency Function. It was the first jury trial in Southern Utah in the history of the federal court. The jury found defendants guilty. I later sentenced them.

Counsel for Prosecution: Leshia M. Lee-Dixon
United States Department of Justice
Criminal Division
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Washington, D.C. 20005
(202) 514-3601

Counsel for Defendants: R. Clayton Huntsman
1224 South River Road, Suite A-204
St. George, UT 84790
(435) 628-2846

- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

1. *Adams v. Gateway, Inc.*, No. 2:02-cv-106 TS, 2003 WL 23787856 (D. Utah Dec. 30, 2003).

Counsel for Plaintiff: Gregory D. Phillips
Howard Phillips & Andersen
560 East 200 South, Suite 300
Salt Lake City, UT 84102
(801) 366-7471

Counsel for Defendant: David M. Connors
Chapman & Cutler
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Salt Lake City, UT 84111
(801) 320-6700

John R. Posthumus
Greenberg Traurig
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Denver, CO 80223
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2. *Phillip M. Adams & Assocs. v. Dell*, 621 F. Supp. 2d 1173 (D. Utah 2009).

Counsel for Plaintiff: Gregory D. Phillips
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(801) 366-7471

Counsel for Defendant: R. Stephen Marshall
J. Mark Gibb
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Salt Lake City, UT 84111
(801) 328-3600

3. *digEcor, Inc. v. e.Digital*, No. 2:06-cv-437 TS, 2008 WL 803108 (D. Utah Mar. 22, 2008).

Counsel for Plaintiff: David W. Tufts
Erik A. Olson
Erin T. Middleton
Durham Jones & Pinegar
111 East Broadway, Suite 900
Salt Lake City, UT 84111
(801) 415-3000

Counsel for Defendant: James S. Jardine
Rick B. Hoggard
Ryan B. Bell
Samuel C. Straight
Ray Quinney & Nebeker
36 South State Street, Suite 1400
P.O. Box 45385
Salt Lake City, UT 84145
(801) 532-1500

4. *ClearOne Commc'ns, Inc. v. Chiang*, No. 2:07-cv-37 TC DN, 2008 WL 704228 (D. Utah Mar. 10, 2008).

Counsel for Plaintiff: James E. Magleby
Jennifer F. Parrish
Magleby & Greenwood PC
170 South Main Street, Suite 850
Salt Lake City, UT 84101
(801) 359-9000

Counsel for Defendants: Karra J. Porter
Christensen & Jensen PC
15 West South Temple, Suite 800
Salt Lake City, UT 84101
(801) 323-5000

5. *Benson v. Hartford Life & Acc. Ins. Co.*, No. 2:10-cv-00275-TS, 2011 WL 285831 (D. Utah Jan. 28, 2011).

Counsel for Plaintiff: Brian S. King
336 South 300 East, Suite 200
Salt Lake City, UT 84111
(801) 532-1739

Counsel for Defendant: James L. Barnett
Holland & Hart, LLP
222 South Main Street, Suite 2200
Salt Lake City, UT 84101
(801) 799-5826

6. *Winderlin v. Kunz*, 2009 WL 224486 (D. Utah 2009).

Counsel for Plaintiff: Alyson E. Carter
Robert B. Sykes
Robert B. Sykes & Associates, P.C.
311 South State Street, Suite 240
Salt Lake City, UT 84111
(801) 533-0222

Counsel for Defendants: Allan L. Larson
Heather S. White
Snow Christensen & Martineau
10 Exchange Place, Eleventh Floor
Post Office Box 45000
Salt Lake City, UT 84145
(801) 521-9000

7. *Lee v. Utah*, No. 2:09-cv-544 DN, 2010 WL 2901610 (D. Utah July 22, 2010).

Counsel for Plaintiff: S. Clark Newhall
57 West 200 South #101
Salt Lake City, UT 84101
(801) 230-8705

Counsel for Defendant: Bradley Ross Blackham
Snow Christensen & Martineau
10 Exchange Place, 11th Floor
P.O. Box 45000
Salt Lake City, UT 84145
(801) 521-9000

8. *Mathis v. Perriraz*, No. 2:08-cv-507 DN, 2010 WL 56073 (D. Utah Jan. 6, 2010).

Counsel for Plaintiff: Darren G. Reid
David K. Broadbent
Holland & Hart
222 South Main Street, Suite 2200
Salt Lake City, UT 84101
(801) 799-5800

Counsel for Defendant: Joshua L. Lee
Bennett Tueller Johnson & Deere PC
3165 East Millrock Drive, 5th Floor
Salt Lake City, UT 84121
(801) 438-2000

9. *Heimerdinger v. Collins*, No. 2:07-cv-844 DN, 2009 WL 1743764 (D. Utah June 18, 2009).

Counsel for Plaintiff Douglas B. Thayer
Jordan K. Cameron
Hill, Johnson & Schmutz, L.C.
RiverView Plaza, Suite 300
4844 North 300 West
Provo, UT 84604
(801) 375-6600

Counsel for Defendant John A. Snow
Cassie J. Medura
Van Cott, Bagley, Cornwall & McCarthy
36 South State Street, Suite 1900
P.O. Box 45340
Salt Lake City, UT 84111
(801) 532-3333

10. *Martinez v. City of Ogden*, No. 1:08-cv-87 TC DN, 2009 WL 424785 (D. Utah Feb. 18, 2009).

