



Federal Jurisdiction

Federal Bar Association Utah Chapter Newsletter

Spring 2013



by Juliette White

President's Message

I stumbled upon an astonishing statistic recently: two-tenths of one percent. That is the total amount of our nation's budget that is devoted to the Judiciary. For each dollar in taxes that you pay, only two-tenths of one penny is used to run an entire branch of our federal government. As Chief Justice Roberts

recently observed, "Those fractions of a penny are what Americans pay for a Judiciary that is second to none."

Considering the tiny fraction of the overall budget committed to the Judiciary, it is with increasing frustration that I witness the harms inflicted on the judicial branch as a result of the sequester. Our Judiciary is facing grave threats to its ability to continue performing its Constitutionally-mandated functions. Cases continue to be filed, in ever increasing numbers, and the courts must respond—even in a budget crisis. The Constitution still affords criminal defendants the right to a speedy trial and to a court-appointed attorney, and both criminal and civil litigants the right to a jury trial regardless of whether the legislative and executive branches reach agreement on our nation's budget. If the courts cannot afford to pay federal public defenders or jury fees, or even keep the courtroom doors open, these Constitutional protections are seriously compromised.

As members of the bar, we know well that the Judiciary's most important resource is its people: the judges, law clerks, court security officers, probation officers, and administrative staff are all essential to ensuring that justice continues to be served. Each time I appear in a new courtroom, I am reminded yet again that the caliber of people who serve the judicial branch is second to none. Their commitment to the rule of law and respect for everyone involved is a constant reminder to me that what they do each day is invaluable to the citizens of this country.

Personnel costs comprise over half of the federal Judiciary's budget, and a clear majority of those personnel costs go to support staff. Here in Utah, the federal court is coping with the sequester by, in part, leaving positions unfilled after individuals retire or leave. It is also employing civil-only calendars on alternating Fridays to accommodate furloughs and staff reductions. These are only temporary solutions, and the Court can only continue for so long before the lack of personnel becomes untenable.

If you think the federal judicial system has enough fat in its administration and programs that it can afford to slim down a bit, think again. The Judiciary has already been engaged in aggressive cost-containment measures across the country for over eight years. These reductions and cutbacks are occurring despite a tremendous caseload. In 2010, over 361,000 civil and criminal cases were filed in U.S. District Courts nationwide. Last year, there were approximately 447 cases pending before each of our Utah District Court judges. The long term consequences of further cuts are difficult to comprehend.

(Continued on next page)

President's Message	1
Events Calendar	2
New Members	2
Utah Chapter: Board Members	3
Clerk's Corner	4
Judicial Profile	5
Tri-State Seminar	6
Trivia Corner	6
Notable Decisions	7
2012 Pro Bono Award	8
Legal Humor	9

(Continued from previous page)

All of this draws into sharp relief the fact that the judicial branch is beholden to the legislative and executive branches for its funding. I am grateful for the advocacy efforts of the Federal Bar Association, which does all it can to ensure that Congress understands the importance of the Judiciary. I encourage all of you to keep this in mind as we struggle with the fiscal challenges that our country is facing.

Take a moment and write to your representative or senator. Help them understand that there are some parts of our government that cannot withstand further budget reductions without compromising the foundations of our democracy.



