

BAR & BENCH

SALT LAKE COUNTY BAR ASSOCIATION

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SPRING 2018

President's Message

by Trystan Smith
Salt Lake County Bar President

A few months ago, on March 13, 2018, a new organization dedicated to advancing the goals of equity and inclusion in Utah's legal profession, officially celebrated its launch. The Utah Center for Legal Inclusion or (UCLI), a nonprofit organization based in Salt Lake City, is comprised of stakeholders from across the community, dedicated to helping people with diverse backgrounds advance in Utah's legal community.

UCLI aims to enhance organizational inclusion, facilitate educational opportunities and professional advancement for students and attorneys with diverse backgrounds, assisting in eliminating bias in Utah's justice system and tracking legal inclusion efforts throughout the state. The organization plans to coordinate with the Utah State Bar and its affinity groups, legal employers, government agencies, educational institutions and other partners to reach its goals.



Trystan Smith

If you are a leader in your law firm or government agency, consider partnering with UCLI and take the time to learn more about the organization. Go to www.utahcli.org for more information and to review UCLI's Strategic Plan.

UCLI's planning board is co-chaired by former Justice Christine Durham and Salt Lake City attorney Fran Wikstrom.

Please enjoy the spring edition of the Bar and Bench. And special thanks to our Bar and Bench committee members, Kate Conyers, Kristen Olsen, Rich Mrazik and Dani Cepernich.

Dear Justice Tongue:

I am a relatively new lawyer but would like to become known as one of the most feared lawyers “on the block.” To that end, shouldn’t I refuse to give anyone any leeway, not absolutely required by the rules. I have read the rules of professional courtesy. They do not seem to have any teeth and I cannot see that my career would be furthered by giving into that “namby pamby” stuff. Can you think of any reason why my notion of how I should practice is anything but strictly ethical?

**Signed,
Fired Up**

Dear Fired,

Let me introduce the concept of culture. It is one of our most precious and apparently least understood values in our society. In our legal profession, culture is entrenched in over 200 years of American jurisprudence, carried on and continually enhanced by some of the best minds this nation has ever produced. Not surprising, our system of justice has developed into one of the most admired legal systems in the world. One special characteristic of our honored system is that it requires more than “strict compliance with the rules.” It demands and depends on compliance with, and allegiance to, the spirit, common understanding and social contract that are the very foundation of our system.

No society, no community, no system of justice operates successfully in the long term when short-term gain eclipses its core values and honored traditions. Our system of distributive justice is grounded in a social compact that you, and every client you represent, needs to embrace. The common goals of this culture, and its traditional conventions, serve the wider interests of insuring individuals the opportunity to address their grievances within a predictable system of laws and ordinances, overseen by dedicated jurists who implement not just the bare rules, but the ethical grounding underlying those rules.

As better put by one of my former clerks:

Arching over all our engaging, challenging, and sometimes agonizing roles [as advocates] is the one most fundamental to the question of who we are. We are the indispensable guardians of our system of distributive justice. And in that role, we serve the twin causes of our clients and the indispensable standards and traditions that constitute our system of justice—a delicate balance in the best of times and an immense Herculean effort in the worst. Professionalism and our attendant duties to our system of justice transcend concepts of contract and prescribed obligation. They participate in a professional tradition of increasing excellence and civility over centuries.

In the course of our professional duties we sometimes attract the title of warriors. While it speaks to the intensity of the struggles in which we engage and the courage necessary to meet daunting challenges, justice neither needs nor can she well tolerate warriors. Warriors project power in the interest of conquest. Justice cannot abide power.

...

Our greatest challenge as both practitioners in, and guardians of, the judiciary is that it must always rest on that delicate balance, sustained by a reserve of trust, honor, integrity, civility and independence.

...

Courtrooms are the places in which the consequences of human behavior, its abuses, its thoughtfulness, its thoughtlessness, its mendacity, its honesty, its good and its evil are made plain, understood and addressed. The ground around the great and small is made level (more or less) by the talent, zeal and commitment of dedicated advocates, and the fair and even application of the rules of engagement, by independent judges.

...

Justice Tongue

P r o f e s s i o n a l i s m A n d C i v i l i t y

Our judicial system and the embedded right of trial by jury has been an immense legacy. It is to the constructs of these rich judicial traditions, that our greatest citizens, by dint of intellect and character have devoted the best they had to offer. This legacy however, comes with formidable conditions. It exacts a price. That price is constant effort, sacrifice and diligence. And that effort starts with the understanding that the professionalism and civility of its advocates is an absolute mandate. This system of justice will not be preserved by the dysfunction of advocates on either side of any issue following scorched-earth tactics. Scorched-earth and exploitive tactics are a corrosive form of cheating.

