



Federal *Jurisdiction*

Federal Bar Association Utah Chapter Newsletter

Winter 2017



President's Message

Happy New Year! In a world full of uncertainty, one thing you can count on is that the Federal Bar Association in Utah has tons of terrific events planned for 2017. But at the beginning of this New Year, I want to make you aware of two very important emphases of the FBA.

First, the FBA has a long tradition of community service and civics engagement. We are very excited that under the leadership of the new national president, the Honorable Michael Newman, the FBA – nationally and here in Utah – is increasing its efforts in this regard. Our chapter is participating in the new SOLACE (Support Of Lawyers All Concerned Encouraged) program which provides support and assistance to members of the legal community nationwide. We will also be looking for opportunities to support civics education, including our second annual classroom to courtroom event in April and hopefully several other new opportunities throughout the year.

Second, at the national level, the FBA devotes significant resources to advocating on behalf of the federal judiciary. Each year the FBA urges Congress to provide adequate funding for the federal courts, advocates for the President and Congress to promptly nominate and confirm nominees to the federal appellate and district courts, supports the establishment of additional judgeships, and lobbies for the transfer of adjudication of immigration claims from the Department of Justice to a specialized Article I court. The full list of issues on the 2017 agenda is available online at <http://www.fedbar.org/Advocacy/Issues-Agendas.aspx>.

Our chapter is successful here in Utah primarily because of the support of our legal community and our federal judges. We look forward to continuing our efforts in support of both in 2017.

If you have any questions or comments, please let me know at amettler@swlaw.com. Thank you for your support!

President's Message	1
Clerk's Corner	2
12th Annual Tri-State Seminar	3-4
Crowdfunding Under The JOBS Act	5-6
Help RISE CLE	6
Federal Bar Association Annual Awards Dinner	7-8
Annual Ronald N. Boyce Seminar	9
Events Calendar	10
Utah Chapter Board	11

Clerk's Corner



by Mark Jones

Judge Dale Kimball was appointed to the federal bench in November 1997 by President Bill Clinton. He has also served on the Federal Bar Association Board for almost as long. Judge Kimball is often called the “quintessential” judge. He loves being a federal judge and he very much

enjoyed being an attorney as well.

At a recent FBA Board meeting, Judge Kimball gave verbal notice to FBA's 2017 new Board President, Amber Mettler, that she didn't need to keep him on the Board if she wanted a new judge to serve in his stead. Without any hesitation, she quickly retorted that she very much wants him to stay. Very smart woman, Amber Mettler!

Anybody who knows Judge Kimball knows he is serious about wanting to serve and make a positive difference. However, he only wants to participate if he is needed and he can add value to the endeavor or organization. It is not hyperbole that Judge Kimball loves the FBA and he loves serving on its Board, even after having done it for 19 years. He has been the champion of the Ronald N. Boyce Litigation Seminar even before it was given that name in remembrance of the inimitable Magistrate Judge Ron Boyce.

Judge Kimball has always been the “muscle” in encouraging the federal judges to speak or participate on different panels for the last 19 years for almost any FBA function. He relishes that role, and who can blame him with his track record!

With a wry smile, Kimball has conceded he has enjoyed “strong arming” one or two reluctant judges to get them to participate in the Boyce Seminar. Actually, not many federal judges can say “no” to Judge Kimball. His quick wit and disarming laugh are quite endearing. He has earned the respect of all his colleagues on the bench.

As a senior judge, Judge Kimball maintains a 60% caseload, a significantly higher percentage than is required to maintain a full chambers staff. I asked him why he chooses to receive more than the minimum caseload. His response was quick and direct: “Rachel really doesn't want me getting in her way at home with me spending too much time there. I still have enough cases to keep me busy and interested at the Court, plus I still have time to teach at the BYU Law School.”