Events Calendar

U.S. District Court New Lawyers Orientation

June 24, 2013

10th Circuit Bench & Bar Conference, Colorado Springs, CO

August 28-31, 2013

Tri-State Seminar (Utah, Idaho & Wyoming), Park City/Deer Valley

Sept 19-21, 2013

Ronald Boyce Federal Courts Seminar

October 25, 2013

Annual Awards Dinner

November 13, 2013

Welcome to Our New and Renewed FBA Members

The Honorable Robert T. Braithwaite

The Honorable R. Kimball Mosier

Tyson C. Horrocks

Bryan L. Quick

James S. Jardine

Michalyn Steele

Jennifer R. Korb

Trevor C. Lang



To Join the FBA, see www.fedbar.org/join.html

Utah Chapter of the FBA Board



Juliette P. White, *Parson Behle & Latimer*
President

Kelly J. Latimer, U.S. Department of the Interior
Chair, Pro Bono Committee

Jenifer L. Tomchak, *Parr Brown Gee & Loveless*
Vice-President

Amber M. Mettler, *Snell & Wilmer*
Chair, Young Lawyers Committee

Peggy Hunt, *Dorsey & Whitney LLP*
Treasurer

David L. Mortensen, *Stoel Rives, LLP*
Co-Chair, Chapter Newsletter Committee

The Honorable Dale A. Kimball,
U.S. District Court
Judicial Liaison

Erik A. Olson, *Durham Jones and Pinegar*
Chair, Boyce Seminar

Mona L. Burton, *Holland & Hart*

Amy F. Sorenson, *Snell & Wilmer*

Nathan Crane, *Stirba & Associates*

Michael D. Stanger,
Callister Nebeker & McCullough

Parker Douglas, *Utah Federal Defender's Office*
Chair, Criminal Law Seminar Committee

Erik Strindberg, *Strindberg & Scholnick, LLC*
Chair, Public Relations Committee

Jonathan O. Hafen, *Parr Brown Gee & Loveless*
Chair, Southern Utah Seminar Committee

Mark K. Vincent, *U.S. Attorney's Office*
Chair, Awards Dinner Committees

Benson L. Hathaway, *Kirton & McConkie*

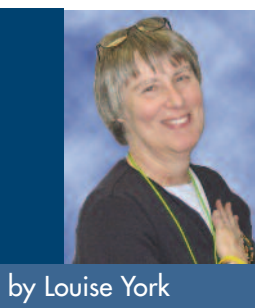
Robert G. Wing, *Prince Yeates & Geldzahler*

Justin D. Heideman,
Heideman McKay Heugly & Olsen

R. Scott Young, *Snow Christensen & Martineau*
Co-Chair, CLE/Sidebar Committee

David J. Holdsworth,
Law Office of David J. Holdsworth
Co-Chair, Chapter Newsletter Committee

Louise York, *Chief Deputy Clerk, U.S. District Court*



by Louise York

Clerk's Corner

Effective May 1, 2013, the Judicial Conference of the United States has approved a general administrative fee for filing a civil action, suit or proceeding in a district court. Filing fees for civil cases will be \$400.00.

Parties proceeding with a waiver of filing fee will also have this administrative fee waived.

Caseload Filing Trends

The court had a slight increase in civil filings last year but criminal filings continued to slip. There were 1418 civil matters filed but only 888 criminal cases. In comparison, in 2010, civil filings were at the 1455 level while there were 1313 criminal filings. The sharp drop in criminal filings has an effect on the funding level for the court which is based upon case workload statistics applied nationally. Because the civil filings remain strong, the financial allocation for the District Court Clerk's Office is more stable than that for the Probation/Pretial Office and the Federal Public Defender Office which are dramatically lowered when the case filings decrease. Coupled with other budget constraints from sequestration and the continuing resolution which funds operations, the court faces serious challenges in the next few months to maintain operations. Hopefully, some of these issues will have been resolved by the time you are reading this.

Judge Waddoups narrowly won the crown for the most jury trials held in 2012. The addition of Judges Nuffer and Shelby during 2012 had a wonderful effect on the pending caseload per judge as the three active district judges - Judges Stewart, Benson and Waddoups were able to transfer cases to the new judges.

There was a jump in the number of cases filed with the United States as a defendant with 78 more cases filed in 2012 than had been filed in 2011. A portion of those cases are the series of matters dealing with ownership of roads throughout the state. Real Property cases declined as fewer foreclosure challenges have been filed, prisoners filings increased slightly as did appeals from the decisions of the Social Security Administration.

Criminal felony charges involving drugs dropped the most in 2012 (537 counts in 2011 compared with 301 counts in 2012). This decrease is reflected in the lower number of criminal cases filed. Grand Jury Indictments (counting both original indictments and superseding indictments) decreased for 335 in 2011 to only 273 in 2012.