Counsel for Plaintiff: Erika Birch
Lauren I. Scholnick
Strindberg & Scholnick LLC
785 North 400 West
Salt Lake City, UT 84103
(801) 359-4169

Counsel for Defendant: Camille N. Johnson
David J. Hawkins
Stanley J. Preston
Snow Christensen & Martineau
10 Exchange Place, 11th Floor
P.O. Box 45000
Salt Lake City, UT 84145
(801) 521-9000

- e. Provide a list of all cases in which certiorari was requested or granted.

I know of no cases in which certiorari was granted. Certiorari was requested in *United States v. Echeverria*, No. 2:04-cr-136 DB (D. Utah Oct. 29, 2004), *cert. denied*, 549 U.S. 1297 (2007).

- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

1. *Phillip M. Adams & Assocs., LLC v. Sony Elecs., Inc.*, No. 1:05-cv-64 TS, 2010 WL 2219424 (D. Utah May 26, 2010), *rev'd in part*, 2010 WL 3447818 (D. Utah Aug. 30, 2010). I denied plaintiff's motion to amend the complaint and for terminating sanctions. In denying the motion to amend, I concluded that there was no need to discuss the motion for terminating sanctions because it was contingent on amendment of the complaint. The District Court upheld the ruling on amendment, but reversed the ruling on the sanctions motion. The court found that the motion for sanctions was not moot because it also related to the plaintiff's claims of patent infringement. The district court did not rule on sanctions at that time.

2. *United States v. Skutley*, No. 2:08-cr-676 DB (D. Utah June 8, 2010), *rev'd*, 2010 WL 3362718 (D. Utah Aug. 23, 2010). In a Report and Recommendation on a motion to suppress, I concluded that the evidence seized during a traffic stop should be suppressed because the officers did not have reasonable suspicion to make the stop. The District Court disagreed, concluding that the officers had observed a traffic violation and that the stop was therefore lawful. Report and Recommendation supplied.

3. *United States v. Alcala*, No. 2:09-cr-535 DB (D. Utah Mar. 16, 2010), *rev'd*, No. 2:09-cr-535 DB (D. Utah May 14, 2010). In a case involving conspiracy to smuggle illegal aliens into the country and VISA fraud, I detained the lead defendant after finding he violated pre-trial release conditions by leaving the jurisdiction without permission. Defendant moved for release from custody after the time had expired to object to the original order of detention. I denied the

motion because it failed to cite any information that was not known at the time of the hearing. District Judge Dee Benson reversed, setting pre-trial release conditions. Defendant has since absconded from pre-trial release and his whereabouts are unknown. Opinion supplied.

4. *Systemic Formulas, Inc. v. Kim*, No. 1:07-cv-159-TC, 2009 WL 5205995 (D. Utah Dec. 23, 2009) *aff'd in part, rev'd in part*, No. 1:07-cv-159-TC (D. Utah Feb. 4, 2010). I sanctioned an attorney appearing *pro hac vice* because he violated a protective order by providing his client with information obtained in discovery marked "For Attorney's Eyes Only." One of the sanctions prohibited the attorney from appearing *pro hac vice* in this court for three years. On appeal, District Judge Tena Campbell affirmed all other sanctions except for the three year restriction on the attorney appearing in this court. Opinion supplied.

5. *Wade v. Reg'l Dir. of IRS*, No. 1:08-cv-148-CW, 2009 WL 2423535 (D. Utah Aug. 4, 2009), *rev'd*, 2009 WL 4906853 (D. Utah Dec. 10, 2009). The petitioner filed a petition for a writ of mandamus to compel the IRS to remove tax liens from his property and to enjoin the IRS from further collections. In a Report and Recommendation, I concluded that the IRS's motion to dismiss should be granted on the grounds that the relief sought was barred by the doctrine of sovereign immunity, the Anti-injunction Act, and the Declaratory Judgment Act, and that the petitioner had failed to state a viable claim under the Mandamus Act. The District Court declined to adopt the Recommendation, concluding that when reading the petition in the light most favorable to the petitioner, the sovereign immunity doctrine did not bar the action, it was error to characterize the petition as one for declaratory relief under the Declaratory Judgment Act, the action was not barred by the Anti-injunction Act, and the petition stated a claim under the Mandamus Act.

6. *ClearOne Commc'ns, Inc. v. Chiang*, No. 2:07-cv-37 TC, 2008 WL 687104 (D. Utah Mar. 10, 2008), *vacated*, 2009 WL 1108800 (D. Utah Apr. 20, 2009). I entered an order granting plaintiff's motion to consolidate this case with another case involving the same parties. The district court later vacated this order to bring the initial case to trial at an early date.

7. *S.E.C. v. Merrill Scott & Assocs, Ltd.*, No. 2:02-cv-39 TC, 2007 WL 3275146 (D. Utah Nov. 5, 2007), *vacated in part*, 2008 WL 276502 (D. Utah Jan. 30, 2008), *aff'd in part, rev'd in part*, 600 F.3d 1262 (10th Cir. 2010). I granted the government's motion to intervene and also allowed investor to seek limited discovery. District Judge Tena Campbell vacated the portion of my order allowing investor's discovery. The Tenth Circuit ruled that it did not have jurisdiction to review the intervention order because investor had failed to object to my order before the District Judge.