That being said, Judge Kimball and his wife Rachel have enjoyed 54 wonderful years of marriage together. She has won more than her share of “arguments” and holds her own with her loquacious husband. Rachel has been very successful in her own professional pursuits as an E.R. Trauma Nurse. Together they have had six children, 24 grandchildren and six great grandchildren. Even with all their professional accomplishments, their greatest pride is their wonderful family.

When President Mettler passes her gavel to the next FBA Board President next November, chances are pretty good that Judge Kimball will still be sitting at the table.



Judge Dale Kimball



by Kristen R. Angelos

12th Annual Tri-State Seminar

On October 13-15, 2016, the 12th Annual Tri-State Seminar was held in beautiful Sun Valley, Idaho. This event was held at the Sun Valley Inn Convention Center with featured presenters, including federal judges and practitioners from Idaho, Wyoming, and Utah. A welcome reception was held on Thursday night allowing practitioners from all three states to mingle and network.

On Friday morning, the seminar began with a panel presentation on “Proportionality and the New Discovery Protocols,” featuring our own Magistrate Judge Evelyn Furse. The panelists split the attendees into small sections, provided a scenario, and required them to outline arguments for and against, using a proportionality analysis, whether a plaintiff should be entitled to discovery involving thousands of emails, most of which might not be relevant and would involve hundreds of hours to try and locate.

Next, Judge Dee Benson and his panel gave a presentation on “Intellectual Property: Football, Music, and Texas – Recent Developments in IP Litigation.” During this discussion, Judge Benson indicated that lawyers should be using technology in a way that keeps their audience focused on the things they want them to focus on. Retired Chief Judge Randall R. Rader, U.S. Court of Appeals for the Federal Circuit, indicated that graphical presentations are helpful as long as they are simple; complicated graphics only confuse a jury more. To illustrate this point, Dana Herberholz, Parsons, Behle & Latimer, showed attendees sport-reference graphics he used to explain patent law during a trial. The jury was comprised of sports-oriented individuals, so he tried to tailor the graphics to them.

U.S. Magistrate Judge Michael J. Newman, National President of the Federal Bar Association, was the Luncheon Keynote Speaker. Judge Newman spoke about some of the challenges facing the judiciary, his future visions for the FBA, and also talked about the FBA’s national civics initiative and outreach efforts to provide assistance to its members and the legal community through the SOLACE Program.

After lunch, Utah Bankruptcy Judge Joel Marker and other panel members discussed topics including the impact of recent United States Supreme Court decisions on the ability of a bankruptcy court to enter final judgments, the discharge of student loan debt, consumer and business related matters, and bankruptcy appellate issues. Chief Bankruptcy Judge Terry L. Meyers (Idaho) emphasized during the panel discussion that bankruptcy court should not scare practitioners. He reminded attendees “You are still in a court-- it is just different language.” He drew

laughter from the audience when he indicated practitioners should never inform the judge during a proceeding “I don’t know very much about bankruptcy law.” He said that would become very apparent during the case. Members of the panel also emphasized that if a practitioner is new to bankruptcy court, they should always look at the local rules and also determine if the judge has standing general orders.