The Standards of Professionalism and Civility, and not your wild ambition, should animate every decision you make in your practice. You can and should be energetic, creative and hard charging. That is not what this lesson is about. Throughout your career, and starting now, you must understand and uphold the tenets of professionalism that accompany the privilege bestowed upon you. We call our adversaries in the legal profession “colleagues” for a reason. You need to figure out why.

I wish you enlightenment.

Tongue

Judicial Profile

J u d g e D i a n a H a g e n

By **Richard Mrazik**

Judge Diana Hagen was appointed to the Utah Court of Appeals in June 2017 by Governor Gary R. Herbert. Before her appointment, Judge Hagen was the First Assistant United States Attorney for the District of Utah and the former Appellate Chief for that office. Before that, she worked in private practice at Parr, Brown, Gee & Loveless. And before all of that, Judge Hagen aspired to a career as an actress.

Judge Hagen spent her teen years honing her acting skills in school, community, and summer stock theaters. But halfway through her college career, the joy she drew from public speaking, combined with the realities of being a working actor, compelled Judge Hagen to change her major to speech communication. And while studying the First Amendment during a course called “Freedom of Expression,” Judge Hagen fell in love with the Constitution, the rule of law, and the intellectual engagement offered by thinking, talking, and writing about legal issues.

After graduating Order of the Coif from the University of Utah S.J. Quinney College of Law in 1998, Judge Hagen served as a law clerk for United States District Court Judge Tena Campbell. This experience showed Judge Hagen the kind of judge she wanted to become. In Judge Hagen’s words:

“One who is humble, willing to learn, and willing to change my mind and admit when I’m wrong. One who is not result-driven, but decides cases based on an honest assessment of what the law requires. And one who exercises restraint and recognizes a judge’s limited role.”

When reflecting on her first six months on the Court of Appeals, Judge Hagen is struck by the challenge posed by being an objective decision maker on close questions of law.

“I was convinced that, as an appellate prosecutor, I had always taken an objective approach to the law, confessing error when appropriate and recommending no appeal when the government’s position wasn’t supported by the record or the law. What I didn’t realize is that on close cases, especially questions of law where the standard of review doesn’t tip the scales, how difficult it can be to make the decision when you’re a neutral arbiter and you don’t have any predefined position or interest to defend.”

Judge Hagen also emphasizes how important oral argument is to her decision-making process.

“I’m surprised at how often oral argument clarifies the issues for me. There are many times I go into argument on a really close case and I think, ‘I need to know the answer to this question.’ I have one question and it’s usually about the record or it’s about whether an issue was raised or how it was raised. And the answer is really going to make a difference to me one way or the other.”

Judge Hagen offers some practical reminders for counsel. First, parties can help the Court of Appeals more quickly identify cases that should be certified to or recommended for recall by the Utah Supreme Court by pointing out in their principal

brief’s statement of the case that the issue raised is one of first impression that is likely to recur in future cases, involves the proper interpretation of a constitutional provision, or otherwise has special significance.

Second, Judge Hagen emphasizes how helpful it is to attach the district court’s order, critical parts of the record, and key cases as part of the appendix. “I would err on the side of attaching more rather than less. Especially if I’m reading briefs away from the office, I appreciate having everything I need to understand the case at my fingertips.”

Third, when representing an appellee, consider beginning your oral presentation by responding to the questions asked of the appellant. As Judge Hagen notes, the court’s questions to the appellant may “show what the court is keyed into.”

Finally, Judge Hagen encourages counsel to strike a balance between procedural and substantive arguments. “You need to raise whatever procedural issues you think might benefit your client. But those arguments are much more persuasive if the procedural deficiency actually resulted in some kind of unfairness, as opposed to being just a technical gotcha.”



J u d g e D i a n a
H a g e n

Judicial Profile

J u d g e R y a n H a r r i s

By Dani Cepernich

After just shy of six years serving on the Third District Court, Judge Ryan Harris was recently (June 2017) appointed to the Utah Court of Appeals. The Bar & Bench wanted to see what--aside from having relocated a few floors up in the Matheson Courthouse--has changed for Judge Harris since it profiled him in the Winter 2013 edition.