8. *United States v. Evanson*, No. 2:05-cr-805 TC, 2007 WL 128960 (D. Utah Jan. 12, 2007), *rev'd*, 2007 WL 3171547 (D. Utah Apr. 20, 2007). I granted

Defendant's motion for discovery of a Suspicious Activity Report mentioned in affidavit supporting a search warrant because the validity of the search warrant was at issue in defendant's motion to suppress. District Judge Tena Campbell reversed my decision after the government objected, as she found that after the government's disclosure of other related documents the Suspicious Activity Report was not material.

9. *United States v. Evanson*, No. 2:05-cr-805 TC, 2006 WL 2992561 (D. Utah Oct. 18, 2006), *rev'd*, No. 2:05-cr-805 TC (D. Utah Mar. 21, 2007). I denied the government's motion to disqualify defendant's counsel. District Judge Tena Campbell effectively reversed when granting a related motion on issue of attorney/client conflict of interest. Opinion supplied.

10. *United States v. Barney*, No. 2:04-cr-370 DB (D. Utah Jan. 5, 2005), *rev'd*, No. 2:04-cr-370 DB (D. Utah May 20, 2005). In a Report and Recommendation on a motion to suppress, I concluded that evidence seized during an arrest should be suppressed because the officers did not have probable cause for the arrest. The district court reversed, finding that the officers' actions in placing the defendant on his knees and handcuffing him were not a seizure in violation of the Fourth Amendment. Opinions supplied.

11. *United States v. Morrison*, No. 2:03-mj-41 DN (D. Utah May 6, 2004), *aff'd*, No. 2:04-CR-288 PGC (D. Utah July 19, 2004), *rev'd*, 415 F.3d 1180 (10th Cir. 2005). Defendant was charged with willfully and knowingly transmitting in interstate commerce an internet communication threatening to injure another person. The government moved to authorize involuntary antipsychotic medication to render defendant competent to stand trial. I granted the motion, and the District Court affirmed. The Tenth Circuit reversed holding that inquiry into whether it was appropriate to medicate defendant to ensure his safety or others' safety should have preceded inquiry into medication to render defendant competent. Opinions supplied.

12. *United States v. Baker*, No. 1:03-cr-128 DB (D. Utah May 18, 2004), *rev'd*, No. 1:03-cr-128 DB (D. Utah June 29, 2004). In a Report and Recommendation on a motion to suppress, I concluded that the evidence should be suppressed because it was obtained as a result of a traffic stop that violated the Fourth Amendment. The District Court declined to adopt the Recommendation, concluding that the officers had reasonable suspicion to make the traffic stop. Opinions supplied.

- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

Civil: As a magistrate judge, I issue orders on non-dispositive matters and orders on dispositive matters in consent cases, and I issue reports and recommendations

on all dispositive matters referred to me. My non-dispositive orders include discovery matters, motions to amend the pleadings, motions to modify the schedule and other miscellaneous civil motions. I issue hundreds of such orders in any given year. Because my duties have included all civil scheduling for the active district judges for the past several years, I issue many scheduling orders and orders amending case schedules. Very few of the pretrial civil orders are published, although I have filed all of my orders with our court's Electronic Case Filing system for as long as the court has maintained that system.

Criminal: As a magistrate judge, I issue orders on non-dispositive criminal matters such as appointment of counsel, detention and scheduling, which are all referred by rule to the magistrate judge in this district. Very few if any of these orders are published.

In consulting all known sources, including Westlaw, Lexis and CM/ECF, I have found approximately 400 opinions which I understand to mean "reasoned decisions." Because tracking mechanisms were not automated before 2005 in our court, the actual number is likely higher. Only three opinions have been published, which is less than 1%. The unpublished opinions are stored in CM/ECF and are designated as "written opinions," which makes them available without cost on PACER. It appears that West and Lexis download and post the majority of these opinions on their services.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

1. *United States v. Benard*, No. 2:09-cr-56 DAK, 2010 WL 3734847 (D. Utah Aug. 17, 2010), *adopted by* District Judge Dale Kimball, 2010 WL 3734846 (D. Utah Sept. 22, 2010). Defendant's appeal is pending before the Tenth Circuit Court of Appeals.

2. *United States v. Skutley*, No. 2:08-cv-676 DB (D. Utah June 8, 2010), *rev'd*, 2010 WL 3362718 (D. Utah Aug. 23, 2010). Report and Recommendation supplied in response to question 13f.

3. *United States v. Gordon*, No. 2:04-cr-00688-CW (D. Utah July 21, 2008), *adopted by* District Judge Dee Benson, 2008 WL 3540007 (D. Utah Aug. 13 2008).

4. *United States v. Montoya*, No. 2:04-cr-673-DB (D. Utah Nov. 2, 2005), *adopted by* District Judge Dee Benson on December 1, 2005. Opinion supplied.