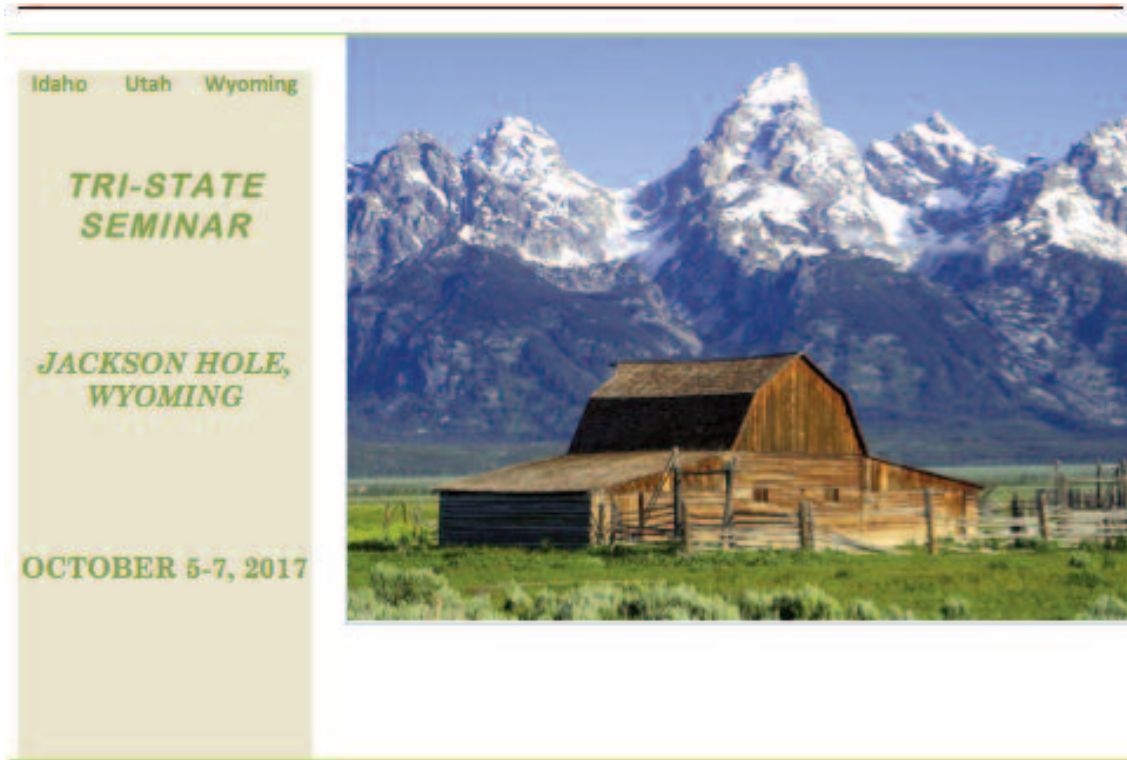
After the bankruptcy panel, United States Attorney John Huber, along with Professor John Freemuth, Boise State University, Alan Schroeder, Schroeder and Lezamiz Law Offices, LLP, and moderator United States Magistrate Judge Candy Wagahoff Dale (Idaho), examined the Dwight and Stephen Hammond case that led to the Malheur Refuge occupation and the federal land management policies at the center of these conflicts. This panel discussion occurred while a jury trial was taking place against Ammon and Ryan Bundy and others on federal felony charges involving the occupation. Two weeks later, a jury found seven defendants, including Ammon and Ryan Bundy, not guilty of charges involving the 41-day occupation.

The last presentation of the day by Judge Dale Kimball, Judge David Sam, and Matthew L. Lalli, Snell and Wilmer, titled “Effective & Ethical Trial Behavior,” involved a discussion highlighting lawyer behavior during trial that is unethical, questionable, and “maddening.” Judge Kimball suggested that when practitioners object during trial and receive a ruling, they should not continue to argue -- instead, just move on. Judge Kimball indicated that if you need to make a record most judges will let you do it during the break. He also noted that most evidentiary issues should be anticipated and ruled on before trial begins. Judge Sam then discussed a case where a Utah attorney wanted to look at some boxes of discovery and a California attorney, upset at the request, put the Utah attorney in a “headlock.” The Utah attorney was later taken to the hospital. Judge Sam indicated he had to make a ruling in the matter, ultimately ruling that “dispute resolution by combat is unsatisfactory.” This drew laughter from the audience.

On Saturday morning, Magistrate Judge Paul Warner and Rafael Gonzalez, First Assistant, United States Attorney’s Office (Idaho), discussed “Smart on Crime” initiatives. This was followed by a panel discussion made up of thirteen judges representing Utah, Idaho, and Wyoming, who allowed practitioners to address practical issues pertinent to their everyday practice. Unfortunately, I was not able to attend these morning sessions.

