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Google as a reference?

Social media is a good way to check up on potential employees, but attorney Michael Stanger says there are some important boxes to check before you rely on Facebook or Instagram to qualify — or disqualify — a candidate.

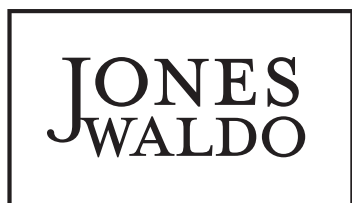
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BIG CHANGES COMING?

The Utah Work Group on Regulatory Reform has released its recommendations to the Utah Supreme Court - and that could mean changes like client solicitation and nonlawyer ownership are on the way

In late 2018, the Utah Supreme Court organized the Utah Work Group on Regulatory Reform and tasked that Work Group with finding ways to change the regulations governing the practice of law to encourage innovation and expand the legal market. The goal of these changes was straightforward: increase access to affordable legal services.

The Work Group, headed by Supreme Court Justice Deno Himonas and John Lund, past president of the Utah Bar Association, issued its report and recommendations in August, proposing reforms that, if adopted, could dramatically change the practice of law in Utah and, hopefully, provide people with access to quality, affordable legal services.

The foundation of the Work

Group's report is a driving concern that many people in Utah cannot find affordable legal services. Citing national statistics, the Work Group noted that low-income Americans are the ones most likely to go it alone in dealing with legal issues. It appears to be that way in Utah, too.

Pointing to cases in Utah's 3rd District Court (the trial court network that handles cases in Salt Lake, Summit and Tooele counties), the Work Group

observed that "the idealized adversarial system in which both parties are represented by competent attorneys is not flourishing in Utah. At least one party was unrepresented throughout the entirety of the suit in 93 percent of all civil and family law disputes disposed of in the 3rd District in 2018."



CORY TALBOT

Against that backdrop, the Work Group made two sweeping recommendations to increase access to affordable legal services. First, the Work Group proposed that the Utah Supreme Court "substantially loosen restrictions on the corporate practice of law, lawyer advertising, solicitation, and fee arrangements, including referrals and fee sharing." These loosened restrictions would, among other things, allow lawyers to directly solicit people needing legal assistance, to enter into partnerships with nonlawyers and to share fees with nonlawyers.

These changes are already underway, as a separate committee is currently working through amendments to the Utah Rules of Professional

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WORK GROUP

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Conduct, the rules that govern lawyers in the practice of law.

Second, the Work Group recommends the creation of a new regulatory body to oversee legal services in Utah under the direction of the Utah Supreme Court. One very interesting role the Work Group envisions for the regulatory body would be to oversee a “regulatory sandbox,” that is, “a policy structure that creates a controlled environment in which new consumer-centered innovations, which may be illegal (or unethical) under current regulations, can be piloted and evaluated.” In other words, the regulatory body would, in part, provide a testing ground for new types of legal services. The regulatory body would then evaluate how these services worked (or didn’t work) with a focus on risk to the consuming public and use that data to recommend policy changes to the Utah Supreme Court.

Based on its report, the Work Group seems to believe that these changes will allow for “disruptive innovation,” or simply “disruption,” in the Utah legal market. The key to this disruption is technology. Put simply, the Work Group believes that its recommendations will provide incentives for companies to invest in technology that will make legal services — currently out of reach for many people in Utah — much more affordable and accessible.

So, what impact will this have on legal services in Utah? It’s not entirely clear. Decades ago, the District of Columbia loosened restrictions on the practice of law with similar goals of expanding legal services, and the impact was virtually nonexistent. One concern is that the same result will follow here.

Because other states have the traditional restrictions on the practice of law that Utah has, it’s very possible that technology companies will not be willing to invest significantly for services that can only be used in Utah. One answer to this problem is that, while Utah is at the forefront in loosening its restrictions on the practice of law, it may not be alone for long. Organizations in Arizona and California are considering similar changes, and state supreme courts throughout the western United States will be considering the issue over the next year. Beyond that, the success of disruption in Utah could pave the way for more states to loosen their restrictions on the practice of law.

One thing that cannot be ignored is that the changes to the Utah Rules of Professional Conduct will almost certainly have impacts in the legal market beyond efforts to address a

shortage of affordable legal services. For example, an accountant, business consultant and lawyer could form a partnership, allowing businesses to consolidate some of their outside professional services.

The Work Group’s report also shows that it is sensitive to a concern that many lawyers have about loosening restrictions on the practice of law. For example, what happens when a lawyer partners with a nonlawyer who is concerned more about profits than professional obligations?

To be clear, the changes proposed by the Work Group would not allow a nonlawyer to practice law — that still could only be done by a lawyer or other professional authorized by the Utah Supreme Court.