5. *United States v. Jackman*, No. 2:05-cr-228 PGC (D. Utah Oct. 18, 2005), *adopted by* District Judge Paul Cassell on November 8, 2005, *aff'd*, 214 F. App'x 814 (10th Cir. 2007). Opinion supplied.

6. *Barker v. Utah State Office of Educ.*, No. 2:04-cv-518 DAK (D. Utah Aug. 26, 2005), *adopted by* District Judge Dale Kimball on September 21, 2005. Opinion supplied.

7. *United States v. Roman*, No. 2:04-cr-00544-TS (D. Utah June 15, 2005) (two separate written Reports and Recommendations), *adopted by* District Judge Ted Stewart on August 5, 2005, and September 28, 2005. Opinion supplied.

8. *United States v. Norlander*, No. 2:04-cr-00720-DB (D. Utah Apr. 27, 2005), *adopted by* District Judge Dee Benson on May 16, 2005. Opinion supplied.

9. *United States v. Sotelo*, No. 2:04-cr-388 TC (D. Utah Feb. 24, 2005), *adopted by* District Judge Tena Campbell on April 13, 2005. Opinion supplied.

10. *United States v. Barney*, No. 2:04-cv-370 DB (D. Utah Jan. 5, 2005), *rev'd*, No. 2:04-cr-370 DB (D. Utah May 20, 2005). Report and Recommendation supplied in response to question 13f.

11. *United States v. Echeverria*, No. 2:04-cr-136 DB (D. Utah Oct. 29, 2004), *adopted by* District Judge Dee Benson on February 3, 2005, *aff'd*, 203 F. App'x 936 (10th Cir. 2006), *cert. denied*, 549 U.S. 1297 (2007). Opinion supplied.

12. *United States v. Hurst*, No. 2:03-cr-795-DB (D. Utah June 25, 2004), *adopted by* District Judge Dee Benson on July 14, 2004. Opinion supplied.

13. *United States v. Baker*, No. 1:03-cr-128 DB (D. Utah May 18, 2004). This case involved two separate written Reports and Recommendations ("R&Rs"). One R&R (Document 33) was adopted by District Judge Dee Benson on June 29, 2004; but on the same date, Judge Benson declined to follow the other R&R (Document 32). Opinions supplied.

- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have not sat by designation on a federal court of appeals.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I follow the recusal statutes and Code of Conduct for United States Judges. Whenever called for by the Code of Conduct for United States Judges, the recusal statutes, or my general interest in maintaining impartiality and the appearance of impartiality of the Court, particularly with pro se parties, I disclose the potential conflict and/or recuse myself.

Our court does not employ an “automatic” recusal system. I evaluate each case when referred to me and when assigned for the parties’ consent to my jurisdiction. CM/ECF maintains a conflict checking tool which I periodically update. The conflict checking tool runs cases against a list I maintain in the system. That list includes former clients, former adverse parties and for several years included all attorneys in my former firm and the firm with which my former law firm merged. Names of attorneys who are close personal friends are included. I also review cases as they proceed, examining the list of counsel and parties to determine if an association appears which is not listed in our conflict database.

In the following cases, a party moved for my removal or disqualification. None of these motions were granted.

The motion was procedurally deficient in these cases:

Layland v. United States, No. 2:01-cv-00076

Anderson v. Ireland, No. 2:03-cv-00068

Burbank v. USDC UT, No. 2:04-cv-00742

The motion was substantively deficient in the following cases, because the motion only alleged adverse rulings:

Mikesell v. Galetka, No. 2:01-cv-00891

Soc’y of Lloyd’s v. Bennett, No. 2:02-cv-204

Travis v. Park City Mun. Corp., No. 2:05-cv-00269

In the following cases, I initiated recusal due to personal, family or staff relationships:

United States v. Great Salt Lake Council, Inc. (BSA), No. 2:04-cv-00604.

I was a Boy Scout leader at the time and the case sought substantial damages against the regional BSA organization.

Jensen v. Utah, No. 2:05-cv-00739. A law clerk was employed previously as counsel for the defendant state agency.

George v. Delta Air Lines, Inc., No. 2:07-cv-00742; *Smith v. Delta Airlines*, No. 2:07-cv-00843. A law clerk was formerly employed by the defendant and her husband was still employed by that same party.

United States v. Kaplar, No. 2:06-cv-00261. I recused on this case because my law clerk's husband was related to a pro se party.

Wright Express Fin. Servs. Corp. v. ACAS Acquisition (Logex), Inc., No. 2:06-cv-01039. My neighbor was counsel for a party.

Rose v. Utah State Bar, No. 2:08-cv-00592. I had served as a Utah State Bar Commissioner and President.

York v. U.S. Dep't of Justice, No. 2:09-cv-00063. During my years in St. George, I had many legal encounters with this pro se plaintiff.

Wood-Federowicz v. Yengich, No. 2:09-cv-00482. I, like all the other judges in this district, recused in this case against a prominent defense lawyer and former CJA Panel Chair.

Brazzle v. Washington City, No. 2:09-cv-00074. I have a close personal friendship with the Washington City Attorney and previously performed significant legal work for that party.

Torrey v. Davol, No. 2:09-cv-00883. A defendant in the suit was a physician for my wife and me.