Although Judge Harris very much enjoyed his time on the Third District Court, one of the motivations for him seeking appointment to the Court of Appeals was the ability to have a greater impact on the development of the law. As someone who takes pleasure in writing, Judge Harris found himself occasionally lamenting the limited reach of his written opinions. Like many judges on the State's district courts, Judge Harris would dedicate a significant amount of time to drafting written opinions on parties' motions. While he recognized the value and importance of those opinions to the litigants in the case before him, he also recognized the limited ability of that written work to shape the development of the law; there was no real mechanism for the decisions being carefully made and documented by himself and other district court judges to provide guidance for litigants and other judges facing similar issues, some of which--such as discovery--rarely reach the appellate courts. The increased effects his efforts would have on the development of Utah law was one factor on his mind when Judge Harris submitted his name for consideration for the Court of Appeals.

Having now sat on the Court of Appeals for nearly a year, Judge Harris notes his current and prior positions are more different than he would have expected. One of the most significant differences is the day-to-day experience on the two courts. Whereas on the Third District Court, Judge Harris was calendared to be in court from 8:30 a.m. through the end of the day most days, he now sits for oral arguments three days a month. Those arguments often involve more narrowly-focused legal issues and, of course, do not include any witness testimony. In this sense, Judge Harris remarks the Court of Appeals can seem more removed than the district court. He occasionally misses the

depth of discussion he was able to have with counsel during the sometimes hours-long motion hearings many of us may recall. Equally so, he misses the personal interactions the district court fostered: interactions with lawyers, litigants, witnesses, jurors, and family members.

Judge Harris, however, relishes the often intricate and complex legal issues presented on appeal. As he says, if even part of you is a "legal nerd," there is something interesting to be found in most every appeal. This bodes well for Judge Harris, who describes himself as probably having "slightly more than a little part 'legal nerd'" in him. The Court of Appeals further provides the opportunity for written work with far-reaching impacts that is not available

at the district court. Each month, he, as with each of his colleagues, is assigned to draft the opinion in four of the cases he is assigned to hear. Although infrequent, there is also an occasional concurrence or dissent to be written.

Perhaps one of Judge Harris's favorite changes from this district court is the collective decision-making process in which he now engages. He has found this process has the power to produce a better product, with his colleagues raising issues and nuances he alone may not have focused on. It is, however, something Judge Harris is still figuring out. He notes that in this area in particular, he is especially grateful for his new colleagues, who have been immensely supportive in his transition to his new role.



J u d g e R y a n
H a r r i s

Judge Harris is not alone in this transition. The current composition of the Court is the "newest" since the Court of Appeals was created in 1987. Four of the Court's seven judges were appointed within the past two years. Judge Harris has found the closeness in time between the appointment of Judge Jill Pohlman and Judge David Mortensen in May 2016, and the appointment of himself and Judge Diana Hagen in June 2017 has fostered a great deal of cohesiveness. Not only are the other three judges sharing in the new experiences of the Court of Appeals along side him, with the support and guidance of their experienced colleagues, but Judge Harris has also found they share several outside commonalities.

Continued

J u d g e R y a n H a r r i s

Those who may appear before Judge Harris in the Court of Appeals can expect an experience similar to hearings before him in the district court, but in condensed form. Judge Harris continues his practice of carefully reviewing the parties' briefing, typically reading the briefing twice along with all major cases and important portions of the record. In this respect, he appreciates when lawyers include key portions of the record in the appendix to the briefing, which he has with him during argument. He expects all lawyers to be well prepared, and you can usually count on at least a few hard questions. One important difference, however, is the necessary focus on preservation. Judge Harris notes his surprise at the number of cases in which preservation really matters. When it is an issue, the litigants should be prepared to address whether the issue on appeal was properly preserved and what this means for the standard of review.

As Judge Harris begins his tenure on the Court of Appeals, he "keeps front and center" a lesson he learned while clerking for Judge Stephen Anderson of the United States Court of Appeals for the Tenth Circuit: while it can be easy to forget in the isolated--in this case, fifth-floor--ivory tower, each appeal involves real cases with real people. He strives to produce clear and concise rulings in the cases before him, with written opinions that are as helpful and provide as much guidance as possible to the litigants, the bar, and the bench.

In his spare time, Judge Harris can still be found in the mountains, either skiing or trail running. He additionally enjoys the Salt Lake County Bar Association's annual events, and is looking forward to the upcoming spring social.

Perhaps one of Judge Harris's favorite changes from this district court is the collective decision-making process in which he now engages.

New Lawyer Spotlight

Alexandra Sandvik

By Kristen Olsen

Alexandra Sandvik, a recent graduate from BYU Law, knew she made the right decision becoming a lawyer when she received a firm-wide email about the beloved (infamous?) Oxford comma. Her inbox was soon filled with passionate firm-wide follow-up emails from colleagues about the benefits and drawbacks of said comma. “I knew, then, that I had found my people,” she said.