Congratulations to the Idaho Chapter for an exceptional seminar at a beautiful venue.

The 13th Annual Tri-State Seminar will be held on October 5-7, 2017, in Jackson Hole Wyoming, at Spring Creek Ranch. This will be presented by the Wyoming Chapter of the Federal Bar Association. We look forward to seeing you there.



***Southern Utah Law
Symposium***

**May 11-13, 2017
St. George, Utah**

Crowdfunding Under The JOBS Act



by Cheryl M. Mori

On October 26, 2016, the Utah FBA Chapter, along with the Salt Lake Regional Office (SLRO) of the Securities and Exchange Commission and the Utah State Bar Securities Section, co-hosted an

afternoon CLE discussing the new crowdfunding rules and the state of the crowdfunding industry.

If you have donated to a GoFundMe campaign, you have participated in crowdfunding. Crowdfunding is a relatively new and evolving method of using the internet to raise capital to support a wide range of ideas and ventures. An entity or individual raising funds through crowdfunding typically seeks small individual contributions from a large number of people. Since 2013, the global crowdfunding industry has grown more than 560% - from \$6.1 billion to \$34.4 billion. The industry is projected to grow to over \$300 billion by 2025.

The Jumpstart Our Business Startups (JOBS) Act, signed into law in April 2012, permits companies to raise investment funds through crowdfunding. Final rules known as “Reg A+” were adopted in October 2015, and the new rules have been in effect since May 16, 2016. These rules reduce the legal and reporting requirements for making such offerings. Under Reg A+, crowdfunding can be an effective tool for start-ups and other companies to raise investor funds to finance new and existing businesses and ideas. These rules can be highly beneficial for Utah businesses, considering our state’s vibrant economy and entrepreneurial spirit. However, there are pitfalls practitioners should be aware of before advising clients in this area.

SLRO Regional Director Richard Best introduced two panels that included distinguished guests from the regulatory area and active practitioners who are experts in the area of crowdfunding. Panelists included:

- Timothy White, Jr. (SEC Division of Trading and Markets)
- Erin Galipeau (SEC Office of Compliance Inspections and Examinations)
- Amy Reischauer (SEC Division of Corporation Finance)
- Keith Woodwell (Utah Division of Securities)
- Lisa Robinson (FINRA Membership Application Program)
- Douglas S. Ellenoff (Ellenoff Grossman & Schole LLP)
- Sara Hanks (CrowdCheck)

The panels presented information on the crowdfunding considerations for issuers and the practical aspects of utilizing crowdfunding portals.

Lawyers and other professionals should advise clients about the new possibilities raised by crowdfunding, but need to remember that this is a securities transaction. Therefore, the language of disclosures is important and must meet all the requirements. The rules are in place to protect investors and provide disclosures.

In order to raise funds under the new rules, the issuer has to use either a registered broker-dealer or a registered “funding portal” as an intermediary. Funding portals are essentially broker-dealers that deal only with crowdfunding, and have less disclosure and regulatory requirements than traditional broker-dealers. Currently, there are 18 registered funding portals. FINRA processes new member applications, and the websites for registered funding portals can be found at FINRA.org.

According to the SEC, 94 companies had filed to raise a total of \$1.7 billion under the new rules as of early June 2016. Of those, 45 offerings seeking to raise a total of \$785 million have qualified to raise funds, and a few have actually completed their offerings.

The SEC staff is happy to assist with questions regarding Regulation Crowdfunding. For issuer questions, you may contact the Division of Corporation Finance’s Office of Small Business Policy using an online request form or by telephone at (202) 551-3460. For intermediary questions, you may contact the Division of Trading and Markets, Office of Chief Counsel, at (202) 551-5777, or search for your answer in the Small Business Compliance Guide for Intermediaries.