Western World Ins. v. Special Population Learning Outdoor Recreation & Educ., No. 2:06-cv-00967. My wife, son and I had been volunteers for the defendant entity.

Driessen v. Sony BMG Music Entertainment, No. 2:09-cv-00140. A former student was co-plaintiff and his spouse, a law professor, was the other plaintiff.

I recused myself in cases in which I felt pro se plaintiffs would not feel fairly treated or could later claim such unfairness if I remained:

Raiser v. Utah Cnty., No. 2:02-cv-01209. I had ruled against the pro se plaintiff in another case.

Johnson v. Johnson, No. 2:05-cv-00749. The pro se plaintiff made a significant written threat against me.

Wade v. Reg'l Dir. of IRS, No. 1:08-cv-00148. The pro se plaintiff objected to my recommendation to dismiss the case and the district judge declined to adopt it. I was concurrently referral judge on the pro se plaintiff's civil complaint against his former lawyer in a case with closely related subject matter.

Biers v. State of Utah, No. 2:09-cv-01008. Mr. Biers filed an ethics complaint against me after I ruled against him on some motions and I recused.

I do not recall the reason for recusal in this case:

MyGym v. Engel, Case No. 1:06-cv-00130.

15. Public Office, Political Activities and Affiliations:

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not held any public offices other than judicial offices. I was an unsuccessful candidate for the following offices, in the years indicated:

St. George City Council, 1979

Washington County Attorney, 1982

Utah State Senate District 29, 1992

I have not had any unsuccessful nominations for appointed office.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Chair, Taxpayers for Washington County, 1988. At the request of local business and education leaders, I chaired a campaign to educate about and encourage rejection of tax limitation initiatives. I raised funds, responded to state-wide coordinators' requests for assistance, coordinated local public appearances, and arranged for placement of advertisements regarding the initiatives.

Secretary, Washington County Democratic Party, 1994 – 1995. Formal service as a party organizer. I provided administrative support for the party by maintaining

lists of party members and district organizations. I provided local support for various state campaigns.

Organizer, Washington County Democratic Party, 1978 – 1994. As the county grew from a relatively small population to exceed 80,000, along with others in my law firm, I informally provided administrative support for the party by maintaining lists of party members and district organizations, as well as supporting local and state candidates in their individual campaigns.

16. Legal Career: Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I have not served as a clerk to a judge.

- ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1978

Allen, Thompson & Hughes (firm no longer exists)
149 East Tabernacle
St. George, Utah 84770
Associate

1979 – 2002

Snow Nuffer (formerly Snow, Nuffer, Engstrom, Drake, Wade & Smart,
now merged into Durham, Jones & Pinegar)
192 East 200 North
St. George, Utah 84770
Member, Officer and Director

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

Starting in 1993, I began to serve as a mediator. Since appointment to the bench, I have continued to serve as a settlement judge or mediator on cases as assigned by the district judges.

Mediations in Private Practice

1. *Confidential v. Confidential*. This wrongful death case arising out of a gravel crusher malfunction mediated to settlement.
2. *Claw Constr. v. Hurricane*. This case between a municipality and a contractor centered on construction rights under changing permit laws and city exaction policies. The case resolved.
3. *Road Creek Ranch, Inc. v. Freemont Irrigation Co.* This water dispute between a landowner and an irrigation company regarding water rights for irrigation and the stream flow needed to maintain a hatchery was resolved.
4. *Confidential v. Confidential*. This domestic mediation with serious emotional and financial issues was resolved.
5. *Yee v. Utah Dep't of Transp.* This state litigation over an accident allegedly caused by road conditions did not settle the case on the day of mediation but settled a week later for the amount of the state's last offer during the mediation.

Mediations as a Judge

6. *Wing v. various parties*. Several claims in a group of over 30 cases filed by a receiver seeking to recover funds which allegedly passed through a Ponzi scheme have been resolved in mediation.
7. *Confidential v. Confidential*. This trade secret case between prominent industry parties was co-mediated with a law professor to unsuccessful conclusion. Nearly a year later, the case settled just after opening statements in an anticipated three week trial.
8. *Disabled Rights Action Comm. v. Brentwood*, 2:02-cv-1005 DB. This is one of a series of cases dealing with architectural violations of ADA in residential rental properties. It was necessary to adjourn this mediation for ten days to allow measurements and verification of site plans, and then the case settled.
9. *Ridgeway v. Fleet*, 2:03-cv-00858 TS. This case first came to mediation in January 2005 but did not resolve. At a second session in May of that year, five days before trial, the case resolved.

10. *Ammons v. La-Z-Boy*, No. 1:04-cv-67 TC. Working with a private mediator who had vast mediation experience, we co-mediated to settlement a consolidation of 19 separate plaintiffs' claims for wrongful termination and retaliation. The resolution included three plaintiffs who had filed bankruptcy because the bankruptcy trustees were involved before and during the mediation.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

In the early years of my practice, in a two-attorney firm in a small town, I did virtually all types of legal work, with some emphasis on estate planning and business documentation.

During all phases of my practice from 1978 to 2002, I was involved in real estate development and foreclosures and also retained as counsel by different municipalities in Utah and Arizona. These retainers ranged from general representation, to representation for special projects such as establishment of municipal electric systems, to service as special litigation counsel.

