

Utah Court of Appeals

Chambers of
Judge Carolyn B. McHugh

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January 6, 2014

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
437 Russell Senate Building
Washington, D.C. 20510

Dear Mr. Chairman:

I have reviewed the Senate Questionnaire that I filed on May 24, 2013, in connection with my nomination to be a United States Circuit Judge for the Tenth Circuit Court of Appeals. Incorporating the additional information below, I certify that the information contained in that document is, to the best of my knowledge, true and accurate.

Question 6:

My two-year term as the presiding judge of the Utah Court of Appeals expired on December 31, 2013.

Question 8:

Community Leader in Civic and Character Education, The Utah Commission on Civic and Character Education (2013)

Question 9:

My term on the Utah Commission on Civic and Character Education expired in September 2013.

Question 12(c):

I made two additional reports to the Judicial Council, one on behalf of the Technology Committee on September 10, 2013, and one on behalf of the Outreach Committee on November 25, 2013. Council minutes for these meetings are attached to this letter.

Question 13(a) & 13(a)(i):

I have presided over 1,189 cases that reached judgment, 777 of which were civil and 412 of which were criminal. Of those 1,189 cases, approximately 65% were civil and 35% were criminal.

Question 13(b):

Please see attached supplemental list.

Question 13(f):

Turner v. University of Utah Hospitals & Clinics, 271 P.3d 156 (Utah Ct. App. 2011), *rev'd*, 310 P.3d 1212 (Utah 2013). This case involved an appeal from a jury verdict finding no cause of action against a hospital and medical professionals for injuries allegedly sustained while plaintiff was hospitalized after a tragic automobile accident. The Utah Court of Appeals rejected the various claims of error raised by the plaintiff and upheld the jury verdict. Among other things, the Court of Appeals held that: (1) even if a jury instruction on one theory advanced by the plaintiff was erroneous, plaintiff could not establish harm under Utah Supreme Court precedent because the jury could have reached its no-cause verdict on an alternative theory and (2) the plaintiff was precluded from raising the issue of juror bias on appeal under Utah's cure-or-waive rule, because she did not exercise a peremptory challenge which was available. On certiorari review, the Utah Supreme Court concluded that the Court of Appeals had interpreted the term "theory" too broadly and held instead that the plaintiff had argued only one "theory" because she had asserted only one cause of action – medical malpractice. The Utah Supreme Court also "abandoned" the cure-or-waive rule and adopted a new standard for preserving the issue of jury bias. Accordingly, the Utah Supreme Court reversed our decision and remanded the matter to the trial court for a new trial.

Jenkins v. Jordan Valley Water Conservancy Dist., 283 P.3d 1009 (Utah Ct. App. 2012), *rev'd*, ___ P.3d ___ (Utah 2013). This case involved the review of a summary judgment granted by the trial court in favor of the defendant on the plaintiffs' negligence claim. The Utah Court of Appeals concluded that the plaintiffs did not need an expert to establish the standard of care or breach of that standard under the unique facts of this case and proceeded to address the merits. The Utah Supreme Court granted the defendant's petition for certiorari and concluded that an expert was required and, therefore, reversed our decision without reaching the other issues raised on appeal.

With this letter, I have also enclosed an updated Net Worth Statement and Financial Disclosure Report. I thank the Committee for its consideration of my nomination.

Sincerely,

A handwritten signature in blue ink that reads "Carolyn B. McHugh". The signature is fluid and cursive, with the first name "Carolyn" and last name "McHugh" clearly legible.

Judge Carolyn B. McHugh
Judge, Utah Court of Appeals

encls.

cc: w/ encls.

The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

JUDICIAL COUNCIL MEETING

Minutes

Monday, November 25, 2013

Matheson Courthouse

Salt Lake City, UT

Chief Justice Matthew B. Durrant, Presiding

ATTENDEES:

Chief Justice Matthew B. Durrant
Hon. Kimberly K. Hornak, Vice Chair
Justice Jill Parrish
Hon. James Davis
Hon. Glen Dawson
Hon. George Harmond
Hon. Thomas Higbee
Hon. Brendan McCullagh for Hon. David Marx
Hon. Paul Maughan
Hon. David Mortensen
Hon. Reed Parkin
Hon. John Sandberg
Hon. Randall Skanchy
John Lund, esq.

EXCUSED:

Hon. David Marx

STAFF PRESENT:

Daniel J. Becker
Ray Wahl
Alison Adams-Perlac
Dawn Marie Rubio
Debra Moore
Jody Gonzales
Rick Schwermer
Tim Shea
Nancy Volmer
Alyn Lunceford
Nini Rich

GUESTS:

Judge Carolyn McHugh
Judge Royal Hansen
Judge Kate Toomey

1. WELCOME AND APPROVAL OF MINUTES: (Chief Justice Matthew B. Durrant)

Chief Justice Durrant welcomed everyone to the meeting. A special welcome was extended to Judge McCullagh who was sitting in for Judge Marx.

Motion: Judge Maughan moved to approve the minutes from the October 28, 2013 Judicial Council meeting. The motion was seconded, and it passed unanimously.

2. CHAIR'S REPORT: (Chief Justice Matthew B. Durrant)

Chief Justice Durrant reported on the following:

He, Mr. Becker and Mr. Wahl attended the groundbreaking ceremony for the Ogden Juvenile Courthouse on Monday, November 4. Chief Justice Durrant and Judge Frost spoke at the event.

3. ADMINISTRATOR'S REPORT: (Daniel J. Becker)

Mr. Becker reported on the following items:

Judicial Confirmations, Nominations and Retirements. The Senate confirmed the following judges last week: 1) Judge Sharon Sipes, Second District Juvenile Court; 2) Judge Brent Bartholomew, Fourth District Juvenile Court; and 3) Judge John Pearce, Court of Appeals.

Nominations are pending to fill the following vacancies: 1) the Second District Court vacancy, 2) the Third District Juvenile Court vacancy, and 3) the Fifth District Court vacancy. Mr. Becker mentioned the unofficial retirement notice from Judge Hans Chamberlain, with a tentative effective date of May 1, 2014.

Building Board. The Building Board met several weeks ago to prioritize building requests and land bank purchases. The Duchesne court remodel project ranked 13th.

Council Photo. Mr. Becker reminded Council members that the Council photo would be taken later in the meeting.

Executive Session. An executive session will be held later to discuss matters of professional competency.

4. COMMITTEE REPORTS:

Management Committee Report:

Chief Justice Durrant reported that the Management Committee meeting minutes accurately reflect the issues discussed. The items needing to be addressed by the Council have been placed on today's agenda.

Liaison Committee Report:

No meeting was held in November.

Policy and Planning Meeting:

Judge Maughan reported on the following items:

The Policy and Planning Committee spent the majority of their meeting reviewing and discussing the current process for conducting performance evaluations of senior judges and court commissioners.

Bar Commission Report:

Mr. Lund reported on the following:

He expressed the Bar Commission's pleasure in hearing the Council's decision to hold their July 2014 meeting in Snowmass, Colorado, in conjunction with the Bar's Summer Conference. He also noted that efforts would be made to utilize attendees on workshop panels.

Mr. Becker noted preliminary decisions that have been made relative to travel to the conference. He noted that an increase to the judicial operation's budget will be discussed further by the Council at their April meeting when the one-time spending plan for FY 2015 is considered.

5. OPEN AND PUBLIC MEETING LAW ORIENTATION: (Alison Adams-Perlac)

Ms. Adams-Perlac provided the annual training to members of the Council on the Open and Public Meetings Act as required by Rule 2-103. She highlighted the following: 1) the basic principles of the rule include—the meetings must be open unless they are closed in the proper way for the proper purpose, the requirements for an open meeting, and the intent to establish procedures consistent with the philosophy of the Utah Open and Public Meeting Act; 2) what a meeting is; 3) public notice must be given; 4) audio recording and minutes – what the minutes shall include and access to the meeting recording and minutes; 5) public access to the meeting; and 6) closed meetings – how the meetings are closed, reasons for closing a meeting, and limits on decisions in a closed meeting.

6. LEGISLATIVE UPDATE AND INTERIM HIGHLIGHTS: (Rick Schwermer)

Mr. Schwermer provided a legislative update to the Council. He distributed a copy of the draft bill, Court System Task Force, as well as the November 2013 Interim Highlights. He highlighted the following in his update: 1) the Child Welfare Legislative Oversight Panel met, 2) Veteran's Reintegration Task Force Report, 3) court system modifications, 4) Divorce Orientation Course timing, 5) Drug Offender Reform Act (DORA), 6) retirement and independent entities, 7) Senate judicial confirmations, 8) appointment of Ms. Jacey Skinner as the Governor's legal counsel, 9) Executive Appropriations met, and 10) the Governor's 2015 budget recommendations will be released in December.

7. JUDICIAL OUTREACH COMMITTEE UPDATE: (Judge Carolyn McHugh and Ms. Nancy Volmer)

Chief Justice Durrant welcomed Judge McHugh to the meeting.

Judge McHugh provided an update to the Council on the activities of the Judicial Outreach Committee. She mentioned that the 2013-2014 Strategic Communication Plan was distributed to the Council members in their meeting packet. She highlighted the following in her update: 1) members of the committee were mentioned, 2) 2012-2013 public information office accomplishments, 3) noted the subcommittees and their work, 4) 2013-2014 Strategic Communication Plan goals, and 5) implementation of Rule 4-401 – Electronic media coverage of court proceedings. Judge McHugh mentioned that two outreach meetings were held during the past year.

The following 2012-2013 accomplishments of the Public Information Office were highlighted: 1) hosted the Conference of Court Public Information Officers in August, 2) wrote and distributed 56 news releases/media advisories, 3) responded to 775 media inquiries, 4) planned for and facilitated changes to Rule 4-401, 5) produced court publications including the Annual Report and the Court News employee newsletter, 6) managed the court's social media component.

For the 2013-2014 year, the committee included the following as goals in the Strategic Communication Plan: 1) look at ways to build a more positive view of the courts with diverse populations, 2) determine new ways to communicate with target audiences, 3) consider ways to better inform the public about the court's performance measures, and 4) explore creating an online media training program.

The following was highlighted relative to the change to Rule 4-401 - Electronic media coverage of court proceedings: 1) 74 requests for video pool for cameras were received since the changes to the rule took place, and 2) the first gavel to gavel media coverage that was streamed live took place during the MacNeill case.

Judge McHugh expressed her appreciation to Ms. Nancy Volmer for her support to the Committee.

Chief Justice Durrant thanked Judge McHugh for her update.

8. SUMMIT COUNTY COURTROOM EXPANSION: (Alyn Lunceford)

Chief Justice Durrant welcomed Mr. Lunceford to the meeting.

Documents relative to the proposed Summit County courtroom remodel were included in the documentation sent to Council members. Mr. Lunceford provided information relative to Summit County's need for expansion of one additional courtroom to handle the increased caseload.

Mr. Lunceford highlighted the following relative to the proposed remodel to the Summit County court facility: 1) a presentation was made to the Facilities Standing Committee on the proposed design of the expansion project, 2) Summit County has incorporated funding for the expansion into their 2014 budget, 3) architectural firm has been contacted regarding a planning and programming contract, and 4) once design has been finalized, the design will be presented to the Summit County Council and the Facilities Standing Committee for approval.

Mr. Lunceford highlighted the following relative to approval of the remodel project: 1) design of the remodel of the facility to be completed in January-February time frame, 2) construction phase 120-150 days upon completion of the design, 3) anticipated completion of the remodel project by September 2014, 4) an increase of \$50,000 to the FY 2015 budget would be needed for lease payments, 5) thereafter, an adjustment of \$100,000 would be needed for lease payments, 6) working with Summit County on a structure with payback terms within the existing lease term, and 7) current lease expires in 2022.

Mr. Becker mentioned that the Third District presiding judges, Judge Ryan Harris, and Judge Todd Shaugnessy were involved in remodel planning meetings, in addition to management staff.

Mr. Lunceford responded to questions asked relative to the proposed remodel project for the Summit County court facility.

Motion: Judge Skanchy moved to accept the proposal for the Summit County courtroom remodel project. Judge Maughan seconded the motion, and it passed unanimously.