Here’s an example: A technology company could invest in artificial intelligence to provide estate planning

services with the assistance of lawyers who work for the technology company and advise customers of the legal impacts of their estate planning decisions. How will those lawyers respond to directions from the company to limit the time spent with customers or to purchase additional products or services regardless of the lawyers’ professional judgment about the need for those products or services? The Work Group proposes to address these concerns through robust regulatory oversight, but it’s too early to analyze whether this is, or can be, effective to address these types of situations.

One last concern to note: Utah courts are already significantly backlogged. Civil cases routinely take years from filing to trial. If the Work Group’s recommendations do create significantly greater access to legal services, will our court system be

overwhelmed? Or will it save time and resources as people can more efficiently address their legal needs? Or both?

Whatever the answers to these and other concerns, one thing is clear at this point: The recommendations in the Work Group’s report are going to be put into effect in some form, and this will happen quickly. The Utah Supreme Court’s Advisory Committee on the Rules of Professional Conduct is drafting amended rules now to address the Work Group’s recommendations.

Over the next year, we’ll all step into uncharted territory when it comes to the practice of law in Utah.

Cory Talbot is a partner at the law firm of Holland & Hart in Salt Lake City where his practice focuses on commercial litigation, antitrust and competition counseling, and healthcare matters.



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USING GOOGLE AS A REFERENCE

Should employers review applicants' social media profiles?

The ease with which information can be obtained about a job applicant through an online search means more employers are reviewing this information in the hiring process. Surveys indicate over 70 percent of employers are reviewing some portion of an applicant's social media footprint.

But, as a case involving the University of Kentucky (UK) shows, it is not without risk. Martin Gaskell was initially the leading candidate for the position of founding director of UK's MacAdam Observatory. During the search process, a member of the search committee conducted an Internet search for information about Gaskell and found his personal website containing an article titled "Modern Astronomy, the Bible and Creation." Gaskell was not hired and sued UK for religious discrimination. While the parties heavily disputed what role Gaskell's religious beliefs played in the decision not to hire him, Gaskell was able to present sufficient evidence to survive a summary judgment motion and the case ultimately settled, highlighting the risks that come with incorporating such research into the hiring process.

Those in favor of social media screening argue that it provides invaluable insight into a candidate's informal life, as opposed to the best foot a candidate may put forward in an interview. Discovery of questionable content or behavior is one of the primary reasons hiring managers say they

perform such searches. Bad matches for an employer's corporate culture can be identified and eliminated early in the process. Next, an Internet search is certainly less expensive than a formal background check, particu-

larly when screening a large candidate pool. Reviewing a candidate's LinkedIn recommendations may provide helpful information not available through a resume.



MICHAEL STANGER

Employers using social media screening reveal that they have disqualified candidates for a number of reasons:

- Provocative or inappropriate photos or videos.
- Information about the candidate drinking or using drugs.
- Discriminatory comments on race, gender, religion, etc.
- The applicant was linked to criminal behavior.
- The applicant made negative remarks about a previous employer.
- The candidate lied about an absence and bragged about this on social media.

While social media can yield valuable hiring information, there are significant negatives to consider as well. Will the candidate view the search as an unreasonable invasion of privacy? Some candidates may be alienated and withdraw from the process rather than consent to a search. Will the search yield false positives, with the candidate being confused with another person of the same name? Perhaps most concerning, the search may provide

the employer with information that could be the basis an unlawful decision. Social media may reveal a candidate's religion, sexual orientation, the year she graduated from high school (and thus her likely age) and a whole universe of information related to protected classes she may belong to. This information could potentially taint a hiring decision and render it subject to later legal challenges.

Finally, employers using social media screening may subject themselves to a negligent hiring lawsuit. Consider, for example, a company that hires a driver who is later involved in a serious accident, when the same employee had posted videos on Facebook highlighting his reckless driving. Will the employer be held liable for negligence for not using this readily available information when deciding to hire the driver?

Employers who decide that the pros of social media screening outweigh the cons can implement a number of helpful best practices to help minimize the risk that an unfavorable hiring decision is later challenged as having been tainted by a social media search. These include:

- Informing applicants that a search may be conducted and obtaining written consent for the search. Ideally, this will include informing the candidate about the scope of the search.
- Establishing uniform guidelines for Internet/social media screening. Employers should establish a fixed set of social media sites for all applicants,

along with a list of lawful information/criteria to be included in each search, focusing on the candidate's fitness for the job. The results of the search should be documented in writing and screenshots containing information that may be relevant to the hiring decision saved.