Sandvik was born in Salt Lake City, and was adopted by her parents shortly after birth. “I like to call myself a ‘rescue,’” she said, but it is still unclear who rescued whom. Sandvik grew up in Provo, Utah and she said she was very accident-prone as a child. “I was obsessed with climbing things,” she recalled, “and because I also was not highly coordinated, this combo resulted in 13 broken bones, 8 concussions, and countless stitches.”

Sandvik wanted to be a writer when she grew up, and her parents—who were both attorneys—would often remind her that they were writers, too. “Though I did come very close to going to grad school for creative writing,” she said, “my practical side won out and I went to law school.”

In addition to writing, Sandvik developed a love for cooking at age 14, after her mother passed away. “I started cooking for my family pretty young,” she said, which helped her develop a “deep and committed love for cooking and food.” Sandvik explained, “I think food is the great unifier—everyone eats—and I love the way it can bring people and communities together.” Someday, she would love to visit every Michelin Star-rated restaurant with her husband, who is currently earning a PhD in Finance at the University of Utah.

In law school, Sandvik was pleased to find that her parents were right—lawyers (and law students) did a lot of writing. She became a lead articles editor for the BYU Law Review and the Editor in Chief of the International Law and Management Review. She also served as the Women in Law president and Vice President of the American Constitution Society.

She excelled in law school and earned the Outstanding Law Student Award from the National Association of Women Lawyers. Sandvik stated, “I’m happy to report that many changes have taken place since my mom went to BYU Law in

1977.” Her mother told her stories about how her law professors in the seventies told her that she did not deserve to be a law student because “she was taking the place of a man who needed to put food on the table.”

When asked if practicing law is what she expected, Sandvik replied, “Yes, in that I expected that you can always expect the unexpected.” As is common among new attorneys, Sandvik is often worried that something is falling through the cracks. “There have been more than a few nights,” she admits, “where I’ve been startled awake by the thought that I didn’t send something off that I should have and had to check my email to make sure I did before I could fall back asleep.”

Though the practice of law can sometimes induce anxiety, she explained, it is nice because the days always go by so quickly. “I was an editor for a marketing company for a few years after my under-grad and before law school,” she said, “and I can tell you that days spent searching for split infinitives and incorrect semicolon use go by much more slowly.”

Sandvik is grateful for the many people who are helping her navigate through the practice of law, including her colleagues at Snell & Wilmer. “I’m lucky enough to work at a firm where I’ve got a lot of different mentors, formal and informal,” she said. She enjoys practicing in Salt Lake City where the market is large enough to land interesting legal work, but still a small enough community where experienced members of the bar take an active role in developing young lawyers’ careers.



Alexandra
Sandvik

Sandvik, who interned for recently retired Justice Christine Durham during law school, said she would love to have an impact on making the legal field in Utah a more diverse and inclusive environment. “Because lawyers have such an impact on the development of laws and policies that affect their communities,” she said, “I think it is very important to make sure that each voice in our community is represented by members of the bar.” In addition to diversity and inclusion, Sandvik—who has two dogs at home—cares deeply about animal rights. “I think that we still have a long way to go on learning how to be kinder, more responsible creatures,” she said, “and we can start by giving the animals around us a little more respect.”

Practitioner Profile

Ellen Maycock

By Kate Conyers

The Salt Lake County Bar Association congratulates Ellen Maycock on her recent honor as the recipient of the prestigious Dorothy Merrill Brothers Award for her accomplishments in the advancement of women in the legal profession. For more information on Ellen's recognition on that award, click [here](#).

I had the pleasure of meeting up with Ellen at her new office at Michael Best & Friedrich LLP, located at the U.S. Bank Building on 170 South Main Street in Salt Lake City. We met in the conference room as her office was still not completely set up following her recent move from Kruse Landa Maycock & Ricks a few blocks away. When I arrived at her office I was nervous because Ellen is a local legal legend and I've looked up to her for so long. Of course, she made me immediately feel comfortable, as the best family attorneys tend to do, and we had a pleasant conversation where I had the opportunity to get to know her better.

Although Ellen's family has always had roots in Utah, she didn't grow up here. Her dad was an engineer and her family would move for his career every couple of years. She attended high school in Las Vegas, Nevada, and then moved to Utah to attend college at the University of Utah, where she earned her B.A., cum laude, in English. She didn't immediately go to law school; she took a break and worked as a secretary at the University's Anatomy Department for a few years.