9. UTA ECOPASSES: (Alyn Lunceford)

In an attempt to minimize air pollution statewide, State government has contracted with UTA to obtain Eco-Passes for state employees in UTA service districts at discounted rates. With this, 23 court sites or 928 court employees, will have the option of receiving an Eco-Pass in January of 2014 at no additional cost to the courts compared to the 89 employees that are currently receiving UTA transportation passes. An Eco-Pass provides unlimited travel on TRAX, all buses including express buses, S-Line and FrontRunner. The pass excludes ski buses and special services UTA transportation.

Mr. Lunceford was thanked for his update.

10. ADR COMMITTEE UPDATE: (Judge Royal Hansen and Ms. Nini Rich)

Chief Justice Durrant welcomed Judge Hansen and Ms. Rich to the meeting.

A copy of the ADR Program Overview was distributed to members of the Council.

Judge Hansen provided an update to the Council on the activities of the ADR Committee. He highlighted the following in his update: 1) available Alternative Dispute Resolution (ADR) programs, statewide; 2) ADR program statistics for 2013; 3) an overview of the committee membership; 4) 2013 program highlights, and 5) development and approval of a new website resource on Ethics and Discipline for ADR providers.

ADR program statistics highlights included: 1) more than 3,000 cases were mediated through court ADR programs; 2) four ADR staff mediators conducted 1,047 child welfare mediations, statewide; 3) more than 200 pro bono mediations were arranged by ADR staff; 4) over 1,100 pro bono mediations were provided through ADR program collaborations with non-profit community organizations and educational institutions; and 5) provided an annual 40-hour basic mediation training to over 200 court employees since 2007.

Ms. Rich provided an overview of the new Ethics and Discipline online resource available to ADR providers. She noted the availability of a roster of available providers can be found online, as well.

Judge Hansen expressed his gratitude to Ms. Rich and the IT staff involved in developing the online web-pages relative to the ADR program.

Ms. Rich answered questions relating to the mediation program.

Chief Justice Durrant expressed his gratitude to the ADR Committee and Ms. Rich for all they do for the court ADR programs.

11. THIRD DISTRICT COMMISSIONER APPOINTMENT: (Judge Royal Hansen and Peyton Smith)

Judge Hansen stated that the Third District Court has had a commissioner vacancy since the end of August. He outlined the process undertaken in selecting a new court commissioner.

The Third District Bench recommended Ms. Kim Luhn be hired to fill the vacancy for a court commissioner in the Third District Court.

Motion: Judge Maughan moved to accept the recommendation of the Third District Bench to appoint Ms. Kim Luhn to fill the vacancy for a court commissioner. Judge Hornak seconded the motion, and it passed unanimously.

12. PRESENTATION TO ASTAR FELLOWS: (Chief Justice Matthew B. Durrant)

Three judges from Utah completed the ASTAR Platform A Program through the National Courts and Science Institute. The judges include: 1) Judge Kate Toomey, 2) Judge L.A. Dever, and Judge Ric Oddone.

Chief Justice Durrant presented Judge Toomey with her certificate of completion as an ASTAR Science and Technology Fellow. Judge Dever and Judge Oddone were unable to attend.

Judge Toomey provided background information on the program and the training necessary to become certified in the program.

13. COUNCIL PHOTO

A photo of the Council was taken.

14. LANGUAGE ACCESS IN THE TRIAL COURTS OF RECORD: (Alison Adams-Perlac)

Ms. Adams-Perlac provided an update to the Council on language access in the trial courts between the years of 2011-2013. She highlighted the following in her update: 1) English fluency by Utah population; 2) language spoken at home; 3) speaks English less than very well; 4) types of credentialing categories for interpreters; 5) percent of hours interpreted by highest credentials available; 6) percent of Spanish language hours interpreted by a certified interpreter; 7) hours interpreted by district in 2013; 8) district court – total interpreted hearings; 9) juvenile

court – total cases and parties using interpreters; 10) interpreting costs, 2011-2013; 11) interpreting costs by district, 2011-2013; 12) change in language interpreting costs, 2012-2013; 13) travel costs, 2012-2013; 14) percent change in program costs vs. percent change in number of hearings; 15) statewide, costs have declined by 1%; 16) remote interpreting program; 17) staff interpreter program; 18) expected impact on program costs in 2014; and 19) language access recommendations.

The following are recommendations made on behalf of the Language Access Committee: 1) study remote interpreting program to determine whether expansion to other areas is feasible, 2) retain the four full-time staff interpreters in the Third District, and 3) study whether there are needs in other districts that warrant hiring staff interpreters.

Chief Justice Durrant thanked Ms. Adams-Perlac for her report.

Motion: Judge Harmond moved to accept the report to include further study of remote interpretation and staff interpreter needs in other districts. Judge Davis seconded the motion, and it passed unanimously.

Motion: Judge Hornak moved to enter into an executive session to discuss a matter of professional competency. Judge Parkin seconded the motion, and it passed unanimously.

15. EXECUTIVE SESSION

An executive session was held at this time.

16. ADJOURN

The meeting was adjourned.

JUDICIAL COUNCIL MEETING

Minutes
Tuesday, September 10, 2013
Snowbird Resort
Snowbird, UT

Chief Justice Matthew B. Durrant, Presiding

ATTENDEES:

Chief Justice Matthew B. Durrant
Hon. Kimberly K. Hornak, vice chair
Justice Jill Parrish
Hon. Glen Dawson
Hon. George Harmond
Hon. Paul Maughan
Hon. Brendon McCullagh
Hon. David Mortensen
Hon. Reed Parkin
Hon. John Sandberg
Hon. Randall Skanchy
Hon. Larry Steele
John Lund, esq.

EXCUSED:

Hon. Gregory Orme

STAFF PRESENT:

Daniel J. Becker
Ray Wahl
Jody Gonzales
Debra Moore
Rick Schwermer
Tim Shea
Alison Adams-Perlac
Ron Bowmaster
Derek Byrne

GUESTS:

Judge Michele Christiansen
Judge Carolyn McHugh
Joanne Slotnik, JPEC

1. **WELCOME AND APPROVAL OF MINUTES: (Chief Justice Matthew B. Durrant)**
Chief Justice Durrant welcomed everyone to the meeting.

Motion: Judge Maughan moved to approve the minutes from the August 16, 2013 Judicial Council meeting. Judge Steele seconded the motion, and it passed unanimously.

Chief Justice Durrant recognized the outgoing members for their service and contribution to the Council. The outgoing members include: 1) Judge Larry Steele, and 2) Judge Brendon McCullagh.

Chief Justice Durrant swore in Judge Skanchy as a member of the Council.

2. **CHAIR'S REPORT: (Chief Justice Matthew B. Durrant)**
Chief Justice Durrant had nothing new to report.

3. ADMINISTRATOR'S REPORT: (Daniel J. Becker)

Mr. Becker reported on the following items:

State Supreme Courts. A book depicting the State Supreme Courts was circulated amongst the Council members for viewing. It will be placed in the Council Room at the Matheson Courthouse for further viewing.

Legislative Retirement Committee. The Legislative Retirement Committee will meet on September 25 with judicial retirement on their agenda for discussion. Chief Justice Durrant and Mr. Becker are on the agenda to address the importance of the present system.

Drug Court Grant. A drug court grant in the amount of \$1.4 million has been received by the Department of Human Services (joint application by Utah Courts and DHS) to be used over a three-year period. Discussion of how the funding will be implemented will take place at a later date.

Judicial Vacancies. The following judgeship appointments are pending confirmation: 1) Mr. Brian Cannell, 1st District Juvenile Court; 2) Commissioner Catherine Conklin, Second District Court; 3) Mr. Samuel Chiara, Eighth District Court; 4) Mr. Keith Eddington, Eighth District Juvenile Court; and 5) Mr. Ryan Evershed, Eighth District Juvenile Court.

The following judicial vacancies are pending appointment by the Governor: 1) Second District Juvenile Court vacancy replacing Judge Paul Iwasaki, 2) Fourth District Juvenile Court vacancy replacing Judge Kay Lindsay, and 3) Court of Appeals vacancy replacing Judge Bill Thorne.

4. COMMITTEE REPORTS:

Management Committee Report:

Chief Justice Durrant reported that the Management Committee meeting minutes accurately reflect the issues discussed. The items needing to be addressed by the Council have been placed on today's agenda.

Liaison Committee Report:

Justice Parrish reported on the following items:

The Liaison Committee met prior to the Council meeting to review the proposed amendment to the Citation Section of the Code which would require law enforcement to note on the citation whether the offense is a domestic violence citation or not.

Feedback on the proposed amendment will be sought by the statewide association of prosecutors.

Policy and Planning Meeting:

Mr. Shea reported on the following items:

The Policy and Planning Committee met on Friday, September 6. The following was highlighted in his update: 1) reviewed guidelines for paying interpreters, 2) rules for final action are included on the agenda later in the meeting, 3) discussion took place regarding a request for an amendment relative to SB 281 – Debt Collection Information Amendments – to allow clerks to use judges' signature stamps in matters of disclosing information for debt collection by the Department of Workforce services.

Bar Commission Report:

Mr. Lund reported on the following:

The Bar Commission held their annual retreat at the end of August.

The 2014 Bar's Summer Conference will be held in Snowmass, Colorado.

A special election will be held in the Third District to replace Mr. Jim Gilson.

Ms. Joanne Slotnik and Mr. John Ashton, Judicial Performance Evaluation Commission (JPEC) members, presented information on the work of JPEC to the Bar.

Mr. Lund reported that the Bar Commission would be looking at the practice of law in the next 5-10 years as one of their priorities for the coming year.

5. LEGISLATIVE UPDATE AND INTERIM HIGHLIGHTS: (Rick Schwermer)

Mr. Schwermer provided a Legislative Update for the Council.

An interim session was not held in August. Mr. Schwermer highlighted the following in his update: 1) a legislator is considering resurrecting circuit courts to handle misdemeanors and domestic cases, and the justice courts would continue to handle infractions and local ordinances; 2) EEOC Appropriations Committee met at the Ogden Courthouse; and 3) the Prison Relocation and Development Authority (PRADA) met with Mr. Rick Schwermer, Ms Debra Moore, and Judge Kevin Allen making presentations.

Mr. Becker introduced Alison Adams-Perlac, the new AOC staff attorney and former juvenile court law clerk. Ms. Emily Iwasaki has been selected to fill the juvenile court law clerk vacancy and will begin working for the courts on Monday, September 16.

6. FY 2014 BUDGET ADJUSTMENTS: (Daniel J. Becker)

Mr. Becker reported that an additional \$200,000 in unobligated carry forward funds is available after the books were closed for FY 2013.

He recommended the following adjustments to the FY 2014 budget: 1) set aside \$44,000 for the Fourth District Juvenile clerical assistance as approved at the August Budget and Planning Session, 2) increase the senior judge budget by \$56,000 to allow senior judge coverage while judicial vacancies are being filled and provide for commissioner vacancies, and 3) add \$100,000 to the balance in the trust interest support account to address revenue shortfalls stemming from low interest rates.

Mr. Byrne provided an overview providing a comparison of the trust interest support account expenses to revenue over time.

Motion: Judge Parkin moved to approve the FY 2014 budget adjustment recommendations as presented by Mr. Becker. Judge Hornak seconded the motion, and it passed unanimously.

7. COURT COMMISSIONER CONDUCT COMMITTEE UPDATE: (Judge Michele Christiansen and Rick Schwermer)

Judge Christiansen provided an update to the Council on the activities of the Court Commissioner Conduct Committee. The following was highlighted in her update: 1) four complaints were received, 2) one complaint was dismissed, 3) one complaint was dismissed after investigation, and 4) one complaint – lost jurisdiction upon retirement of the commissioner.

Discussion will take place and feedback sought at the Presiding Judge luncheon tomorrow of Rule 3-111 – Performance Evaluation of Senior Judges and Court Commissioners.

8. E-FILING HARDSHIP EXEMPTION: (Debra Moore)

Ms. Moore received an e-filing hardship exemption from Mr. Steve Simpson, attorney in Bluff, UT due to inadequate internet access. A temporary exemption was granted by the Management Committee at their August 16 meeting to be discussed further at the September Council meeting.

Discussion took place.