- To avoid the taint that may arise if the search yields information that could be the basis of an unlawful decision, the search should be conducted by a non-decision-maker. This could include outsourcing the screening work to a third party. In this way, only job-related information is passed on to the decision-maker and protected characteristics are scrubbed.

- Where possible, negative information discovered during the search should be independently verified from other sources, including the applicant themselves.

- Focus on candidates' professional lives. While some off-the-job behavior is clearly disqualifying, the primary focus should be on how candidates interact in their professional communities.

- The search should not involve "friending" applicants in order to gain access to nonpublic portions of their social networking profiles.

By following these guidelines, employers can minimize the risk that their use of social media screening leads to a later legal challenge.

Michael D. Stanger is a shareholder at the Salt Lake City law firm Strong & Hanni. He specializes in commercial litigation along with construction and employment law.

IMPORTANT POINTS TO CONSIDER WHEN YOU OWE THE IRS MONEY

Navigating tax controversy and the Internal Revenue Service (IRS) can be daunting. It is important to consider specific factors when dealing with the IRS and, in some cases, to seek the advice of a legal expert. The following are key points to consider when dealing with the IRS:

Make sure it isn't a scam. The first thing to do when you receive notice that you owe the IRS money is to verify that it is not a scam. You can go online to locate the correct official IRS phone number to confirm that you in fact owe money. You will have to wait on hold, but it is better to wait on hold than to fall victim to a scammer. Tax attorneys have access to a practitioner priority phone line — not available to the layperson — that can expedite the process.

Gather information. It is crucial to figure out how much you owe, whether all of your tax returns have been filed and whether you have any upcoming compliance or appeal deadlines. Once you are in communication with the IRS, you can ask these questions and determine everything the IRS expects you to do to get back into full compliance.

Come into current compliance. Aside from dealing with taxes you may owe for the past, you should make sure you are in current compliance with tax withholding, filing returns and other requirements. This is important because if you are not in compliance, the IRS will not allow you to get on a payment plan and will not accept an "offer in compromise" (an agreement between a taxpayer and the IRS that settles the taxpayer's tax liabilities for less than the full amount owed). If you remain out of compliance, the IRS might resort to seizing your bank accounts, wages or other assets.

If the IRS is wrong, challenge the tax assessment. The IRS might say you owe them money, but that doesn't mean they are right. Every individual has a unique situation with the IRS. It is often helpful to find a professional who is well-versed in tax law to look at the IRS documents you receive and verify that the tax assessment is correct. For instance, if you are audited, it is important to make sure that the IRS gives you all the deductions and credits you are entitled to. You should challenge the IRS if the tax assessment is incorrect.

Seek to get penalties reduced or removed. Even if the IRS assessed the right amount of tax, in many circumstances you can file a request to remove or reduce penalties. Sometimes there are really good reasons why someone was not able to file returns

or pay taxes on time, such as illness or a death in the family. The IRS may reduce or remove penalties if they receive a proper penalty abatement request.



SAMUEL LAMBERT

If you can afford to pay the debt, set up a payment plan. If you think that you have the ability to pay the debt, even if it might take a few years, you can set up a payment plan and pay in increments over time. Setting up a payment plan keeps the IRS from continuing to threaten you and from seizing your assets.

If you cannot afford to pay the debt, file an offer in compromise. If

the amount you owe is so big that you do not think you can pay it in full, you can file an offer in compromise. The goal of an offer in compromise is to get the IRS to accept a full settlement based on your ability to pay. In this scenario, the offer in compromise is not based on how much you owe, but on how much money you have and currently earn.

If applicable, request innocent spouse relief. Sometimes the IRS comes after a person because that person's spouse was hiding income. A common situation is that one spouse is making money but not reporting the extra income.

If the couple filed a joint tax

return, this can leave the innocent spouse responsible for the other spouse's misconduct. In this situation, a request for innocent spouse relief can free the innocent spouse from tax liability.

In rare cases, bankruptcy, a lawsuit or another strategy may be appropriate. Not every situation fits neatly into one of the usual boxes. Some circumstances require a unique approach, which is why it is helpful to get the advice of a tax law practitioner. Doing so can cut costs and eliminate the anxiety of trying to deal with the IRS by yourself.

Do you also owe taxes to your state? A lot of times, people overlook state tax obligations because they are relatively small compared to federal taxes. However, it can make sense to resolve both state and federal taxes at the same time.

Samuel A. Lambert is an attorney with the firm of Ray Quinney & Nebeker in Salt Lake City. He helps clients resolve audits, appeals and collection issues with the IRS, the Utah State Tax Commission, and county boards of equalization.