Close to one in five of every case assigned to magistrate judges end up being permanently assigned to that judge, upon the parties' consent. This rate has been pretty consistent in the five years that the program has been in effect.

It's pretty early in the year to project the annual caseload, but filings so far in 2013 appear to be on track with the 2012 numbers.

April, 2014

The countdown to the court move has begun. The completion date for the new building continues to be March of 2014. The court move will begin in early April 2014. Chambers, Clerk's Office and Probation will cease operations in the Moss Building and begin to operate in the new building. While there will be a short period of time in which court hearings will not be held and the court offices unavailable by phone, the goal of the court is to make this disruption as short as possible by making maximum use of weekends. CM/ECF functioning should continue even when we are moving the court computers. (The entire program is replicated constantly by another server on the East Coast so no data or functionality will be missed during the move.) Much more information will be available as the move draws closer.



by Michael D.
Stanger

Judicial Profile

Magistrate Judge Evelyn J. Furse

Magistrate Judge Evelyn J. Furse addressed FBA members at a January 9, 2013 Sidebar Luncheon. Having filled the vacancy created by Judge Nuffer's appointment to the District Court Bench, Judge Furse shared her thoughts on various issues that come before her.

First addressing scheduling issues, Judge Furse spoke of the public interest in quick resolution of cases, noting that this interest needs to be considered along with the interests of the parties to a particular litigation. To further this interest, the District Court seeks to move cases to trial within three years of filing, and to resolve motions within six months of filing. Consequently, parties seeking extension of a deadline cannot rely on a simple recital of "good cause" for the requested extension. They must explain what the "good cause" is in some detail.

Next, Judge Furse remarked on the lack of a need for a separate motion to strike when objecting to evidence offered in the context of a summary judgment motion. Instead, practitioners can raise their evidentiary objections in the context of briefing the motion itself.

Judge Furse was asked about whether the federal court will be adopting expedited discovery dispute resolution procedures similar to those recently instituted in state court. She indicated she has developed her own system whereby parties can write a letter to the Court of 500 words or less stating their position on a discovery matter. The Court will attempt to set a hearing within seven days, and the other party will also be allowed to set forth their position in a letter of 500 words or less in advance of the hearing. Parties wishing to opt in to this type of dispute resolution can indicate that in a scheduling order.

Judge Furse indicated that she believes her courtroom to be a good venue for younger attorneys to gain experience. She stated that she will be patient with young attorneys, and that she finds it helpful to have the person who drafted the pleadings present.

Judge Furse noted the importance of addressing inadvertent disclosure/clawback issues in a scheduling order.

Finally Judge Furse mentioned the District Court's current deliberations on jury size and whether it should be scaled back from the current practice of requiring 12 jury persons in a civil trial.

For more information on Judge Furse, including her contact information, practices and procedures, practitioners are directed to

http://www.utsd.uscourts.gov/judges/furse_prac.html



Judge Evelyn J. Furse



by David Holdsworth

Tri-State Seminar Park City, Utah September 19-21, 2013

UPDATE ON TRI- STATE ANNUAL CONVENTION

Some FBA members have inquired whether the Utah Chapter will be hosting the Annual Tri-State Seminar this year with the Annual Convention in Salt Lake City looming on the horizon.

The answer is: Yes, the Utah Chapter will again be hosting the Tri-State for several reasons, including (but, of course, not limited to) the fact that Salt Lake City will not be hosting the Annual Convention until 2015. (I know, you

thought it was 2014, and it was, but now it's going to be 2015).

Anyway, the Utah Chapter will host the 2013 Tri-State Seminar in the Deer Valley area on September 19-21, 2013. (The seminar will run the week after the National Convention in Puerto Rico). The Tri-State will be held at the Silver Baron Lodge in Deer Valley, moments away from downtown Park City. Last year, we had a tremendous turnout in Sun Valley. We hope this fall's event will be able to continue the tradition of great networking, stimulating CLE and fun for couples and families in a spectacular setting.