Motion: Judge Mortensen moved to approve an exemption for 24 months. The motion was amended to approve an exemption for 12 months. Upon expiration of the 12-month period, Mr. Simpson would need to request approval for an extension to his exemption. Judge Dawson seconded the motion, and it passed unanimously.

9. THIRD DISTRICT COURT COMMISSIONER VACANCY AND SECOND DISTRICT COMMISSIONER VACANCY: (Daniel J. Becker)

Mr. Becker distributed data of the Second and Third District Court Judicial Weighted Caseload of Domestic Cases and Workload. He recommended filling both Commissioner vacancies.

Motion: Judge Maughan moved to approve filling the Third and Second District Commissioner vacancies. Judge Dawson seconded the motion, and it passed unanimously.

10. JUDICIAL PERFORMANCE EVALUATION COMMISSION UPDATE: (Joanne Slotnik)

Chief Justice Durrant welcomed Ms. Slotnik to the meeting.

Ms. Slotnik highlighted the following in her update: 1) the Commission will meet bi-weekly deliberating on judges up for retention in 2014; 2) the Supreme Court has appointed Professor Eric D. de Rosia, Brigham Young University, to replace Mr. Myron March on the Commission; 3) Ms. Diane Allison has replaced Ms. Jennifer Yim on the Commission; 4) the Utah Criminal Justice Center conducted an audit of the survey results and deemed the data accurate; 5) the timeframe to receive attorney survey data closed in mid August; 6) a request will be sent to the 2014 judges up for retention to update their bios; 7) any 2014 or 2016 judges up for retention, whose surveys reflect lower scores, will be notified by October 1 to be given an opportunity to meet with members of the Commission at the end of October to discuss their survey results further; 8) two writers have been hired to help prepare the judges' narratives; and 9) the 2014 retention reports will be distributed in January 2014.

Chief Justice Durrant thanked Ms. Slotnik and JPEC for their service.

11. STANDING COMMITTEE ON TECHNOLOGY UPDATE: (Judge Carolyn McHugh and Ron Bowmaster)

Chief Justice Durrant welcomed Judge McHugh to the meeting.

Judge McHugh expressed her gratitude to Ron and the IT staff for all they do to help the courts move forward technologically.

The following was highlighted in her report to the Council: 1) expansion of civil e-filing to include domestic and probate cases; 2) the transition to mandatory e-filing on April 1, 2013; 3) judicial workspace application became available for trial court judges and staff in January 2013; 4) juvenile court adopted a two-year electronic conversion plan; 5) the move to criminal e-filing is being addressed in county offices; 6) automated trust account disbursements being reviewed; 7) development of case management and workflow systems within the court systems; 8) development of e-filing in the Appellate Courts; 9) expansion of the judicial workspace application to justice courts; 10) adoption and expansion of mobile computing systems; 11) reviewing service delivery methods to remote court locations; and 12) e-filing and e-citation data was provided.

Judge McHugh was thanked for all she and the committee have done during the e-filing conversion.

The Council went back into an executive session.

12. RULES FOR FINAL ACTION: (Tim Shea)

The following Rules are being recommended for final action: 1) CJA 01-0205 – Standing and Ad Hoc Committees, 2) CJA 03-0306 – Court Interpreters, 3) CJA 03-0402 – Human Resources Administration, 4) CJA 04-0110 – Transfer of Juvenile Cases from District and Justice Courts to the Juvenile Court, 5) CJA 04-0404 – Jury Selection and Service, 6) CJA 04-0508 – Guidelines for Ruling on a Motion to Waive Fees, and 7) Rule 4-0408.01 – Responsibility for Administration of Trial Courts.

Rule CJA-03-0306 – Court Interpreters. The amendment creates a complaint process for failure to follow the requirements of the rule and clarifies that the rule is not authority to charge for language access costs, and includes qualifications for a second language stipend before engaging in a first-hand conversation with a person of limited English proficiency.

Rule CJA 04-404 – Jury Selection and Service. The amendment to this rule implements the requirement of Section 78B-1-110 that compliance with a summons satisfies a person's jury service obligation for two years. The effective date for this rule should be January 1, 2014. The remainder of the rules can have an effective date of November 1, 2013.

Rule 4-408.01 – Responsibility for Administration of Trial Courts. This rule has been amended to remove Morgan from the list of contract sites.

Clarification was requested relative to justice courts and second language stipends.

Motion: Judge McCullagh moved to approve the rules for final action with an additional amendment to Rule CJA-03-0306 – Court Interpreters, relative to justice courts and second language stipends. Judge Steele seconded the motion, and it passed unanimously.

13. SENIOR JUDGE CERTIFICATIONS: (Tim Shea)

Mr. Shea provided background information on certification of court commissioners and senior judges. He reported that the process for certifying court commissioners has remained the same for several years. The process for certifying senior judges, amended two years ago, includes reporting of attorney survey data to the survey contractor (National Center for State Courts). Mr. Shea outlined the process that should be taking place with the survey data. He reported ongoing problems exist with attorney survey data being reported to the survey contractor. He noted that short of the surveys, the senior judges meet the minimum performance

standards to be recertified.

Discussion took place.

Mr. Becker recommended that the Council act on the certification information for senior judges minus the attorney surveys and request the Policy and Planning Committee to review the process for certifying senior judges and modify the policy, if needed.

Motion: Mr. Lund moved to approve Mr. Becker's recommendations regarding the certification process for senior judges. Judge Steele seconded the motion, and it passed unanimously.

Motion: Judge Hornak moved to enter into an executive session to discuss matters of personnel. The motion was seconded, and it passed unanimously.

14. SENIOR JUDGES AND COURT COMMISSIONERS CERTIFICATION: (Tim Shea)

The following court commissioners terms will expire on December 31, 2013; and they have applied for reappointment: 1) Commissioner Michelle R. Blomquist, 2) Commissioner David S. Dillon, and 3) Commissioner Thomas R. Patton.

The following senior judges have terms that will expire on December 31, 2013; and they have applied for reappointment: 1) Judge Roger S. Dutson, 2) Judge Dennis M. Fuchs, 3) Judge Pamela G. Heffernan, and 4) Judge Sandra N. Peuler.

Motion: Judge Maughan moved to forward the recommendations, on behalf of the Council, to the local presiding judges to certify the court commissioners for reappointment and to the Supreme Court to certify the senior judges for reappointment. Judge Mortensen seconded the motion, and it passed unanimously.

15. EXECUTIVE SESSION:

An executive session was held at this time.

16. ADJOURN

The meeting was adjourned.

Supplement to attachment 13b

- 286. *Hahnel v. Duchesne*, 305 P.3d 208 (Utah Ct. App. 2013).
- 287. *Bonnie & Hyde v. Lynch*, 305 P.3d 196 (Utah Ct. App. 2013).
- 288. *In re M.J.*, 302 P.3d 485 (Utah Ct. App. 2013).
- 289. *Macris v. Sevea Intern., Inc.*, 307 P.3d 625 (Utah Ct. App. 2013).
- 290. *State v. Gunter*, 304 P.3d 866 (Utah Ct. App. 2013).
- 291. *Hadley v. Workforce Appeals Bd.*, 303 P.3d 1037 (Utah Ct. App. 2013).
- 292. *Wm. Douglas Horne Family Revocable Trust v. Wardley/McLachlan Development, LLC*, 304 P.3d 99 (Utah Ct. App. 2013).
- 293. *State v. Stone*, 305 P.3d 167 (Utah Ct. App. 2013).
- 294. *Snow v. Chartway Federal Credit Union*, 306 P.3d 868 (Utah Ct. App. 2013).
- 295. *Washington County School Dist. v. Labor Comm'n*, 309 P.3d 229 (Utah Ct. App. 2013), *cert. granted*, ___ P.3d ___ (December 16, 2013).
- 296. *State v. Daughton*, 308 P.3d 537 (Utah Ct. App. 2013).
- 297. *Sundial, Inc. v. The Villages at Wolf Hollow Condominium Homeowner's Assoc., Inc.*, 310 P.3d 1233 (Utah Ct. App. 2013).
- 298. *State v. Ekstrom*, ___ P.3d ___ (Utah Ct. App. 2013).
- 299. *State v. Cunningham*, ___ P.3d ___ (Utah Ct. App. 2013).
- 300. *Yuanzong Fu v. Rhodes*, 304 P.3d 80 (Utah Ct. App. 2013) (McHugh, J., concurring in part and dissenting in part), *cert. granted*, ___ P.3d ___ (Nov. 14, 2013).

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Carolyn Baldwin McHugh

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

United States Circuit Judge for the Tenth Circuit

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.

Utah Court of Appeals
450 South State Street
Salt Lake City, Utah 84114

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

1957; Abington, Pennsylvania

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.

1979 – 1982, S.J. Quinney College of Law at the University of Utah (formerly University of Utah College of Law); J.D. (Order of the Coif), 1982

1975 – 1978, University of Utah; B.A. (*magna cum laude*), 1978

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.

2005 – present
Utah Court of Appeals
450 South State Street
Salt Lake City, Utah 84114

Presiding Judge (2012 – present)
Associate Presiding Judge (2010 – 2011)
Judge (2005 – 2009)

1991 – 1992; 2011
S.J. Quinney College of Law at the University of Utah
(formerly University of Utah College of Law)
332 South 1400 East
Salt Lake City, Utah 84112
Adjunct Professor

1983 – 2005
Parr Brown Gee & Loveless
185 South State Street, Suite 800
Salt Lake City, Utah 84101
Shareholder (1987 – 2005)
Associate (1983 – 1987)

Fall 1986
University of Utah
College of Social and Behavioral Science
260 South Central Campus Drive, Room 205
Salt Lake City, Utah 84112
Adjunct Professor

1982 – 1983
United States District Court for the District of Utah
350 South Main Street
Salt Lake City, Utah 84101
Law Clerk to Judge Bruce S. Jenkins

Summer 1982
Ray Quinney & Nebeker
36 South State Street, Suite 1400
Salt Lake City, Utah 84111
Summer Associate

1981 – 1982
S.J. Quinney College of Law at the University of Utah
(formerly University of Utah College of Law)
332 South 1400 East
Salt Lake City, Utah 84112
Legal Writing Teaching Assistant

Summer 1981
Latham & Watkins

355 South Grand Avenue
Los Angeles, California 90071
Summer Associate

1980 – 1981
S.J. Quinney College of Law at the University of Utah
(formerly University of Utah College of Law)
332 South 1400 East
Salt Lake City, Utah 84112
Criminal Law Tutor

Summer 1980
Berman & Giauque (now dissolved)
500 Kearns Building
Salt Lake City, Utah 84101
Summer Associate

1978 – 1979
Grinnell Brothers Music (now out of business)
1515 Woodward Avenue
Detroit, Michigan 48226
Data Control Clerk

Other Affiliations (uncompensated):

2004 – 2005
Legal Aid Society of Salt Lake
205 North 400 West
Salt Lake City, Utah 84103
Trustee

1996 – 2005
Salt Lake County Bar Association
c/o Judge Robert J. Shelby, President
United States District Court
350 South Main Street
Salt Lake City, Utah 84101
Trustee (1997 – 2005)
Ex Officio Trustee (1996 – 1997)

1996 – 2003
Catholic Community Services of Utah
745 East 300 South
Salt Lake City, Utah 84102
President, Board of Trustees (2002 – 2003)

Executive Committee (1999 – 2003)
Trustee (1996 – 2003)

1995 – 1997
Women Lawyers of Utah
c/o Utah State Bar
645 South 200 East
Salt Lake City, Utah 84111
President, Board of Trustees (1996 – 1997)
Executive Committee (1995 – 1996)

1991 – 1996
S.J. Quinney College of Law at the University of Utah
(formerly University of Utah College of Law) Alumni Association
332 South 1400 East
Salt Lake City, Utah 84112
Trustee

1991 – 1996
Voices for Utah Children
747 East South Temple, Suite 100
Salt Lake City, Utah 84102
Trustee

1982 – 1986
Big Brothers Big Sisters of Greater Salt Lake
1875 Murray Holladay Road
Salt Lake City, Utah 84117
Executive Committee (1984 – 1986)
Trustee (1982 – 1984)

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 never served in the military. I was not required to register for selective service.

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.