Crowdfunding CLE

Crowdfunding Under The JOBS Act



Crowdfunding CLE



Crowdfunding CLE



Crowdfunding CLE



Crowdfunding CLE



Help RISE CLE

The FBA and Utah District Court co-sponsored the 5th annual Help RISE Pro Bono training CLE, held at the Federal District Courthouse on November 15, 2016. This event provided attendees with all of the training necessary to volunteer for the FBA's award-winning pro bono

program designed to assist participants in the Utah District Court's drug and behavioral health court reentry program, known as RISE, or Reentry Independence through Sustainable Efforts.

The RISE program assists federal defendants on supervised release or probation who struggle with drug addiction and/or mental health issues reintegrate into the community. Because of the tenuous circumstances of many of the RISE participants, even the smallest of setbacks can derail their reentry process. The Help RISE program helps RISE participants in their reentry efforts by establishing a network of volunteer attorneys who provide participants with pro bono legal assistance in the three civil areas of law most likely to affect them—family law, bankruptcy, and landlord/tenant law.

This year's agenda included a "Bankruptcy Basics" presentation by Jory L. Trease, a "Basics of Utah Family Law" presentation by Judge Catherine J. Hoskins, and a presentation titled "What Every Lawyer in Utah Must Know About Landlord Tenant Law" by Martin S. Blaustein. Additionally, Alex Ramos gave a presentation on "Tips for Working with RISE Drug Court Clientele." Attendees of the training also had the opportunity to sit in on a RISE case staff meeting, which included representatives from the Utah District Court, U.S. Attorney's Office, Office of the Federal Public Defender, and U.S. Probation. Attendees then observed the drug court docket, presided over by Chief Magistrate Judge Brooke C. Wells.

Upon completion of this training, the volunteer attorneys are eligible for a pro bono case placement. All volunteer attorneys for the Help RISE program qualify for coverage by the Utah State Bar's malpractice insurance policy. Volunteer attorneys are also assigned a mentor attorney who practices in the area of law relevant to their assigned case and who is available to help answer procedural or substantive questions.

The Help RISE pro bono referral program is currently in need of mentor attorneys in the areas of family law, bankruptcy, and landlord/tenant law. Please contact Kelly Latimer (kellyjlatimer@gmail.com) if you are interested in participating in this great program.



by Stewart Young

Federal Bar Association Annual Awards Dinner

On November 9, 2016, the Utah Chapter of the Federal Bar Association honored four giants of the legal profession in Salt Lake City. United States Magistrate Judge Paul M. Warner, Patricia W. Christensen (Parr Brown Gee & Loveless), and Kent R. Hart, Assistant Federal Defender (posthumously), were honored with the Distinguished Service Award. Martin S. Blaustein, Utah Legal Services, was awarded the 2016 Pro Bono Award.

The night started out with the introduction of the 2017 Utah Chapter officers by President-Elect Amber Mettler. Scott Young then introduced Mr. Blaustein who regaled the dinner attendees with a discussion of one of the first post-traumatic stress disorder cases in the country. Mr. Blaustein indicated that pro bono work is a great learning opportunity and he concluded by thanking the FBA for the honor and award.

The night then turned to the Distinguished Service Awards. Mark Vincent introduced Magistrate Judge Warner, recanting his long and storied career before taking the bench. Additionally, Mr. Vincent noted Judge Warner's instrumental work relating to military veterans with the creation of the Veterans' Court. Judge Warner, when accepting the award, admitted to the crowd his love of Hallmark Specials and thanked the FBA for the honor. Judge Warner expressed his gratitude to his court staff and law clerks, noting that the advice he'd received, to "hire really smart clerks," had paid off greatly. Finally, the judge noted the upcoming Veteran's Day holiday and expressed his enthusiasm for Veteran's Court and the changes that this Court had made in so many lives. He closed his remarks by thanking his lovely wife Linda.