We look forward to seeing you in the mountains in September.



Trivia Corner



1. Most people with a passing interest in American history know that George Washington was inaugurated in New York City. Who was the only other president inaugurated outside of Washington, D.C.? And where was he inaugurated?
2. The United States has had two sets of father/son presidents, and one set of grandfather/grandson presidents. Which two U.S. Presidents shared a pair of great grandparents?
3. BONUS QUESTION: Which U.S. President married his deceased law partner's daughter?



by Scott Young

Notable Decisions

***United States v. Santistevan*, 701 F.3d 1289 (10th Cir. Dec. 17, 2012) (Kelly, J.) (Tymkovich, J., dissenting)**

The district court suppressed incriminating statements made by a defendant after the defendant handed an FBI agent a letter from his attorney stating that defendant did not wish to speak without an attorney. The defendant made no statements indicating that he endorsed the letter, and the agent asked whether defendant wished to talk to him despite the letter. The defendant agreed to talk, whereupon he made incriminating statements. On appeal, the Court held that the letter unequivocally invoked defendant's Fifth Amendment Rights (1) because the letter clearly indicated that defendant did not wish to speak with the agent and (2) because the defendant did not dissociate himself from the letter. Accordingly, the Court determined all questioning of defendant should have stopped when the agent received the letter and that the incriminating statements were properly suppressed. The dissent disagreed, arguing that suppression was not warranted because "the act of handing over the letter and remaining silent created competing inferences—the very definition of an ambiguous situation," and would not alert a reasonable police officer that defendant was invoking his Miranda rights.

***Peterson v. Martinez*, 2013 WL 646413, No. 1:10-CV-00059-WDM-MEH (10th Cir. Feb. 22, 2013) (Lucero, J.)**

Creating an apparent circuit split with ***Moore v. Madigan***, 702 F.3d 933 (7th Cir. 2012), the Tenth Circuit determined that carrying concealed firearms is not protected by the Second Amendment. A Washington resident brought suit after his application for a concealed handgun license in Colorado was denied because state law only permitted such licenses to be issued to residents. The individual's claims were rejected on Summary Judgment, and on appeal the Court concluded that "concealed carry bans have a lengthy history" and that "the Second amendment does not confer a right to carry concealed weapons." In reaching this conclusion, the Court relied on dicta in ***Robertson v. Baldwin***, 165 U.S. 275 (1897), which stated that "the right of the people to keep and bear arms is not infringed by laws prohibiting the carrying of concealed weapons." Ultimately, the Tenth Circuit reasoned that "[i]n light of our nation's extensive practice of restricting citizens' freedom to carry firearms in a concealed manner," the practice is not protected by the Second Amendment.

***Fireman's Fund Ins. Co. v. Thyssen Min. Const. of Canada, Ltd.*, 703 F.3d 488 (10th Cir. Dec. 19, 2012) (Matheson, J.)**

Plaintiffs brought suit against Defendants in both Canada and New Mexico for negligence relating to the collapse of a mine in Canada. In the Canadian court the defendants sought dismissal of the case based on the statute of limitations. The New Mexico district court then dismissed Plaintiffs' complaint on the ground of forum non conveniens because New Mexico was an inconvenient forum as no party was a resident and because Canada provided an adequate alternative forum. On appeal, the Court recognized the discretion district courts are provided in deciding such issues, but reversed on the ground that the Canadian court might not be an adequate alternative forum. The Court recognized that New Mexico was an inconvenient forum and that Canadian law applied to the action, but focused on the defendants' pending claim that the Canadian action was barred by the statute of limitations. It reasoned that an alternative forum cannot be adequate if "the alternative forum does not permit litigation of the subject." (Citing ***Piper Aircraft Co v. Reyno***, 454 U.S. 235 (1981)). Accordingly, the Court determined that dismissal of the New Mexico action was inappropriate until it was ultimately decided whether the Plaintiffs claims were barred by the statute of limitations in Canada. If they were, Canada would not be an adequate forum under the forum non conveniens analysis.



by Kelly Latimer

2012 Pro Bono Award

Prince, Yeates & Geldzahler

At its annual awards dinner, the Utah Chapter of the Federal Bar Association presented its 2012 Pro Bono Award to the law firm of Prince, Yeates & Geldzahler and its attorneys Robert G. Wing and Jared N. Parrish for their pro bono representation of the plaintiff in *Hamson v. Cardon*.