Dorothy Merrill Brothers Award for the Advancement of Women in the Legal Profession,
Utah State Bar (2009)
Christine M. Durham Woman Lawyer of the Year, Women Lawyers of Utah (2001)

Young Alumnus of the Year, S.J. Quinney College of Law at the University of Utah
(formerly University of Utah College of Law) (1997)
Distinguished Committee Award, Needs of Children Committee, Utah State Bar (1996)
Utah Law Review Editorial Board, S.J. Quinney College of Law at the University of
Utah (formerly University of Utah College of Law) (1981 – 1982)
Eccles Merit Fellowship, Eccles Family Charitable Trust (1981 – 1982)
American Jurisprudence Awards: Antitrust, Constitutional Law II, Criminal Law,
Evidence, Torts, and Trusts and Estates, S.J. Quinney College of Law at the
University of Utah (formerly University of Utah College of Law) (1979 – 1982)
William H. Leary Scholar, S.J. Quinney College of Law at the University of Utah
(formerly University of Utah College of Law) (1979 – 1982)

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.

American Bar Association (intermittently 1988 – present)
Vice-Chairperson, Environmental Quality Committee (1992 – 1997)
Vice-Chairperson, Planning Committee, Conference on Environmental Law
(1996 – 1997)
Co-Chairperson, Planning Committee, Conference on Environmental Law (1997
– 1999)
Litigation Section (intermittently 1982 – 2011)
Judicial Section, Appellate Division (2010 – present)
American Bar Foundation Fellow (2011 – present)
American Inns of Court (1985 – 1987, 2004 – 2011)
Barrister (1985 – 1987)
Master of the Bench (2004 – 2011)
Salt Lake County Bar Association (1982 – present)
Ex Officio Member, Board of Trustees (1996 – 1997)
Vice-Chairperson, Pamphlets Committee (1996 – 1997)
Chairperson, Art and the Law Committee (1997 – 1998)
Chairperson, Pamphlets Committee (1997 – 1998)
Trustee (1997 – 2005)
United States Department of Justice, Advanced Science and Technology Adjudication
Resource Center
Fellow (2006 – present)
Utah Commission on Civic and Character Education (2011 – present)
Utah Judicial Conduct Commission (2010 – present)
Utah State Bar (1982 – present)
Committee on Courts and Judges (approximately 1983 – 1987)
Chairperson, Publications Subcommittee, Needs of Children Committee (1993 –
1994)
Chairperson, Needs of Children Committee (1995 – 1996)
Bar Examiners Committee (1988 – 1993)
Ex Officio Bar Commissioner (1998 – 1999)

Board Member and Judicial Representative, Appellate Section (2010 – present)
 Planning Committee, Utah State Bar Spring Convention (2013)
 Utah State Courts (2005 – present)
 Member, Standing Committee on Judicial Outreach (2006 – present)
 Chairperson, Standing Committee on Court Technology (2008 – present)
 Chairperson, Standing Committee on Judicial Outreach (2010 – present)
 Utah Supreme Court Advisory Committee on the Rules of Professional Conduct (1995 – 1998)
 Women Lawyers of Utah (1982 – present)
 Executive Committee (1995 – 1996)
 President, Board of Trustees (1996 – 1997)
 Judicial Representative (2008 – 2010)

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, 1982

There have been no 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 Court of Appeals for the Ninth Circuit, 1988
 United States Court of Appeals for the Tenth Circuit, 1982
 United States District Court for the District of Utah, 1982
 Utah State Courts, 1982

My membership in the Ninth Circuit lapsed in 1989 because I did not renew it after completing an appeal on behalf of one of my clients. My memberships in the Tenth Circuit and the District of Utah lapsed in 2005 because I did not renew them after being appointed to the Utah Court of Appeals.

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.

Big Brothers Big Sisters of Greater Salt Lake (1982 – 1986)
 Trustee (1982 – 1984)
 Executive Committee (1984 – 1986)
 Catholic Community Services of Utah (1994 – 2005)
 Awards Banquet Committee (1994 – 1998)
 Trustee (1996 – 2003)
 Resource Development Committee (1996 – 2003)
 Executive Committee (1999 – 2003)
 President, Board of Trustees (2002 – 2003)
 Long Range Planning Committee (2003 – 2005)
 Legal Aid Society of Salt Lake (2004 – 2005)
 Trustee
 S.J. Quinney College of Law at the University of Utah (formerly University of
 Utah College of Law) Alumni Association (1982 – present)
 Co-Chairperson, Class Representative Committee (1994 – 1996)
 Trustee (1991 – 1996)
 Utah Office of the Guardian Ad Litem (1994 – 2003)
 Volunteer Guardian Ad Litem
 Voices for Utah Children (approximately 1989 – 2000)
 Trustee (1991 – 1996)
 Budget Advisory Committee (1991 – 1996)

- 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.

To the best of my knowledge, none of the organizations listed above currently discriminates 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.

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.

Oral History of Christine Durham, ABA Senior Lawyers Division, Women Trailblazers in the Law (2009 – 2010). Copy supplied.

Decisions from the Utah Court of Appeals, 2008, UTAH B.J., July – Aug. 2009. Copy supplied.

Past NAWJ President, Judith M. Billings, Retires from the Utah Court of Appeals, National Association of Women Judges (2009). Copy supplied.

With Michael J. Wilkins, *2007 Case Summaries*, UTAH B.J., May – June 2008. Copy supplied.

Separation of Powers, UTAH B.J., July – Aug. 2006. Copy supplied.

First Impressions, UTAH B.J., May – June 2006. Copy supplied.

A View from the Bench: Practice Pointers from Judge Kimball, SALT LAKE COUNTY B. ASS'N, Nov. 1999. Copy supplied.

With Craig G. Adamson et al., *Letter to the Editor*, UTAH B.J., Mar. 1997. Copy supplied.

It's Time for You to Be Part of the Solution to Unmet Legal Needs, UTAH B.J., Winter 1997. Copy supplied.

Recent Developments in Utah Law: Damaging Items of Separately Owned Property Held to Constitute Distinct Crimes, 1981 UTAH L. REV. 689 (1981). Copy supplied. The Recent Developments in Utah Law are a compilation of articles by members of the Utah Law Review. I authored the development identified, but I did not participate in drafting the other developments featured.

Application of the Sherman Act to Politically Motivated Boycotts – Missouri v. National Organization for Women, Inc., 1981 UTAH L. REV. 599 (1981). Copy supplied.

Recent Developments in Utah Law: Evidence of Pre-Decree Behavior as Grounds for Modification of a Child Custody Decree, 1981 UTAH L. REV. 212 (1981). Copy supplied. The Recent Developments in Utah Law are a compilation of articles by members of the Utah Law Review. I authored the development identified, but I did not participate in drafting the other developments featured.

- 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.

2010 – 2012 Utah Judicial Conduct Commission Annual Reports, prepared by the Executive Director and approved by the Commission members. Copy supplied.

1992 – 1995 Year in Review, American Bar Association, Natural Resources, Energy, and Environmental Law Section. Copy supplied.

To the best of my knowledge, I have not prepared or contributed in the preparation of any other reports, memoranda or policy statements on behalf of any bar association, conference, or organization.

- 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.

I have made oral reports to the Judicial Council on behalf of the Technology Committee and the Outreach Committee of the Utah State Courts. Council minutes for the December 15, 2008, June 29, 2009, July 19, 2010, July 18, 2011, September 13, 2011, July 16, 2012, and November 19, 2012 meetings have been 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.

Throughout my career I have presented on many legal topics. I have listed all those that I can recall here after searching through my files and the internet.

March 15, 2013: Panelist, “What the Appellate Rules Won’t Tell You, But You Need to Know,” Utah State Bar Spring Convention, St. George, Utah. PowerPoint and handout supplied.

March 1, 2013: Panelist, 18th Annual Ethics CLE & Ski, Park City Bar Association, Park City, Utah. Handout supplied.

November 15, 2012: Panelist, Judicial Mentoring Seminar, Women Lawyers of Utah, Salt Lake City, Utah. I described my professional background and the process I went through to become a member of the Utah Court of Appeals. I then responded to questions from the audience. I have no notes, transcript, or

recording. The address for Women Lawyers of Utah is P.O. Box 932, Salt Lake City, Utah 84110.

November 13, 2012: Speaker, Closing Remarks, “Making the Connection: Connecting Civic and Character Education to Civic Engagement,” Utah Commission on Civic and Character Education, Salt Lake City, Utah. Remarks supplied.

September 17, 2012: Speaker, Constitution Day Remarks, Utah State Courts, Salt Lake City, Utah. Notes supplied and a video is available at <http://www.youtube.com/watch?v=Q-iPoA3Z-aU>.

April 10, 2012: Judge, Traynor Moot Court Competition Finals, S.J. Quinney College of Law at the University of Utah (formerly University of Utah College of Law), Salt Lake City, Utah. I have no notes, transcript, or recording. The address of the S.J. Quinney College of Law at the University of Utah is 332 South 1400 East, Salt Lake City, Utah 84112.

February 24, 2012: Speaker, Presentation on Effective Oral Argument, Appellate Practice Seminar, Utah Association of Criminal Defense Lawyers, Salt Lake City, Utah. PowerPoint supplied.

February 7, 2012: Speaker, Remarks at the 2012 Campaign Kickoff for “And Justice For All,” Salt Lake City, Utah. Remarks supplied.

January 25, 2012: Guest Lecturer, Judicial Process, “How Do Judges Decide When to “Write/Publish?”, S.J. Quinney College of Law at the University of Utah (formerly University of Utah College of Law). I gave a description of how the Court of Appeals handles published and unpublished decisions and how the individual judges decide whether to write an opinion or a memorandum decision. I then responded to questions from the students. I have no notes, transcript, or recording. The address of the S.J. Quinney College of Law at the University of Utah is 332 South 1400 East, Salt Lake City, Utah 84112.

November 10, 2011: Speaker, “Advocacy and Professionalism in Written Submissions to the Court,” 2011 Conference of the Utah Attorney General’s Office, Salt Lake City, Utah. Notes and PowerPoint supplied.

November 9, 2011: Speaker, “The Practical Applications of the Rules of Professional Conduct and Standards of Professionalism in the Private Practice Arena,” the Utah Minority Bar and the Litigation Section of the Utah State Bar, Salt Lake City, Utah. My remarks focused on decisions from the Utah appellate courts in which sanctions were imposed against attorneys or their clients for failing to comply with the Code of Professional Conduct or the Standards on Professionalism and Civility. I have no notes, transcript, or recording. The address for the Utah State Bar is 645 South 200 East, Salt Lake City, Utah 84111.

September 19, 2011: Speaker, Constitution Day Remarks, Utah State Courts, Salt Lake City, Utah. Notes supplied.

May 17, 2011: Speaker, "The Exhaustion of Administrative Remedies," Utah State Bar, Administrative Law Section, Salt Lake City, Utah. Notes, handout, and audio recording supplied.

April 20, 2011: Panelist, "Ethics, Professionalism, and Civility: How to Avoid the Office of Professional Conduct and Gain the Confidence of the Court," And Justice For All, Salt Lake City, Utah. Agenda used as an outline of my remarks is supplied.

March 7, 2011: Speaker, "The Importance of Understanding and Embracing the Standard of Appellate Review," Utah State Bar, Appellate Section, Salt Lake City, Utah. Notes supplied.

March 4, 2011: Panelist, 16th Annual Ethics CLE & Ski, Park City Bar Association, Park City, Utah. The panel discussed several hypothetical scenarios that raised ethical issues. I have no notes, transcript, or recording. The address for the Park City Bar Association is 445 Marsac Avenue, P.O. Box 1480, Park City, Utah 84060.

September 17, 2010: Speaker, Constitution Day Remarks, Utah State Courts, Salt Lake City, Utah. After the presentation of the colors, singing of the national anthem, and recitation of the pledge of allegiance, a group of judges read the preamble and Article III of the United States Constitution. I moderated the event. I have no notes, transcript, or recording, but press coverage is supplied. The address for the Utah appellate courts is 450 South State Street, Salt Lake City, Utah 84111.

September 2010: Speaker, "Vexatious Litigants: Sanctions and Solutions," 2010 Utah Judicial Conference, Utah State Courts, Park City, Utah. Outline supplied.