From 1982 to 1992, I was heavily involved in criminal prosecution in Utah and criminal defense in Arizona. I was "city attorney" for Kanab, Utah, a small municipality in Southern Utah. In that part-time retained position I performed a broad variety of work for the city, including general advice on governmental compliance, legal assistance on specific projects, ordinance drafting, and misdemeanor prosecution.

From 1995 to 2002, I limited my practice to real estate development, special municipal work, foreclosure and civil litigation. I handled that kind of work throughout my practice, but in those latter years, I did little else. In these years I was also a part-time magistrate judge.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

My typical clients were municipalities; individuals and businesses involved in real estate development and general civil litigation; and insurance companies for defense of civil cases. These clients came from across the southern Utah, southern Nevada, and northern Arizona area. We also had many clients from outside the southern Utah area due to our firm's early internet presence. I also represented individuals in domestic and probate litigation from time to time.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

Throughout my practice I appeared regularly in court. I regularly appeared in courts in southern Utah counties and on occasion in northern Arizona.

- i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|-----|
| 1. federal courts: | 2% |
| 2. state courts of record: | 60% |
| 3. other courts: | 35% |
| 4. administrative agencies: | 3% |

- ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|-----|
| 1. civil proceedings: | 65% |
| 2. criminal proceedings: | 35% |

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I would estimate the number of cases, civil and criminal, that I tried to verdict, judgment or final adjudicated decision to be 150.

- i. What percentage of these trials were:

- | | |
|--------------|-----|
| 1. jury: | 15% |
| 2. non-jury: | 85% |

- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not appeared before the Supreme Court of the United States.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;

- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *K.L.L. Inc. dba Pro Care Home Health & Infusion Specialists v. Bowers*, Washington County Fifth District Court, Civil No. 970500264; Hon. James L. Shumate; 1997 – 2001.

The case started as a collection action by a supplier of medications used by my oncologist client, the defendant, to treat cancer. Hundreds of thousands of dollars were claimed. The doctor counterclaimed because discovery revealed the drug supplier was not purchasing enough drugs to fulfill the orders for which he was billing the doctor. The supplier's records – and the terms of the agreement as to price – were very unclear. I was sole counsel for the defendant doctor. The case was settled at the end of plaintiff supplier's case due to the supplier's severe evidentiary problems.

Opposing counsel: Russell S. Mitchell
 Jones, Waldo, Holbrook & McDonough
 301 North 200 East, Suite 3-A
 St. George, UT 84770
 (435) 628-1627

2. *Christy v. Best Friends Animal Sanctuary*, Kane County Sixth District Court, Civil No. 920600032; Hon. Don V. Tibbs; 1992 – 1993.

This case was a claim by the personal representative and widow of a veterinarian for services allegedly owing from my client, the largest no-kill animal sanctuary in the United States. While the relationship between the doctor and sanctuary had been extremely close, it was apparent the surviving spouse viewed the sanctuary as taking the doctor's time and attention to the doctor's financial detriment. She attempted to construct billings and account records based on standard fees charged to individual clients, and not the practice of billing between the doctor and sanctuary. The case was settled at the end of plaintiff's evidence due to evidentiary problems.

Opposing counsel: Marcus Taylor
 Labrum & Taylor
 175 North Main
 Richfield, UT 84701
 (435) 896-6484

3. *Petersen v. Hales Sand and Gravel*, United States District Court for District of Utah Case No. 2:95-cv-00081-DKW; Hon. David Winder; 1995 – 1996.

I represented the defendants in this sexual harassment suit. The plaintiff was a woman who found a well-paying job on a road crew. The plaintiff claimed she was subjected to bad treatment because of her gender, but the essence of the case was sexual harassment by reason of no port-a-potties and sexual banter of the crew. The evidence demonstrated that plaintiff was often an instigator and always a participant in the offensive activities. The case was not resolved through the administrative process and proceeded through a three-day jury trial. The jury returned a no-cause verdict, but with a note admonishing the corporate defendant on its practices.

Opposing counsel: John Preston Creer
No longer in practice

4. *Kanab City v. Utah Power & Light*, Kane County Sixth District Court, Civil No. 2155; Hon. Don V. Tibbs; 1986 – 1987.

My client Kanab City had a unique provision in its electric franchise ordinance, authorizing Utah Power & Light to use rights of way in the city. The provision allowed the city, at the end of the franchise, to purchase the system by condemnation. In Utah, public uses eligible for eminent domain are usually regarded as of equivalent value, to prevent the many entities with condemnation power from attacking each other. However, this contractual provision appeared to trump case law. The litigation to condemn the system was met with a powerful response from Utah Power & Light which feared the exercise of similar provisions in other municipal franchises and the precedent of involuntary sale of its system. The litigation involved numerous issues beyond the unique legal issues, including inventory and valuation of the system and the utility's right to recover "stranded investment" such as generation capacity and power supply and wheeling contracts dedicated to the service of the municipality. Expert consultants and witnesses were key, and the parties employed all strategies available including publicity campaigns, legislative attacks and initiative petitions, which expanded the litigation. The case was on appeal to the Utah Supreme Court when the utility conceded and negotiated a sale.