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2	Parsons Behle & Latimer 201 S. Main St., Ste. 1800 SLC, UT 84111	801-532-1234 parsonsbehle.com	112	155	79	7	190	5	Full-service corporate law firm	1882	Hal J. Pos
3	Ray Quinney & Nebeker PC 36 S. State St., Ste. 1400 SLC, UT 84111	801-532-1500 rqn.com	102	102	66	6	176	1	Full-service law firm	1940	Arthur B. Berger
4	Durham Jones & Pinegar 111 S. Main St., Ste. 2400 SLC, UT 84111	801-415-3000 djplaw.com	93	93	60	14	123	4	Corporate, estate planning, real estate, intellectual property, litigation	1991	N. Todd Leishman
5	Holland & Hart LLP 222 S. Main St., Ste. 2200 SLC, UT 84111	801-799-5800 hollandandhart.com	77	428	44	8	128	16	Corporate, environmental, healthcare, labor & employment, litigation, real estate	1947	Thomas R. O'Donnell
6	Parr Brown Gee & Loveless PC 101 S. 200 E., Ste. 700 SLC, UT 84111	801-532-7840 parrbrown.com	76	76	54	8	111	1	Business & finance, commercial litigation, bankruptcy, workouts & creditors' rights, construction law services, employment law, international services, natural resources law, real estate law, tax, technology	1975	Robert A. McConnell
7	Stoel Rives LLP 201 S. Main St., Ste. 1100 SLC, UT 84111	801-328-3131 stoel.com	75	350	35	11	82	10	Energy and natural resources, litigation, corporate and intellectual property	1907	Matt Moscon (UT), Jim Torgerson (Companywide)
8	Strong & Hanni Law Firm 102 S. 200 E., Ste. 800 SLC, UT 84111	801-532-7080 strongandhanni.com	71	71	56	20	136	2	Business and litigation	1888	Braden P. Jackson
9	Dorsey & Whitney LLP 111 S. Main St., 21st Floor SLC, UT 84111	801-933-7360 dorsey.com	67	587	31	12	113	19	Corporate, securities, M&A, private equity, bankruptcy, financial restructuring, litigation, natural resources, environment, IP, international, white collar defense	1912	Nolan S. Taylor
9	Snell & Wilmer , Gateway Tower West 15 W. South Temple, Ste. 1200 SLC, UT 84101	801-257-1900 swlaw.com	67	433	24	5	115	11	*	1938	Wade R. Budge Brian D. Cunningham
11	Fabian VanCott PC 215 S. State St., Ste. 1200 SLC, UT 84111	801-531-8900 fabianvancott.com	66	73	30	4	88	2	*	1874	Kyle C. Jones
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13	Snow Christensen & Martineau 10 Exchange Place, 11th Floor SLC, UT 84111	801-521-9000 scmlaw.com	55	55	34	14	110	2	Corp. and bus. planning, commercial disputes, commercial RE, construction, employment, estate planning, family law, gov. defense, healthcare, insurance, professional liability, taxation, transportation, white collar defense	1886	Rodney R. Parker (President)
14	Workman Nydegger PC 60 E. South Temple, Ste. 1000 SLC, UT 84111	801-533-9800 wnlaw.com	46	46	31	7	94	2	Intellectual property prosecution & litigation	1984	Thomas R. Vuksinick
15	Maschoff Brennan 111 S. Main St., Ste. 600 SLC, UT 84111	801-297-1850 mbr.com	40	50	26	4	82	5	Intellectual property & complex litigation	2011	Eric L. Maschoff
15	Richards Brandt Miller Nelson 299 S. Main St., Ste. 1500 SLC, UT 84111	801-531-2000 rbmn.com	40	40	24	9	80	1	Litigation, business, construction, family, estate planning and immigration	1978	Mark Sumsion
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18	Thorpe North & Western LLP 8180 S. 700 E., Ste. 350 Sandy, UT 84070	801-566-6633 tnw.com	27	28	13	5	38	2	Intellectual property, patents, trademarks and copyright, including prosecution and litigation	1979	Garron Hobson
19	Ballard Spahr LLP One Utah Center, Ste. 800 201 S. Main St., SLC, UT 84111	801-531-3000 ballardspahr.com	26	645	10	4	47	15	Real estate, complex litigation, employment, corporate, emerging growth, government relations, consumer financial services	1885	Mark Gaylord,
19	Cohne Kinghorn PC 111 E. Broadway, 11th Floor SLC, UT 84111	801-363-4300 cohnekinghorn.com	26	26	22	2	34	1	Business, bankruptcy, real estate, litigation, healthcare, divorce	1975	John Bradley
21	TraskBritt PC 230 S. 500 E., Ste. 300 SLC, UT 84102	801-532-1922 traskbritt.com	21	21	6	6	50	1	Intellectual property	1973	H. Dickson Burton
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