June 29, 2010: Speaker, "2009-10 Decisions from the Utah Court of Appeals," Utah State Bar, Appellate Section, Salt Lake City, Utah. Handout supplied.

March 12, 2010: Panelist, 15th Annual Ethics CLE & Ski, Park City Bar Association, Park City, Utah. The Park City Bar Association provided several hypothetical scenarios that raised ethical issues. I have no notes, transcript, or recording. The address for the Park City Bar Association is 445 Marsac Avenue, P.O. Box 1480, Park City, Utah 84060.

Approximately 2010: Speaker, "Utah Appellate Decisions Regarding the Standards of Professionalism and Civility," Inns of Court, Salt Lake City, Utah. Handout supplied.

November 7, 2009: Panelist, "Civility, Professionalism, and Advocacy," Annual Retreat, Women Lawyers of Utah, Deer Valley, Utah. The panel drafted hypothetical scenarios and then used them to highlight issues of ethics and civility. We also discussed personal experiences with such issues. I have no notes, transcript, or recording. The address for the Women Lawyers of Utah is P.O. Box 932, Salt Lake City, Utah 84110.

November 6, 2009: Speaker, Introductory remarks about Judith M. Billings, Annual Retreat, Women Lawyers of Utah, Deer Valley, Utah. I gave remarks on the retirement of Judge Judith M. Billings. I have no notes, transcript, or recording, but press coverage is supplied. The address for the Women Lawyers of Utah is P.O. Box 932, Salt Lake City, Utah 84110.

April 23, 2009: Speaker, Presentation on the Indian Child Welfare Act, Juvenile Court Conference, Utah State Courts, Park City, Utah. Notes and PowerPoint supplied.

April 20, 2009: Speaker, "2008 Decisions from the Utah Court of Appeals," Utah State Bar, Appellate Practice Section, Salt Lake City, Utah. Handout supplied.

August 22, 2008: Speaker, Remarks to Incoming Law Students, S.J. Quinney College of Law at the University of Utah (formerly University of Utah College of Law), Salt Lake City, Utah. Remarks supplied.

June 18, 2008: Mock Trial Facilitator, "Civic Workshop for Teachers and Pre-Service Teachers: The Branches of Civic Engagement." Mock trial script supplied.

June 4, 2008: Speaker, Promotion Address, Newman Elementary School, Salt Lake City, Utah. Remarks supplied.

January 31, 2008: Speaker, "2007 Cases from the Utah Court of Appeals," Utah State Bar, Appellate Practice Section, Salt Lake City, Utah. My remarks were published in the Utah Bar Journal and are supplied in response to Question 12a.

January 8, 2008: Speaker, "Effective Appellate Advocacy," J. Reuben Clark Law Society, Salt Lake City, Utah. Handout supplied.

November 9, 2007: Speaker, Ethics and Professionalism CLE, the Utah Minority Bar and the Litigation Section of the Utah State Bar, Salt Lake City, Utah. I discussed the importance of complying with the Canons of Professional Conduct and the Standards of Professionalism and Civility. I have no notes, transcript, or recording. The address for the Utah State Bar is 645 South 200 East, Salt Lake City, Utah 84111.

May 12, 2006: Speaker, Remarks on Family Law, Utah State Bar, Family Law Section, Salt Lake City, Utah. I reviewed recent decisions from Utah's appellate courts on issues of interest to family law practitioners. I have no notes, transcript, or recording. The address for the Utah State Bar is 645 South 200 East, Salt Lake City, Utah 84111.

May 1, 2006: Speaker, Law Day Speech on the Separation of Powers, Utah State Courts, Salt Lake City, Utah. My remarks were published in the Utah Bar Journal and are supplied in response to Question 12a.

January 20, 2006: Speaker, "Getting to Know Judge McHugh," Utah State Bar, Appellate Practice Section, Salt Lake City, Utah. I gave a brief description of my professional background and then responded to questions from the audience. I have no notes, transcript, or recording. The address for the Utah State Bar is 645 South 200 East, Salt Lake City, Utah 84111.

2006: Speaker, "Recent Decisions from the Utah Court of Appeals," Salt Lake County Bar Association, Salt Lake City, Utah. Handout supplied.

2005: Speaker, Remarks on Recent State and Federal Appellate Decisions, Utah State Bar, Banking and Finance Section, Salt Lake City, Utah. Notes supplied.

November 6, 2004: Panelist, "Effective Communication Inside and Outside of the Courtroom." Fall Retreat, Women Lawyers of Utah, Deer Valley, Utah. I spoke about the need for women attorneys to seek out opportunities to handle significant aspects of litigation matters. I have no notes, transcript, or recording, but press coverage is supplied. The address for the Women Lawyers of Utah is P.O. Box 932, Salt Lake City, Utah 84110.

April 11, 2002: Speaker, Presented Christine M. Durham Woman Lawyer of the Year Award to Utah State Senator Patrice Arent, Salt Lake City, Utah. I discussed Senator Arent's professional and personal background, and emphasized her efforts to support women in the profession. I have no notes, transcript, or recording, but press coverage is supplied. The address for the Women Lawyers of Utah is P.O. Box 932, Salt Lake City, Utah 84110.

March 11 – 14, 1999: Moderator, Remarks on Toxic Torts, Conference on Environmental Law, American Bar Association, Keystone, Colorado. I moderated a discussion of new developments in the law of toxic torts, including a discussion of multi-plaintiff litigation and class actions, causation, "fear of cancer" claims, damages for medical monitoring, and standards of proof. I have no notes, transcript, or recording. The address for the American Bar Association is 321 North Clark Street, Chicago, Illinois 60654.

September 1998: Panelist, Negotiation Strategies, Women Lawyers of Utah, Snowbird, Utah. I discussed the importance of understanding the strengths and

weaknesses of your case, explaining them to your client, being aware of what is and is not negotiable from your client's perspective, being open to creative solutions, honoring commitments made to opposing counsel, and carefully documenting the terms of any settlement reached. I have no notes, transcript, or recording. The address for the Women Lawyers of Utah is P.O. Box 932, Salt Lake City, Utah 84110.

March 14, 1998: Moderator, "Practicing Environmental Law in the Next Millennium – Environmental Expertise for the Near Future," 27th Annual Conference on Environmental Law, Keystone, Colorado. I moderated a discussion of climate control issues, alternate dispute resolution, indoor air pollution, risk management tools, pollution prevention, and environmental cost accounting. I have no notes, transcript, or recordings. The address for the American Bar Association is 321 North Clark Street, Chicago, Illinois 60654.

March 1997: Panelist, "Client Confidences and the Use of Outside Environmental Consultants," Conference on Environmental Law, American Bar Association, Keystone, Colorado. I participated in a role-play in which a client instructed an environmental attorney not to produce the unfavorable report of an environmental consultant. The panel then discussed the legal requirements governing the production of the reports of in-house and outside environmental consultants, with particular emphasis on recent decisions from the federal courts. I have no notes, transcript, or recordings. The address for the American Bar Association is 321 North Clark Street, Chicago, Illinois 60654.

June 1992: Speaker, Solid and Hazardous Waste Overview, Utah Manufacturers Association, Salt Lake City, Utah. I provided a basic overview of the Resource Conservation and Recovery Act and its implications for manufacturers who generate hazardous waste. I have no notes, transcript, or recording. The address for the Utah Manufacturers Association is 136 East South Temple, Suite 1740, Salt Lake City, Utah 84111.

Unknown Date: Speaker, "Professionalism and Civility in the Private Practice Arena," Utah State Bar, Salt Lake City, Utah. Handout supplied.

Unknown Date: Speaker, "Preservation of the Record," Utah State Bar, Litigation Section, Salt Lake City, Utah. Notes supplied.

Unknown Date: Speaker, Remarks to a government class, West Jordan High School, West Jordan, Utah. Notes supplied.

- 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.

The only interviews I recall having given are listed below; there may be some interviews on topics such as the Utah State Courts' celebration of Constitution Day or Law Day that I have inadvertently omitted.

Radio Interview on Constitution Day, Salt Lake City, Utah (September 19, 2012). Recording available at <http://kcpw.org/blog/cityviews/2012-09-17/cityviews-91712-utah-radicals225th-constitutional-anniversary-wishes/>.

Approximately 2012: Utah Commission on Civic and Character Education. Copy supplied.

Aaron Falk, *Judge Robert Hilder Retires After 17 Years on the Bench*, SALT LAKE TRIBUNE, July 31, 2011. Copy supplied.

Mark W. Pugsley, *Judicial Profile: Judge Carolyn McHugh*, B. & BENCH MAG., Fall 2005. Copy supplied.

AP Alert, *Carolyn Baldwin McHugh has been nominated from a field of seven candidates for the Utah Court of Appeals*, ASSOCIATED PRESS, June 14, 2005. Copy supplied.

Jill Schachner Chanen, *Guiding Principles: A Look Inside Some Inspired Mentor Relationships Shows How These Parings Build Careers – and Confidence*, A.B.A.J. (2005). Copy supplied.

Jennifer K. Nii, *Insurance License Pulled*, DESERET NEWS, Oct. 18, 2003. Copy supplied.

Peter Scarlet, *LDS' Monson Briefs Rotarians on Human Aid; Rotarians Get LDS Briefing on Human Aid*, SALT LAKE TRIBUNE, Nov. 22, 1997. Copy supplied.

George Tibbits, *Decision Coming – But Not Until Summer – in Radiation Suit*, ASSOCIATED PRESS, Apr. 26, 1983. Copy 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.

Since 2005, I have served as a judge on the Utah Court of Appeals.

After my name was forwarded by a nonpartisan nominating commission, I was appointed by the Governor and confirmed by the Utah Senate in 2005. I was retained in the required periodic, nonpartisan retention elections in 2008. The Utah Court of Appeals has statutory original jurisdiction of criminal matters other than first degree felonies and capital cases, domestic relations cases, child welfare cases, cases originating in the juvenile and district courts, and most administrative proceedings from state agencies. In

addition, the Court of Appeals has jurisdiction to hear cases transferred to it from the Utah Supreme Court, with the exception of those for which the Supreme Court has original, exclusive jurisdiction. The Utah Supreme Court must retain capital felony cases; election and voting disputes, including reapportionment of election districts; cases involving the retention or removal of public officers; legislative subpoenas; lawyer discipline matters; and final orders of the Judicial Conduct Commission. In practice, with the exception of the matters on which it has exclusive jurisdiction, the Utah Supreme Court transfers all appeals to the Utah Court of Appeals. The Utah Supreme Court then sets its docket by issuing writs of certiorari to the Court of Appeals. As a result, the Utah Court of Appeals is the court of last resort for most criminal, civil, agency, and family law appeals in Utah.

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

I have presided over 1,118 cases that reached judgment, 719 of which were civil and 399 of which were criminal.

- i. Of these, approximately what percent were:

jury trials:	0%
bench trials:	0%
civil proceedings:	64%
criminal proceedings:	36%

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

See attached list.

- 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. *Cook Assocs., Inc. v. Utah Sch. and Inst. Trust Lands Admin.*, 243 P.3d 888 (Utah Ct. App. 2010).

This case required us to interpret the Utah Constitution and to determine whether it mandated that the School and Institutional Trust Lands Administration (SITLA) obtain the highest value possible for trust lands, even if to do so would violate the covenant of good faith and fair dealing implied into every contract. We held that, despite its constitutional mandate, SITLA was not free to breach the covenant of good faith with respect to a long-term ground lease.

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For Appellee:

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2. *State v. Pacheco-Ortega*, 257 P.3d 498 (Utah Ct. App. 2011).

In this case, the State appealed the trial court's order dismissing the criminal charges against the defendant based on the State's failure to proceed at the preliminary hearing. We were required to interpret and apply controlling Utah Supreme Court due process authority to a factual scenario of first impression. We reversed the trial court's decision and remanded for further proceedings on the criminal charges.

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3. *Yirak v. Dan's Super Mkts., Inc.*, 188 P.3d 487 (Utah Ct. App. 2008).