Next, Jenifer L. Tomchak presented the Distinguished Service Award to Ms. Christensen. Ms. Tomchak listed Ms. Christensen's myriad accomplishments, including her superior writing skills and her mentoring of many, many lawyers throughout the years. Ms. Tomchak also discussed the gender-discriminating obstacles that Ms. Christensen overcame in order to practice law in Salt Lake City. Ms. Christensen then spoke, noting that when she started practicing law in 1977, Utah District Court Judge Willis W. Ritter would not allow women to appear in his court. She remarked that when she started practicing, only eight women had previously served on the federal bench in the United States. Ms. Christensen then thanked her legal mentors, including Judge Dale Kimball, Judge Bruce Jenkins, and Justice Christine Durham. Ms. Christensen then thanked her law firm and colleagues she has worked

with over the years. Finally, she thanked her loving and supportive family. She noted, "We drink from wells we did not dig and we warm ourselves by fires we did not build."

Finally, Kathryn N. Nester introduced and presented the Distinguished Service Award to Kent Hart and his family. Ms. Nestor discussed Mr. Hart's legacy, including his work against the death penalty and the mentoring of so many young lawyers. She noted that Mr. Hart worked hours and hours on the death penalty in Utah, and got incredibly close to convincing the legislature to end the use of the practice in Utah. She discussed how Mr. Hart worked tirelessly on the Veterans' Court to help veterans and also worked on ensuring that legal training was always available for attorneys in order to better the legal profession and criminal defense in Utah. Losing Mr. Hart's spirit way too soon, Ms. Nestor expressed gratitude to the FBA for honoring Mr. Hart with this recognition. Mr. Hart's widow, Giovanna Hart, graciously accepted the award in Mr. Hart's honor.

Federal Bar Association Annual Awards Dinner



FBA President, Amber Mettler & Amy Sorenson



Aida Neimarlija, Anne Morgan, Peggy Hunt, Kristen Olsen, Sarah Starkey



Scott Young



Kathryn Nester & Giovanna Hart



Judge Paul Warner & Mark Vincent



Scott Young & Martin S. Blaustein

Annual Ronald N. Boyce Seminar

On October 27, 2016, the Annual Ronald N. Boyce Seminar was held at Little America Hotel. Speakers included District Court Judges Jill N. Parrish, Clark Waddoups, Dale A. Kimball, David Nuffer, and Robert J. Shelby. Additionally, Magistrate Judges Dustin Pead and Evelyn Furse presented, along with the Keynote Speaker, Chief Judge Timothy M. Tymkovich of the United States Court of Appeals for the Tenth Circuit, and Bankruptcy Judges Kevin Anderson and William Thurman. Finally, Deputy Clerk of the Court, Anne Morgan, and law clerks Tom Copeland, Susie Hindley, Alex Nelson, and Anne Rice presented.



Boyce Seminar



Boyce Seminar



Boyce Seminar



Boyce Seminar



FBA CRIMINAL LAW SEMINAR

COMING MAY 2017



Events Calendar

DATE	LOCATION	EVENT
March 9-10, 2017	St. George, Utah	Spring Bar Convention
March 18, 2017	Washington, D.C.	FBA National Mid-Year Convention
April 2017	Federal Courthouse	Securities Section CLE
April 20-21, 2017	Washington, D.C.	FBA National Leadership Counsel; Capitol Hill Day
May 11-13, 2017	St. George, Utah	Southern Law Symposium
May 2017	Hotel Monaco, SLC, Utah	Criminal Law Seminar
June 2017	Federal Courthouse	Introduction to Federal Courts
June 2017	Maxwell's Restaurant, SLC, Utah	Young Lawyers/Law Students Event
July 26-29, 2017	Sun Valley, Idaho	Utah Bar Convention
September 14-16, 2017	Westin Peachtree Plaza, Atlanta, Georgia	FBA National Convention
October 5-7, 2017	Spring Creek Ranch, Jackson Hole, Wyoming	Tri-State Seminar
October 2017	SLC, Utah	Boyce Seminar
November 2017	SLC, Utah	Annual Awards Dinner

Utah Chapter of the FBA Board



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