Opposing counsel: Helen Edwards
No longer in practice

5. *In the Matter of the Adoption of W. A. T.*, 808 P.2d 1083 (Utah 1991); Washington County Fifth District Court; Hon. Dean Conder, by assignment; 1989 – 1991.

This was a simple adoption until sisters of the deceased mother objected and sought to adopt the children. The case developed into a serious contest about

rights of children and relatives. My clients, the adopting parents, were legally married, but the natural mother of the children was a polygamous wife of the adopting father. Her children by a prior marriage were the adoption subjects. The children and adopting mother had lived in the home but the natural mother's sisters were hearing impaired and strangers to the fully hearing children. Overlaid on the standard "best interests of the child" issue was the sisters' argument that the polygamous relationship was a law violation that disqualified the proposed adoptive parents. The Utah Supreme Court decision was 2-1-2, with a decisive concurrence in favor of the adoption.

Opposing counsel: Timothy B. Anderson
Jones, Waldo, Holbrook & McDonough
301 North 200 East, Suite 3-A
St. George, UT 84770
(435) 628-1627

6. *Jacobs v. Hafen*, 917 P.2d 1078 (Utah 1996); Kane County Sixth District Court; Hon. Don V. Tibbs; 1993 – 1996.

My client Jacobs and his neighbor Hafen disputed ownership of a strip of land between their larger holdings. The case was decided against Jacobs at the trial level, but an appeal to the Utah Court of Appeals remanded to the trial court for additional findings. The trial court found that Utah Supreme Court case law suggested that a term shorter than 20 years might support acquiescence in "unusual circumstances." Our Supreme Court appeal asked to clarify the case law, and decide that Utah would not permit a boundary to be established by less than 20 years acquiescence. The Supreme Court reversed the trial court, quieting title in my clients' favor without the need for remand.

Opposing counsel: LaMar J. Winward
150 North 200 East, Suite 204
St. George, UT 84770
(435) 628-1191

7. *Matter of Estate of Beesley*, 883 P.2d 1343 (Utah 1994); Washington County Fifth District Court; Hon. J. Philip Eves; 1991 – 1994.

This was an estate dispute between nieces and nephews of the decedent, who were my clients, and the surviving widow. The decedent and his wife executed a self-prepared pre-nuptial agreement and four self-prepared post-nuptial agreements. The widow claimed she was entitled to the entire estate, but the trial court and appellate court held that she was limited by the agreements with her deceased husband to the specific property mentioned and one half of the overall estate.

Opposing counsel: Philip L. Foremaster
No longer in practice

8. *Hales Sand & Gravel, Inc. v. Audit Div. of State Tax Comm'n of Utah*, 842 P.2d 887 (Utah 1992).

The Utah State Tax Commission took the position that the taxpayer owed taxes on transportation charges for its rock products. In spite of numerous arguments to avoid the imposition of tax, the Tax Commission and Utah Supreme Court held that the transportation charges were taxable. The appeal was successful, however, in cancelling the penalty for negligent non-payment, because the Supreme Court recognized that the taxpayer based its nonpayment of taxes on a legitimate, good faith interpretation of an arguable point of law.

State Tax Comm. counsel: Major General Brian L. Tarbet
Adjutant General
Utah Army National Guard
12953 South Minuteman Drive
Post Office Box 1776
Draper, UT 84020
(801) 432-4401

9. *Matter of Estate of Scarritt*, 845 P.2d 938 (Utah App. 1992); Washington County Fifth District Court, Probate No. 913500084; Hon. J. Philip Eves; 1991 – 1992.

I represented a son of the decedent in contesting a will at the trial and appellate levels. We were unsuccessful in arguing that the literal language of the will left significant amounts of property to pass intestate. The court held that since testacy was preferred, all the property passed through the will.

Opposing counsel: Michael W. Park
The Park Firm
315 West Hilton Drive #4
St. George, UT 84770
(435) 673-8689

10. *Moore v. Kanab City*, Kane County Sixth District Court, Civil No. 2134; Hon. Don V. Tibbs; 1986.

I defended the City in this excessive force civil rights case against a police officer who stopped the plaintiff and drew a gun on him, when the plaintiff failed to respond to commands and appeared to be attempting to access a weapon. The issue was the fine point of an officer's ability to act in anticipation of a threat. The trial judge, with a jury present, entered a dismissal at the end of plaintiff's evidence, on the issue of law, based on all facts as proven in the case in chief.

Opposing counsel:

Jim R. Scarth
Kane County Attorney's Office
76 North Main Street
Kanab, Utah 84741
(435) 644-5278

18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

I have not performed lobbying activities for any client, though I have appeared in planning and zoning administrative settings in many municipalities and negotiated with their staff on behalf of developer clients. These discussions would typically consist of arriving at understandings of the application of zoning requirements, development layout, integration of utilities and roads inside the development with those outside the development, and voicing opinions on municipal master plan proposals.