Ellen graduated Order of the Coif from the University of Utah College of Law in 1975, one of about 13-14 women in her class of 130. During law school, she was Editor in Chief of the Utah Law Review – likely the first woman to hold that position. She also took first place in the Freshman Moot Court Competition. Ellen also researched for professors and helped teach pre-law classes.

After law school, Ellen practiced at Snow Christensen & Martineau as a commercial litigator. With others, she then started her own law firm, Kruse Landa Zimmerman & Maycock, housed in the Kearns Building. For the first few years at the firm, Ellen continued practicing commercial litigation until she had a child and needed a little more flexibility and less travel. Since that time, Ellen has

practiced family law and is now one of Utah's preeminent family law lawyers. She worked at Kruse Landa Maycock & Ricks for 39 years until she recently transitioned to Michael Best & Friedrich LLP in September, 2017. In addition to practicing family law, Ellen has also served as a mediator and an arbitrator.

One reason Ellen is such a great family lawyer is because she likes to listen. She enjoys hearing a new and interesting story. Just when she thinks she's heard everything, there's something else. She knows she can't fix everything. As she tells her clients, she is a lawyer, not a magician! She would like to fix other's problems, but that isn't often possible.

Her tips for newer family lawyers are to remember that you can't fix everything and don't take on the emotions of your clients. Do your best and be a professional. The best family lawyers she knows are always consistent, cordial, and even-keeled. Also, work on your relationships with other lawyers; good relationships make the practice a lot more fun and enjoyable.

Ellen is involved in many legal extracurriculars, including serving as the Chair of the Supreme Court Advisory Committee on Rules of Evidence for 13 years and serving two different terms on the Ethics and Discipline Screening Panel. She's also served on the Board of Directors of the Legal Aid Society and as President of the Utah Bar Foundation. Ellen volunteers outside the legal profession,

notably serving on the University of Utah Alumni Association Board. As a result of her many efforts and accomplishments, Ellen has been the recipient of many notable awards, including the Family Law Lawyer of the Year Award, Utah State Bar's Professionalism Award, Utah State Courts' Service to the Courts Award, and Distinguished Lawyer for Service to the Bar Award.

Not surprisingly based on her recent recognition, Ellen also helped form and support the Women Lawyers of Utah (WLU), a group that aimed to help support and provide networking opportunities for female lawyers. Ellen believes that even today, WLU offers support to women; not because it is necessarily needed, but because it is appreciated and helpful.



Ellen Maycock

Continued

E l l e n M a y c o c k

In all of her positions, Ellen continues to be a pioneer and helps empower women, but without that being her goal. After some time in the practice, she recognized that male lawyers who previously hadn't worked with female lawyers became more comfortable with female lawyers in the practice of law and within the profession when they worked with competent female lawyers in the courtroom, in the boardroom, and on committees. Ellen has plenty of stories about male lawyers who would say dumb things even though they had the best of intentions; she says it took time for male lawyers to treat female lawyers as equals. Ellen was awarded the Women Lawyer of the Year in 1998 by the Women Lawyers of Utah because of her contributions to the advancement of women in the legal profession.

Ellen also appreciates other positive changes in the legal profession, including more diversity among lawyers and in the judiciary. She also thinks the new licensed paralegal practitioner program is a really good idea and a direction the Bar needs to go to serve Utah's residents, although we may not quite be ready for it. One development Ellen doesn't appreciate is that the legal profession is becoming too much of a business, putting too much pressure on young lawyers.

Ellen has one daughter, Meg Osswald, who practices in the National Resources Division of the Attorney's General office.

We again congratulate Ellen on her very well-deserved honor!

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Oh, yes, we're social...
The Salt Lake County Bar is on Facebook.
Check us out to connect with other members,
see pictures of our events, start a discussion
and other fun stuff.



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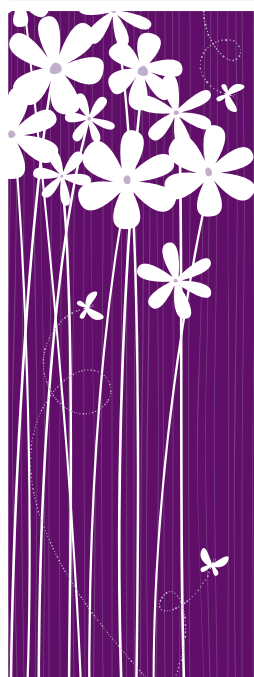
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Check out back issues of the Bar and Bench, a calendar of
upcoming events, and other helpful information on the
Salt Lake County Bar's website.



*Save The Date
The Salt Lake County
Bar Association
Annual Spring Dinner
will be held on
Friday June 8, 2018.*