This case required us to interpret Utah's Product Liability Act on an issue of first impression regarding the plaintiff's burden with respect to the passive retailer defense. We concluded that the trial court correctly granted summary judgment in favor of the defendant because it came forward with evidence that it had not participated in the design, manufacture, engineering, testing, or assembly of bagged salad offered for sale at its grocery store, and the plaintiff failed to dispute that evidence. Accordingly, we concluded that the retailer was a passive retailer as that term is used in the Act, and therefore not strictly liable for the injuries plaintiff suffered when ingesting glass contained in the salad. In doing so, we interpreted Utah's Product Liability Act consistently with the statutes of other jurisdictions which have expressly adopted a "sealed container" exception.

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For Appellee:

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4. *State v. Duran*, 131 P.3d 246 (Utah Ct. App. 2005), *aff'd*, 156 P.3d 795 (Utah 2007).

This case involved issues relating to the Fourth Amendment of the United States Constitution. First, we held that the evidence did not show that the defendant's landlord had common authority over the trailer in which defendant lived and therefore, could not give valid permission to search the trailer. We next held that the police officers could not have reasonably believed that the landlord had authority to consent to a search of the trailer. Although the smell of burning marijuana gave the officers probable cause to believe that a crime was being committed, we held that it did not create exigent circumstances that would permit a warrantless entry into the trailer.

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For Appellee:

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5. *Pete v. Youngblood*, 141 P.3d 629 (Utah Ct. App. 2006).

This case involved the interpretation of Utah Rule of Civil Procedure 26, which provides the requirements for the disclosure of fact and expert witnesses. We held that a party must identify any treating physician who will opine as to causation or the standard of care as an expert witness, rather than as a fact witness. We also determined that the doctrine of *res ipsa loquitur* obviated the need for the plaintiffs to offer expert testimony under the facts of this case.

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For Appellee:

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6. *In re Marriage of Kunz*, 136 P.3d 1278 (Utah Ct. App. 2006).

This case raised issues of first impression regarding the competing interests of plural wives in the estate of their deceased husband. We first ruled that Utah's unsolemnized marriage statute contained a statute of repose, rather than a statute of limitations. Accordingly, we concluded that the statute of repose was not subject to equitable tolling. We next held that the decedent's legal marriage to one claimant was voidable, as opposed to void, for alleged immigration fraud.

Because the marriage had not been challenged during the life of the spouses, however, it remained valid for purposes of determining the legal beneficiary of the estate.

For Appellant:

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For Appellee:

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7. *State v. Davis*, 155 P.3d 909 (Utah Ct. App. 2007).

This case involved the issue of a defendant's right to a jury trial on every element of the offense. We ruled that the trial court erred by instructing the jury that a bicycle path is a public park, rather than submitting that factual issue to the jury. The determination of that issue was relevant to whether the defendant had committed his crimes in a drug-free zone, which was defined by statute to include a certain distance from a public park. As a result, we reversed the conviction and remanded for a new trial.

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8. *State v. Van Dyke*, 223 P.3d 465 (Utah Ct. App. 2009), *cert. denied*, 230 P.3d 127 (Utah 2010).

This case required us to consider the extent to which a police officer can rely on information provided by the police dispatcher, including the report of a citizen informant, to support the officer's reasonable suspicion that the defendant is engaged in criminal activity. We held that the police officer was entitled to rely on the information in the dispatch and that there was sufficient evidence to support the officer's traffic stop of the defendant's vehicle.

For Appellant:
Sheldon R. Carter
(deceased)

For Appellee:
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9. *Ellison v. Stam*, 136 P.3d 1242 (Utah Ct. App. 2006).

The issues in this case required us to interpret the Utah stalking statute. We first held that the test for emotional distress under the statute required the trial court to consider whether a reasonable person under all of the circumstances present would have been distressed. We next held that the trial court should consider the stalker's conduct cumulatively in light of all of the facts and circumstances to determine if an act constituted an episode of stalking. Accordingly, we reversed the trial court's denial of a stalking injunction and remanded for reconsideration under the correct standard.

For Appellant:
Patricia K. Abbott (unable to locate contact information)

For Appellee:

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10. *GLFP, Ltd. v. CL Mgmt., Ltd.*, 163 P.3d 636 (Utah Ct. App. 2007).

This case involved the distinction between individual actions and derivative actions in the context of limited partnerships. The opinion also interpreted the close corporation exception to the derivative rule, and required us to address the interplay between the rules related to derivative claims and the dissolution rights provided by statute. We concluded that the trial court correctly identified most of the claims as derivative and that therefore the summary judgment in favor of the partnership was correct as to those claims. However, we reversed the summary judgment on the appellant's claim for dissolution.

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- 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. *Forsberg v. Bovis Lend Lease, Inc.*, 184 P.3d 610 (Utah Ct. App. 2008), *cert. denied*, 199 P.3d 367 (Utah 2008).

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2. *State v. Perkins*, 222 P.3d 1198 (Utah Ct. App. 2009).

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3. *Ervin v. Lowe's Cos.*, 128 P.3d 11 (Utah Ct. App. 2005).

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4. *State v. High*, 282 P.3d 1046 (Utah Ct. App. 2012).

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5. *Richards v. Brown*, 222 P.3d 69 (Utah Ct. App. 2009), *aff'd on other grounds*, 274 P.3d 911 (Utah 2012).

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6. *Millet v. Logan City*, 147 P.3d 971 (Utah Ct. App. 2006), *cert. denied*, 168 P.3d 819 (Utah 2007).

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7. *State v. Nguyen*, 246 P.3d 535 (Utah Ct. App. 2011), *aff'd*, 293 P.3d 236 (Utah 2012).

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8. *Ameritemps, Inc. v. Labor Comm'n*, 128 P.3d 31 (Utah Ct. App. 2005), *aff'd*, 152 P.3d 298 (Utah 2007).

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9. *Stonehocker v. Stonehocker*, 176 P.3d 476 (Utah Ct. App. 2008).

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For Appellee:

Robert A. Echard
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10. *Jenkins v. Jordan Valley Water Conservancy Dist.*, 283 P.3d 1009 (Utah Ct. App. 2012), *cert. granted*, 293 P.3d 376 (Utah 2012).

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For Appellee:

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

I am unaware of any cases in which certiorari to the United States Supreme Court was requested or granted.

- 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.

Wasatch County v. Okelberry, 153 P.3d 745 (Utah Ct. App. 2006), *rev'd*, 179 P.3d 768 (Utah 2008). The Utah Supreme Court clarified the test for determining what acts interrupt the running of the ten-year period necessary for the dedication of a road for public use. Although the Supreme Court reversed our decision, it indicated that “the court of appeals thoughtfully sought to bring some coherency and consistency to this area.”

Sachs v. Lesser, 163 P.3d 662 (Utah Ct. App. 2007), *rev'd*, 207 P.3d 1215 (Utah 2008). The issue in this case was whether the sale of the stock of a company that primarily holds real property is a business opportunity involving real property. We adopted the minority position on this issue of first impression in Utah, holding that the sale of stock was the sale of personal property. The Utah Supreme Court instead adopted the majority position and held that the sale of 100% of the stock of a real estate holding company is the sale of real property. Therefore, the Supreme Court reversed our decision.

Ameritech Library Servs. v. Labor Comm'n, 169 P.3d 784 (Utah Ct. App. 2007), *rev'd*, 218 P.3d 582 (Utah 2009). This case required us to interpret the term “compensation” in Utah’s Occupational Disease Act to determine if medical expenses for carpal tunnel syndrome should be apportioned. We upheld the decision of the Labor Commission, holding that the expenses should not be apportioned and that therefore, the claimant was entitled to 100% of her medical expenses. The Utah Supreme Court disagreed and limited the claimant’s award accordingly.

Dale T. Smith & Sons v. Labor Comm'n, 2007 UT App 306 (unpublished), *rev'd*, 218 P.3d 580 (Utah 2009). This case was issued as a companion case to

Ameritech Library Servs. v. Labor Comm'n, 169 P.3d 784 (Utah Ct. App. 2007), *rev'd*, 218 P.3d 582 (Utah 2009). As in *Ameritech*, the issue was the proper interpretation of the term “compensation” in Utah’s Occupational Disease Act. We followed our decision in *Ameritech*, holding that the medical expenses were not compensation and therefore, did not need to be apportioned. The Utah Supreme Court disagreed with our interpretation and reversed.

State v. McClellan, 179 P.3d 825 (Utah Ct. App. 2008), *rev'd*, 216 P.3d 956 (Utah 2009). The defendant claimed that when his prior defense attorney resigned and joined the County Attorney’s Office, the entire office should have been disqualified. This was an issue of first impression in Utah. We adopted the majority position on assessing such conflicts. Applying that test, we held that although a presumption arose that the defendant’s prior lawyer shared confidences with the members of the County Attorney’s Office, the presumption had been rebutted. Our decision was based on inferences from an incomplete record. On appeal the Supreme Court affirmed our adoption of the majority rule, but held that the prosecution was charged with any gaps in the record because it bore the burden of proving that the presumption had been rebutted. Accordingly, it reversed and remanded to the trial court for a new trial.

State v. Candedo, 176 P.3d 459 (Utah Ct. App. 2008), *aff'd but criticized*, 232 P.3d 1008 (Utah 2010). We did not reach one of the defendant’s issues because we concluded that he had not preserved it. The Utah Supreme Court held that constitutional challenges to a sentence can be raised for the first time on appeal. However, the Supreme Court rejected the defendant’s argument on the merits.

State v. Clopton, 186 P.3d 1004 (Utah Ct. App. 2008), *rev'd*, 223 P.3d 1103 (Utah 2009). In this case, we applied existing law with respect to the admissibility of expert opinion on the unreliability of eyewitness testimony. However, we urged the Utah Supreme Court to reexamine that authority based on more recent information on the ineffectiveness of jury instructions alone to dispel the jury’s tendency to give undue weight to eyewitness accounts. The Utah Supreme Court obliged us and changed the rule, resulting in the reversal of our decision.

State v. Palmer, 189 P.3d 69 (Utah Ct. App. 2008), *aff'd but criticized*, 220 P.3d 1198 (Utah 2009). Applying the United States Constitution and United States Supreme Court authority, the majority concluded that the defendant was not entitled to have the question of whether he had been convicted of prior DUIs submitted to the jury. We did not also address this issue under the Utah Constitution because we did not consider it adequately briefed. On appeal, the Utah Supreme Court suggested that a different result might be reached under the state constitution, stating that the Court of Appeals “declined to address whether the state constitution affords such a right.” However, the Utah Supreme Court did not reach this issue, holding instead that the defendant had raised only questions of law regarding the prior convictions. Applying concepts of federal

constitutional law, the Utah Supreme Court affirmed, holding that the defendant had no right to submit pure questions of law to the jury.

Merrill v. Labor Comm'n, 163 P.3d 741 (Utah Ct. App. 2007), *rev'd*, 223 P.3d 1089 (Utah 2009). This case involved a constitutional challenge to a Utah statute providing that a permanently disabled worker's disability payments could be reduced after six years by half of the amount of the worker's social security retirement benefits. Applying the rational basis test and considering federal authority, we concluded that the statute did not violate the federal Equal Protection Clause. We also held that the statute did not violate the Uniform Operation of Laws Provision in the Utah Constitution. We noted that some states had reached similar results. The Utah Supreme Court found the authority from states that had held to the contrary more persuasive and also characterized the purpose of disability payments as providing an exclusive remedy for workplace injuries, while our analysis considered the purpose as wage replacement for injured workers. Ultimately, the Supreme Court concluded that the statute was unconstitutional under the Utah Uniform Operation of Laws Provision.

In re R.B.F.S., 218 P.3d 908 (Utah Ct. App. 2009), *rev'd*, 258 P.3d 583 (Utah 2011). By statute, Utah district courts, unlike Utah juvenile courts, may only terminate parental rights when it is necessary to facilitate an adoption. To adopt, the prospective parent must have lived with the child for at least six months or establish that there is good cause to waive the six-month requirement. In this case, the prospective adoptive parent had not lived with the children for at least six months and the trial court had not yet determined whether good cause existed to waive that requirement. Nevertheless, the district court enforced a voluntary relinquishment the biological father executed several years before the biological mother sought to enforce it. In the interim, the biological father had continued to parent the children and to contribute to their support. The biological father appealed the termination order. While the appeal was pending, the prospective adoptive father withdrew his adoption petition. We held that the exercise of the district court's jurisdiction over the termination of the biological father's parental rights was premature because until the court determined that there was good cause to waive the six-month requirement, the termination could not facilitate an adoption. The Utah Supreme Court disagreed, holding that the determination of good cause was not jurisdictional. As a result, it remanded to us for consideration of the merits of the biological father's appeal. Our decision on remand holds that under the plain language of the statute, the father's voluntary relinquishment of his parental rights could not be revoked. That decision is *In re R.B.F.S.*, 278 P.3d 143 (Utah Ct. App. 2012). Legislation has been proposed to address this issue.