The Pro Bono Award was developed by the Utah Chapter of the FBA to recognize those who provide exceptional pro bono service on behalf of the Utah District Court's Pro Bono Program. Firms participating in this program commit to accepting a limited number of pro bono case assignments from the district court over a three-year period. Prince, Yeates & Geldzahler is a charter member of this program, and has recently renewed their commitment to the program for another three-year period.

In 2010, Prince, Yeates & Geldzahler was asked by the Utah District Court to take on the pro bono representation of the plaintiff in *Hamson v. Cardon*, a civil rights action in which the plaintiff alleged that the defendant police officer used excessive force when the plaintiff was shot during a felony traffic stop. Robert G. Wing, a partner with the firm who practices in commercial litigation with an emphasis in federal receiverships, and Jared N. Parrish, a senior associate with the firm who practices in commercial litigation, with an emphasis in matters involving securities, insolvency and fraud, graciously agreed to accept this assignment on behalf of the firm.

Robert and Jared expended a substantial amount of time and resources in representing the plaintiff in this case. The case required a significant amount of discovery, including conducting several depositions, one of which was conducted at the Gunnison prison. The case also involved extensive motion practice, including the daunting task of having to drive down to the J. Reuben Clark Law School and argue a motion in limine in front of Judge Benson's evidence class. Robert and Jared also spent a considerable amount of time and effort preparing for and conducting a two-day jury trial before Judge Benson.

Although the plaintiff did not ultimately succeed at trial, Robert and Jared are to be commended for their excellent representation of the plaintiff throughout this case and for the exceptional pro bono service they provided. The Utah Chapter applauds Robert, Jared, and Prince, Yeates & Geldzahler for its exemplary pro bono service.

Pro Bono Corner

Prince, Yeates & Geldzahler is just one of several firms that have provided pro bono service as part of the Utah District Court's Pro Bono program. The following firms and attorneys have recently participated in this program:

- Marc L. Turman and J.D. Lyons of Callister, Nebeker & McCullough
- Jeffrey J. Hunt, David C. Reymann, and Austin J. Riter of Parr, Brown, Gee & Loveless
- Alex B. Leeman and Benjamin Lear (formerly) of Van Cott, Bagley, Cornwall & McCarthy
- Gary T. Wight and Kirk G. Gibbs for Kipp & Christian
- Sean C. Miller of Richards Brandt Miller & Nelson
- Reid Tateoka of McKay, Burton & Thurman

Thank you to all of the attorneys and firms that have volunteered to participate in the Utah District Court's Pro Bono Program. If you are interested in participating in this program, please contact Kelly Latimer, kellyjlatimer@gmail.com.

RISE Pro Bono Referral Program

The Utah Chapter of the Federal Bar Association is excited to announce that it has established a new pro bono program together with the Utah District Court and the Young Lawyers Division of the Utah State Bar. This pro bono program is designed to assist participants in the Utah District Court's drug and mental health court reentry program, which is 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 using a collaborative rather than a punitive approach. Because of the tenuous circumstances of many of the RISE participants, even the smallest of setbacks in their personal lives can derail their reentry process. The goal of the RISE pro bono referral program is to help RISE participants in their reentry efforts by establishing a network of volunteer attorneys who can 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.