Activities During Legal Practice

1. **Electric Utility Projects.** In 1986, I represented Kanab City, a municipal client in exercising its right to condemn and operate its electric system and eventually negotiating the purchase of the system.
2. **Innovative Real Estate Covenants.** Working with engineers and the developers in the mid-1980s, we created the concept of a "Flexible Footprint" townhome. A "pad" was designated for private ownership, and the walls of various floor plans would fit inside it. By covenant provision, all area outside the walls, regardless of ownership, was maintained in a common and consistent fashion, using common funds.
3. **Pro Bono Covenant Amendment.** I provided pro bono assistance in the amendment of subdivision covenants for Our Savior's Lutheran Church in Bloomington, Utah.
4. **Park Service Permit Negotiation.** In 1991-1993 I represented Lake Powell Tours, Inc. in renegotiation of its National Park Service (NPS) permit to operate on Lake Powell.
5. **Water Rights Administrative Proceeding.** During 1991-1993 I was retained by Brigham Young University to monitor and, if needed, protest an application for diversion of underground water from a creek area in Motoqua, on the border of Utah and Nevada in western Washington County.

International Legal Activities

6. Hosting Foreign Delegations. Annually for the past four years (2007-2010), I have acted as professional host for delegations of Ukrainian judges and court staff who visit the United States. The visits are sponsored by Open World and the Administrative Office of the U.S. Courts.

7. Legal Curriculum Development. In 2007 I compiled the curriculum now entitled "Foundations of a Free Society" for The Leavitt Institute for International Development. This is a practical course in American citizenship, ethics, democracy and the rule of law in the context of the American Jury Trial. It is taught annually in several Ukrainian law schools, concluding with a mock trial competition each spring.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

Alternative Dispute Resolution – Brigham Young University, J. Reuben Clark Law School, 2008 – present. A survey course teaching fundamentals of negotiation, mediation and arbitration, designed to enable student to advise clients in ADR settings. Syllabus supplied.

Law Practice Management – Brigham Young University, J. Reuben Clark Law School, 2001 – 2007. A general introduction to law office management including accounting, staff management, practice systems, and planning. Syllabus supplied.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I held the right to receive a share of payments on certain cases on which work was finished by the dissolved law firm Snow Nuffer, but paid after January 1, 2003. No further payments are expected, though it is theoretically possible.

I receive royalties on two online courses taught on the web through Manexa/LegalSpan in 2007. Payments have declined over time and are irregular. When received, any payment is usually less than \$50 per month.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I intend to continue teaching one class per year at Brigham Young University, J. Reuben Clark Law School, if permission continues to be granted by my chief judge and the chief judge of the circuit. I do not have any commitment to teach from year to year.

I intend to continue teaching with The Leavitt Institute program in Ukraine. I do not have any commitment to teach from year to year.

I intend to participate in presentation of Continuing Legal Education and community outreach efforts. I do not have any commitment to continue this work.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

Based on my prior experience, the conflicts I am likely to encounter are with attorneys with whom I have a close personal relationship, businesses with whom I or a chambers staff member have conflicts, or clients or adverse parties from the time of my practice. However, based on experience, these are infrequent.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

To prevent conflicts of interest from arising, I do not have investments other than personal real estate and the Thrift Savings Plan. I maintain the conflict database provided in CM/ECF and our case manager runs conflict check reports at case referral and case assignment. I also review the notices of case assignment and referral to ensure that no conflict arises which is not flagged by the conflict database. I will continue to follow the federal recusal statutes and the Code of Conduct for United States Judges. If necessary, I would seek advice from the

Code of Conduct Committee of the Judicial Conference. I have erred and always will err on the side of disqualification.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

While a judge, I have participated in hosting visits of young people to the court and discuss with them the many and varied opportunities for work in the justice system. I also participated in the design of the pro bono civil appointment program for our court which provides counsel for pro se litigants in cases that appear to have merit or complex issues that counsel might assist in resolving.

In my law practice in St. George prior to 2003, because of the relatively lower income levels in Southwestern Utah, I regularly provided reduced fee or no-fee services. There were many opportunities to assist persons charged with crimes, facing domestic litigation or involved in juvenile court proceedings. I would estimate I handled thirty of these cases during my practice. I assisted in the establishment of the St. George Children's Justice Center, a location for child victims of crime to meet with law enforcement, counselors and therapists.

26. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

In the Spring of 2009, the idea of applying for the judicial vacancy was suggested to me by Paul Warner, U.S. Magistrate Judge and former U.S. Attorney. To express interest, I then contacted the offices of Senator Hatch, Senator Bennett, and Congressman Matheson, and met with staff members. I met personally with Congressman Matheson on June 30, 2009; with Senator Bennett on October 16, 2010; with Senator Lee on January 14, 2011; and with Senator Hatch on January 19, 2011. There is no selection commission in Utah.

I sent a letter expressing my interest to the President on February 9, 2010 and to the White House Counsel's Office on February 26, 2011. Since March 2011, I have been in contact with officials from the Office of Legal Policy at the

Department of Justice. On May 10, 2011, I met with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On June 29, 2011, the President submitted my nomination to the Senate.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AFFIDAVIT

I, David Nutter, do swear
that the information provided in this statement is, to the best
of my knowledge, true and accurate.

6/27/11

(DATE)

[Signature]

(NAME)



KIRSTEN MUMFORD
NOTARY PUBLIC - STATE OF UTAH
182 EAST 2225 SOUTH
CLEARFIELD, UT 84015
My Comm. Exp. 04/24/2012

[Signature]

(NOTARY)