Lopez v. United Auto Ins. Co., 222 P.3d 1192 (Utah Ct. App. 2009), *aff'd in part and rev'd in part*, 274 P.3d 897 (Utah 2012). We held that the form an automobile insurer provided to the insured waiving underinsured motorist (UIM) coverage did not comply with statutory authority and was therefore invalid. However, we concluded that the passenger who was riding in the insured's car at

the time of the accident was not entitled to UIM coverage. The Supreme Court agreed with our interpretation of the statute, but extended UIM coverage to the passenger.

- 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.

Of the decisions I have authored, approximately 12% are not available in the Pacific Reporter. All of the decisions of the Utah Court of Appeals from 1997 forward are available online at www.utcourts.gov/opinions/index.html and all can be cited in briefs to the court. Decisions issued both before and after 1997 are available through Westlaw and Lexis.

- 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.

I routinely issue decisions on state and federal constitutional matters, including the right to counsel, the right to be free from unreasonable searches and seizures, the right against self-incrimination, the right to allocution, the right to due process, and the right not to be placed in jeopardy twice for the same crime. The following cases are some significant examples, although not exhaustive.

State v. Mahi, 125 P.3d 103 (Utah Ct. App. 2005)

Ervin v. Lowe's Cos., 128 P.3d 11 (Utah Ct. App. 2005)

Salt Lake City v. Williams, 128 P.3d 47 (Utah Ct. App. 2005)

State v. Duran, 131 P.3d 246 (Utah Ct. App. 2005), *aff'd*, 156 P.3d 795 (Utah 2007)

State v. Davis, 155 P.3d 909 (Utah Ct. App. 2007)

State v. Miller, 170 P.3d 1141 (Utah Ct. App. 2007)

State v. Harry, 189 P.3d 98 (Utah Ct. App. 2008)

State v. Balfour, 198 P.3d 471 (Utah Ct. App. 2008)

State v. Barber, 206 P.3d 1223 (Utah Ct. App. 2009)

State v. Perkins, 222 P.3d 1198 (Utah Ct. App. 2009)

State v. Van Dyke, 223 P.3d 465 (Utah Ct. App. 2009), *cert. denied*, 230 P.3d 127 (Utah 2010)

State v. Johnson, 224 P.3d 720 (Utah Ct. App. 2009)

Gardiner v. York, 233 P.3d 500 (Utah Ct. App. 2010), *cert. denied*, 238 P.3d 443 (Utah 2010)

State v. Pacheco-Ortega, 257 P.3d 498 (Utah Ct. App. 2011)

State v. Duran, 262 P.3d 468 (Utah Ct. App. 2011)

Jenkins v. Jordan Valley Water Conservancy Dist., 283 P.3d 1009 (Utah Ct. App. 2012), *cert. granted*, 293 P.3d 376 (Utah 2012)

West Valley City v. Walljasper, 286 P.3d 948 (Utah Ct. App. 2012)

State v. Sessions, 287 P.3d 497 (Utah Ct. App. 2012)

- 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 never 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.

The Utah Court of Appeals employs an automatic recusal system that compares a recusal list provided by each judge to the captions and appearances of counsel on the briefs. If a judge has listed a person or entity involved in the appeal on his or her recusal list, the Clerk of the Court automatically eliminates that judge from the panel that will hear the case.

When I receive the briefs for the cases to which I have been assigned, I perform my own review to be certain that I do not have an actual or perceived conflict with any of the persons or entities involved. On a few occasions, I have initiated a sua sponte recusal due to the involvement of a person or entity overlooked by the Clerk of the Court, not included on my recusal list, or because I had personal knowledge of the case. When I discover a ground for recusal after assignment, I return the briefs to the Clerk of the Court, and she substitutes a different case. Due to our efforts to identify conflicts before assignment to a panel, this happens rarely. The court does not keep records of our voluntary recusals. No party or litigant has ever requested that I recuse myself.

I recuse myself based on two criteria: (1) whether my relationship with a person associated with the appeal, either as an attorney, a party, witness, or trial judge, is such that it would affect my ability to be impartial; and (2) whether the perception of my relationship with a person associated with the appeal, either as an attorney, a party, witness, or trial judge, is such that it would create the appearance of impropriety. For purposes of the first test, I examine my feelings toward the person and if I have any doubt that my association with that person will remain irrelevant, I recuse. As to the second test, I consider whether the relationship would have made me uncomfortable as an attorney or party on the opposing side of the matter. If the relationship would have caused me concern had I been on the other side, I recuse even if I do not believe the relationship would actually affect my impartiality.

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 never held public office other than judicial office. I have had no unsuccessful candidacies for public office or 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.

I have never held an office in or rendered services to any political party or election committee. I have never played a role in a political campaign.

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;

From 1982 to 1983, I served as a law clerk to Judge Bruce S. Jenkins, United States District Court Judge for the District of Utah.

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

I have never practiced law 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.

1983 – 2005
Parr Brown Gee & Loveless
185 South State Street, Suite 800
Salt Lake City, Utah 84101
Associate (1983 – 1987)
Shareholder (1987 – 2005)

- 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.

I completed training and was accepted as an arbitrator by the American Arbitration Association for complex civil litigation. However, I was appointed to the Utah Court of Appeals before the cases assigned to me were ready for arbitration.

b. Describe:

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

During my 22 years of private practice, I primarily represented clients in complex civil litigation. For the first six years of my career, from 1983 to 1989, my practice was general litigation. During this period, I was involved in a number of large construction disputes, accountant's malpractice, antitrust, and other corporate litigation. In 1989, I began to develop an expertise in environmental litigation. I handled matters arising under the Superfund Act, the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), the Resource Conservation and Recovery Act ("RCRA"), the Clean Air Act, the Clean Water Act, and the regulations implementing these laws over the ensuing years. During this time, I also continued to represent clients in other types of complex litigation. From the mid-1990s until I was appointed to the bench in 2005, I handled a number of cases involving legal issues related to mortgage lending and financing, title insurance, commercial fraud, and real estate.

In addition, I maintained an active pro bono practice throughout my career. As a result, I have represented clients of limited means in litigation related to tax disputes, custody, paternity, parental termination, adoption, divorce, guardianship, and contract disputes. I have also tried misdemeanor cases in cooperation with the Salt Lake City prosecutor's office, accepted appointments from district court judges to represent prisoners in habeas corpus proceedings, and served as a volunteer guardian ad litem.

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

During my private practice years, I represented corporate and industrial clients, including: Geneva Steel Corporation; Atlantic Richfield Corporation; Getty Oil; Magnesium Corporation of America; Komatsu Equipment Company; Phillips Petroleum; Westmont Tractor Company; Peterbilt Trucks; Avocet Artemia, Inc.; Haworth, Inc.; Fritz Tile Company; and Deseret Generation & Transmission Cooperative. In addition, I represented companies involved in real estate and financing transactions including: F.C. Stangl Co.; Watts Construction; Watts Development; Courtyard at Jamestown; Boyer Construction; Countrywide Home Loans, Inc.; and Attorneys Title Guaranty Fund, Inc. My practice also included the representation of companies in business disputes, including: Duplication Group, Inc.; Natures Way; Prometric; Sunwest NOP, Inc.; John Alden Life Insurance Co.; Bass Enterprises; Rocky Mountain Machine Co.; and Ultralife Batteries. As a result of my pro bono practice, I represented private individuals, including children, in contract, domestic, and other smaller matters.

- 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.

Almost 100% of my practice was in litigation. I appeared in court regularly. I have argued motions to dismiss, discovery motions, motions in limine, motions related to jury instructions, motions for summary judgment, and post-trial motions. I have tried some smaller cases on my own and served as second chair on larger disputes. Most of my trials have been to a jury.

- i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|-----|
| 1. federal courts: | 50% |
| 2. state courts of record: | 45% |
| 3. other courts: | 0% |
| 4. administrative agencies: | 5% |

- ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|-----|
| 1. civil proceedings: | 99% |
| 2. criminal proceedings: | 1% |

- 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.

To the best of my recollection, I have tried 11 cases to verdict. In approximately four of those cases, I was sole or lead counsel; in the others, I was associate counsel.

- i. What percentage of these trials were:

- | | |
|--------------|-----|
| 1. jury: | 60% |
| 2. non-jury: | 40% |

- 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 never 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.

My former law firm instituted a document retention policy subsequent to my departure from the firm that has resulted in the loss of my private practice files. The following list of litigation matters is based on a search of available databases, review of what few records still exist, and my best recollection. Accordingly, this list is not exhaustive and some requested information is not available.

1. *Westmont Tractor Co. v. Touche Ross & Co.*, No. CV 82-102-M-CCL (D. Mont. 1986) (Judge Charles C. Lovell), *aff'd*, 862 F.2d 875 (9th Cir. 1988).

I was associate counsel for Westmont Tractor Company on an accountant's malpractice action tried to a jury in the United States District Court for the District of Montana. I was significantly involved in this litigation from the initial assessment of whether the firm should accept the matter on a contingent fee basis, through discovery, pre-trial motions, preparation of jury instructions, trial, post-trial motions, and appeal. The jury found that the accountants had committed malpractice in performing audits of our client, a farm equipment company, and awarded it \$5 million in damages. The accountants appealed and I prepared the appellate brief which was successful in the Ninth Circuit Court of Appeals.

For Westmont Tractor:

Stephen G. Crockett
(retired)

Gregory D. Phillips
Phillips, Ryther & Winchester
560 East 500 South, # 200
Salt Lake City, Utah 84102
(801) 935-4935

Robert W. Minto, Jr.
Worden Thane & Hayes, P.C.
111 North Higgins, Suite 200
P.O. Box 9169
Missoula, Montana 59807
(406) 728-3113

For Touche Ross:

John T. Behrendt
Kathryn Surace-Smith
Gibson Dunn & Cruthcher
200 Park Avenue, # 47
New York, New York 10166
(212) 351-4000

Sherman V. Lohn
Garlington, Lohn & Robinson
350 Ryman Street
Missoula, Montana 59807
(406) 523-2500

2. *AMS Salt Indus. v. Magnesium Corp. of America*, No. CV 95-0451 (3d Dist. Ct., Utah 1995) (Judge Pat Brian), *aff'd*, 942 P.2d 315 (Utah 1997).

I was associate counsel for Magnesium Corporation on this case involving a negligence claim against our client for damages allegedly caused to a neighboring business when our client's dike on the Great Salt Lake breached during a storm. The trial court granted summary judgment in favor of our client on the ground that Magnesium Corporation did not have a duty to protect AMS from the high water levels created by the storm. The plaintiff appealed and the Utah Supreme Court affirmed the decision of the trial court. I was instrumental in drafting the summary judgment motion in the trial court and the brief on appeal.

For AMS Salt:

Gary R. Howe
Zachary T. Shields
Callister Nebeker & McCullough
10 East South Temple, # 900
Salt Lake City, Utah 84133
(801) 530-7300

P. Bryan Fishburn
Attorney at Law
4505 South Wasatch Boulevard, # 215
Salt Lake City, Utah 84124
(801) 277-0333

For Magnesium Corporation:

Judge Clark Waddoups
(formerly Parr Brown Gee & Loveless)
United States District Court for the District of Utah
350 South Main Street

Salt Lake City, Utah 84101
(801) 524-6600

3. *Beck's Office Furniture & Supplies, Inc. v. Haworth, Inc.*, 2:90-cv-00472 (D. Utah, jury trial 1994) (Judge Thomas Greene), *aff'd in part and rev'd in part*, 94 F.3d 655 (10th Cir. 1996).