All volunteer attorneys for the RISE pro bono program will be covered by the Utah State Bar's malpractice insurance policy. In addition, volunteer attorneys will be assigned to 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 RISE pro bono referral program is currently in need of both volunteer attorneys and mentor attorneys. Please contact Kelly Latimer (kellyjlatimer@gmail.com) if you are interested in participating in this great program.

Legal Humor

The modern era of legal humor can be fairly viewed as stemming from the publication of D. Robert White, Esq.'s, *Official Lawyer's Handbook* in 1983. Mr. White followed up this path breaking work with a collection of appealing legal humor entitled *Trial and Tribulations, Appealing Legal Humor*, published in 1989. In this volume, Mr. White covered such topics as legal reasoning, legal language, including such classics as Charles R. Maher's article on the infernal footnote, and law firm management, including Arnold B. Kanter's "All Purpose Model Law Partnership Agreement Form" (containing such terms as "Article IV, Associate Salaries, 4.1 Associates shall be paid at the going rate; 4.2 The going rate shall mean the minimum salary that Associates will accept before going").

Such books opened the proverbial floodgates and were soon followed by *The Lawyer Joke Book* published in 1991), which includes gems such as the following:

A lawyer had a dripping faucet in his office bathroom. He looked in the Yellow Pages and found the number of a nearby plumber. The plumber arrived and easily took the entire faucet apart. Within five minutes, he put it back together, having replaced a faulty washer. Wiping his hands, the plumber said, "That will be \$150."

"What?" gasped the astonished lawyer. "That's more money than I make in an hour."

Non-plussed, the plumber looked at him, "I know. That's why I quit being a lawyer."

In the early 1990s, Charles M. Sevilla published two collections of legal humor. The first was entitled *Disorderly Conduct: Verbatim Excerpts from Actual Court Cases*, which includes transcript excerpts such as:

The Court: The Charge here is theft of frozen chickens. Are you the defendant, sir?

The Defendant: No, sir. I'm the guy who stole the chickens.

And the second volume was entitled, *Disorder In The Court: Great Fractured Moments In Courtroom History*, containing such vignettes as:

Judge: What made you bite the police officer?

Witness: He stuck his arm in my mouth.

Similar collections include *Supreme Folly, Further Excerpts From Actual Court Cases* selected by Rodney R. Jones and Gerald E. Velmen. This collection contains many humorous excerpts from actual transcripts, such as:

Prosecutor: Do you know the defendant's Christian name?

Witness: To be perfectly honest, I didn't know they were Christians." and *Corpus Juris Humorous, A Compilation of Outrageous, Unusual, Infamous and Witty Judicial Opinions from 1256 A.D. to the Present*, compiled by John B. McClay and Wendy L. Matthews, referencing opinions such as the one which started with this introduction:

Question: When should an attorney say "no" to a client?

Answer: When asked to file a lawsuit like this one.

In 1992, Bill Adler published *Great Lawyer Stories*. This collection includes parts of speeches from great lawyers, including some not necessarily known for their sense of humor. For example, addressing a college convocation, Justice Sandra Day O'Connor had this to say:

A commencement speech is a particularly difficult assignment. You're given no topic and are expected to inspire all the graduates with a stirring speech about nothing at all. I suppose that is why so many lawyers are asked to be commencement speakers.

In 1995, Michael D. Shook and Jeffrey D. Meyer came out with *Legal Briefs: Hundreds of Entertaining Facts, Surprising Anecdotes, Odd Laws and Humorous Quotations About Lawyers and the Law*.

In 2002, Erin Barrett and Jack Mingo published *Dracula Was A Lawyer: Hundreds of Fascinating Facts From The World of Law*.

While I'm at it, I should mention a few other collections of legal humor:

Nolo Press also issued entertaining books such as *29 Reasons Not To Go To Law School*, which included some rather cynical comments about being a lawyer:

"My employment of practicing law with a good sized firm was hampered by three factors: I didn't like the work, I didn't like the other lawyers, and I didn't like the clients.

Poetic Justice: The Funniest, Meanest Things Ever Said About Lawyers and Devil's Advocates. The Unnatural History of Lawyers.