I was associate counsel for Haworth from 1990 to 1994 before Judge Thomas Greene of the United States District Court for the District of Utah, defending against a claim that our client had breached a dealership agreement. After a two-week trial, the jury entered a judgment against our client and we appealed. The Tenth Circuit affirmed in part and reversed in part. I was involved in both the trial and the appeal.

For Beck's Office Furniture:

Jeffrey R. Oritt
Eisenberg & Gilchrist
215 South State Street, # 900
Salt Lake City, Utah 84111
(801) 366-9100

For Hayworth:

Judge Clark Waddoups
(formerly Parr Brown Gee & Loveless)
United States District Court for the District of Utah
350 South Main Street
Salt Lake City, Utah 84101
(801) 524-6600

Terry Welch
Parr Brown Gee & Loveless
185 South State Street, Suite 800
Salt Lake City, Utah 84111
(801) 532-7840

Justice Jill N. Parrish
(formerly Parr Brown Gee & Loveless)
Utah Supreme Court
450 South State Street, Fifth Floor
Salt Lake City, Utah 84111
(801) 578-3900

4. *Gold Standard, Inc. v. Getty Oil Co.*, CV-86-374 (3d Dist. Ct., Utah 1994) (Judge Frank G. Noel), *aff'd*, 915 P.2d 1060 (Utah 1996).

I was associate counsel on a fraud case brought by Gold Standard against our client, Getty Oil. After a six-week trial, the jury returned a \$404 million verdict against our client. I was involved in trial preparation, including pre-trial motions and jury instructions. During trial, I used the daily transcripts to prepare a motion for judgment notwithstanding the verdict and a motion for a conditional new trial, which we anticipated may be necessary. After the jury returned its historic verdict against our client, we filed these motions and the trial court granted them both. I was also heavily involved in drafting the appellate brief. We prevailed in the Utah Supreme Court.

For Gold Standard:

Judge Deno G. Himonas
(formerly Jones Waldo)
Third District Court
450 South Main Street
Salt Lake City, Utah 84111
(801) 238-7300

James S. Lowrie
Jones Waldo
170 South Main Street, # 1500
Salt Lake City, Utah 84101
801-521-3200

For Getty Oil:

Stephen G. Crockett
(retired)

Mark F. James
Hatch James & Dodge
10 West Broadway, # 400
Salt Lake City, Utah 84101
(801) 363-6363

Brian J. Romriell
(retired)

5. *In re N. L.* (4th Dist. Juv. Ct., Utah 1994) (Judge Leslie Brown).

I was sole counsel representing a foster mother seeking to terminate the parental rights of the biological father of N.L. for child sexual abuse. The biological mother had voluntarily relinquished her rights due to drug addiction. After a

three-day bench trial, the juvenile court judge terminated the father's parental rights. I then represented the foster parents in the proceedings to adopt N.L.

For the State:

Sterling Sainsbury

(Retired—formerly Deputy Utah County Attorney)

6. *R.W. Davis Constr. v. F.C. Stangl* (3d Dist. Ct., Utah 1989) (Judge David Young).

I served as chief counsel representing the defendant in a construction litigation claim tried to a jury. After the plaintiff had rested, I moved for a directed verdict. The trial judge recommended that the plaintiff accept our last offer, rather than risk a ruling on the motion. The plaintiff followed that advice and the matter settled mid-trial.

For Davis:

Michael N. Zundel

Prince Yeats & Geldzahler

15 West South Temple, # 1700

Salt Lake City, Utah 84101

(801) 524-1000

For Stangl:

Bruce A. Maak

Maak & Maak

185 South State Street, Suite 1300

Salt Lake City, Utah 84101

(801) 532-7840

7. *Barclays Am. Corp. v. Kane* (D. Utah 1984) (Judge Juan Burciaga).

I was associate counsel for defendants in an action brought by the bank to foreclose on our clients' homes. The homeowners counterclaimed for securities fraud, claiming that the bank had participated in a fraudulent scheme that involved the sale of unregistered securities and resulted in the homeowners' execution of the subject trust deeds. I was involved in discovery, motion practice, and trial of this matter. After a three-week trial, the jury was unable to reach a verdict. After Judge Burciaga declared a mistrial, the parties reached a settlement favorable to our clients.

For Barclays:

Robert L. Lofts

(retired)

For Homeowners:

Judge Clark Waddoups
(formerly Parr Brown Gee & Loveless)
United States District Court for the District of Utah
350 South Main Street
Salt Lake City, Utah 84101
(801) 524-6600

8. *Gold Mountain Dev., L.L.C. v. Missouri Flat, Ltd.*, CV-000600006 (6th Dist. Ct., Utah) (Judge David Mower), *aff'd*, 2005 UT App 276.

This was a quiet title action in which the parties filed cross motions for summary judgment. The trial court ruled that our client, Missouri Flat, did not own the property in fee simple. On appeal, the majority affirmed the decision of the trial court; the dissenting judge agreed with our position. I was primarily involved in the appeal.

For Gold Mountain:

Richard G. Allen
Attorney at Law
2975 Executive Parkway, # 509
Lehi, Utah 84043
(801) 766-1580

For Missouri Flat:

Ronald G. Russell
Parr Brown Gee & Loveless
185 South State Street, Suite 800
Salt Lake City, Utah 84111
(801) 257-7942

9. *Provident Bank v. Attorneys Title Guar. Fund*, Case No. 000907527 (3d Dist. Ct., Utah approximately 2000 - 2003) (Judge Glen Iwasaki).

This was a dispute concerning whether the bank or ATGF was liable for losses incurred as a result of the wrongful actions of a limited title agent. I was sole counsel for ATGF and after extensive discovery and motion practice, the matter was resolved through a confidential settlement agreement.

For the Bank:

Judge David Connors
(formerly Chapman and Cutler, LLP)
Second District Court
800 West State Street
Farmington, Utah 84025
(801) 447-3822

10. *Faucett Field Ditch Co. v. Does*, Civil No. 020405560 (4th Dist. Ct., Utah 2004 - 2005) (Judge James Taylor).

I was lead counsel for Courtyard at Jamestown in this real estate dispute, which was tried to the bench. My best recollection is that a dispute arose after the sale of certain real property involving the ownership of water rights, among other issues. The trial court ruled in my client's favor and none of the parties appealed.

For Faucett Field:

Richard H. Thornton

Glen R. Bronson

Prince Yeats & Geldzahler

15 West South Temple, # 1700

Salt Lake City, Utah 84101

(801) 524-1000

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.)

While in private practice, I regularly represented clients before state and federal agencies. For example, I represented Geneva Steel, Philips Petroleum, and Deseret Generation and Transmission before the Utah Department of Environmental Quality and before Region Eight of the Environmental Protection Agency. When Utah adopted a lobbyist disclosure and regulation law in 1991, my law firm registered me as a lobbyist for Geneva Steel out of an abundance of caution. Although I was registered as a lobbyist for Geneva Steel for the next few years, I have no recollection of engaging in any lobbying activities on behalf of the company.

I have also litigated many other matters in the state and federal courts, as associate or sole counsel, that were resolved before trial. Examples of my federal cases include: an action on behalf of a domestic steel mill against foreign importers under the 1916 Anti-Dumping Act; cost recovery and penalty actions under federal environmental laws; corporate disputes asserting claims of breach of fiduciary duty, waste of corporate assets, constructive trust, and accounting; breach of contract and fraud actions resulting from business disputes; employment disputes; title insurer liability, and claims under the Racketeering Influenced and Corrupt Organizations Act. My representation of clients in the state courts has included civil litigation arising out of real estate disputes, mechanics lien claims, water rights, business fraud, distributorship and franchise conflicts, and construction claims.

As a result of my pro bono activities, I have also practiced in juvenile court, handling adoptions, parental terminations, and other child welfare matters. While serving as a volunteer guardian ad litem, I interviewed children, their parents, stepparents, relatives, and teachers, and prepared reports for the district court judges to be used in making custody and parent time orders.

Throughout my career, I also participated in community and professional organizations. For many years I served on the Board of Trustees of Catholic Community Services, a group which provides various charitable services, including a local soup kitchen, homeless resource center, refugee resettlement, and rehabilitation services for persons suffering from addiction. I have also served as a trustee of organizations dedicated to advancing the needs of children in Utah, including Big Brothers Big Sisters, and Voices for Utah Children.

During my private practice years, I was active in the Utah State Bar and the American Bar Association, serving on and chairing various professional committees, including the Environmental Quality Committee, the Bar Examiners Committee, and the Supreme Court Advisory Committee on the Rules of Professional Conduct.

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.

In the fall semester of 2011, I taught a course at the S.J. Quinney College of Law at the University of Utah (formerly University of Utah College of Law) entitled, "The Judicial Process." This course was offered to law students who had accepted positions as interns or law clerks for active judges. We discussed judicial review, the debate on the ratification of the United States Constitution, and issues affecting modern courts. Syllabus supplied.

In the fall semester beginning in 1991, I taught a course at the S.J. Quinney College of Law at the University of Utah (formerly University of Utah College of Law) entitled, "Counseling and Negotiations." This course was designed to educate law students about the strategies and ethical constraints involved in giving legal advice and resolving legal disputes. I have been unable to locate a copy of the syllabus.

In the fall semester of 1986, I taught Constitutional Law at the University of Utah College of Social and Behavioral Science. This course provided a general overview of the United States Constitution to undergraduates majoring in political science. I have been unable to locate a copy of the syllabus.

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.

To the best of my knowledge, I am not entitled to any deferred income, stock options, uncompleted contracts, or future benefits from previous business arrangements.

I became vested in the State Courts retirement system after six years of service. Therefore, I will receive a pension upon retirement which will be calculated based on my years of service and the average of my three highest years of salary.

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.

If confirmed, I have no plans, commitments, or agreements to pursue outside employment, with or without compensation, during my service with the court.

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.

I am not aware of any family members or parties, categories of litigation, or financial arrangements that are likely to present potential conflicts of interest. However, Judge Clark Waddoups of the United States District Court and I worked closely together when we were in private practice. Although it has been almost eight years since we were law partners and we do not socialize, I likely would recuse on his matters, if I am confirmed. In addition, I have some former law partners and close personal friends who practice in the Tenth Circuit. I would recuse on their matters.

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

If confirmed, I will consult and abide by the rules and decisions that govern conflicts of interest for federal judges, including 28 U.S.C. Section 455 and the Code of Conduct for United States Judges.

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 in private practice, I handled many pro bono cases. I consider the parental termination trial and subsequent adoption I handled on behalf of a foster mother to be one of my most important cases because a child's future was at stake. I have handled on a pro bono basis many divorces, names changes, the expungement of prior criminal records, step-parent and foster parent adoptions, and paternity actions. I have also tried a fraud case to a jury, served as a volunteer guardian ad litem in many cases before the state's juvenile courts, resolved parent time issues, and handled a dispute with the IRS at no charge. Throughout my career, I have tried to be generous with my time, have encouraged my firm to support pro bono activity, and have supervised younger attorneys in their efforts to assist individuals who could not afford a lawyer.

I have also been actively involved in supporting Utah organizations that provide legal services on a low cost and no cost basis, including And Justice For All, the Disability Law Center, and Utah Legal Services. I continue to participate in fund raising events for these organizations to the extent the Code of Judicial Conduct allows.

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 January 2013, I submitted a cover letter and resume to Senator Orrin Hatch and to Congressman Jim Matheson for a possible position on the Tenth Circuit. On January 16, 2013, I interviewed with Senator Hatch and Senator Mike Lee, and on January 30, 2013, I interviewed with Congressman Jim Matheson. On February 4, 2013, I was notified by Senator Hatch that he and Senator Lee would be

recommending me to the White House for consideration. The following week, I was contacted by an official from the White House Counsel's Office and interviewed with him by telephone. Since February 19, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On March 20, 2013, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, DC. On May 16, 2013, 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.

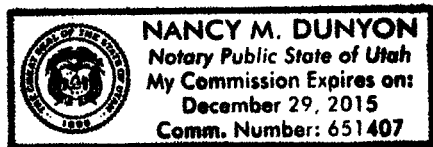
No.

AFFIDAVIT

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

May 16, 2013
(DATE)

Carolyn B. McHugh
(NAME)



Nancy M. Dunyon
(NOTARY)