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Cover Photo

Grinning Goat Among Bluebells by Utah State Bar member Steve Densley.

STEVE DENSLEY is a civil litigation attorney with the law firm of Strong & Hanni. He was born and raised in the shadow of Mount Timpanogos and has hiked to the top countless times. Regarding this cover photo, he said "My wife and I crossed paths with this billy goat as he was grazing in a meadow of wildflowers along with a group of his family and friends. We tried to keep our distance as we passed to avoid spooking them. But this one seemed happy enough to smile for a picture before we parted company."

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Utah Bar JOURNAL

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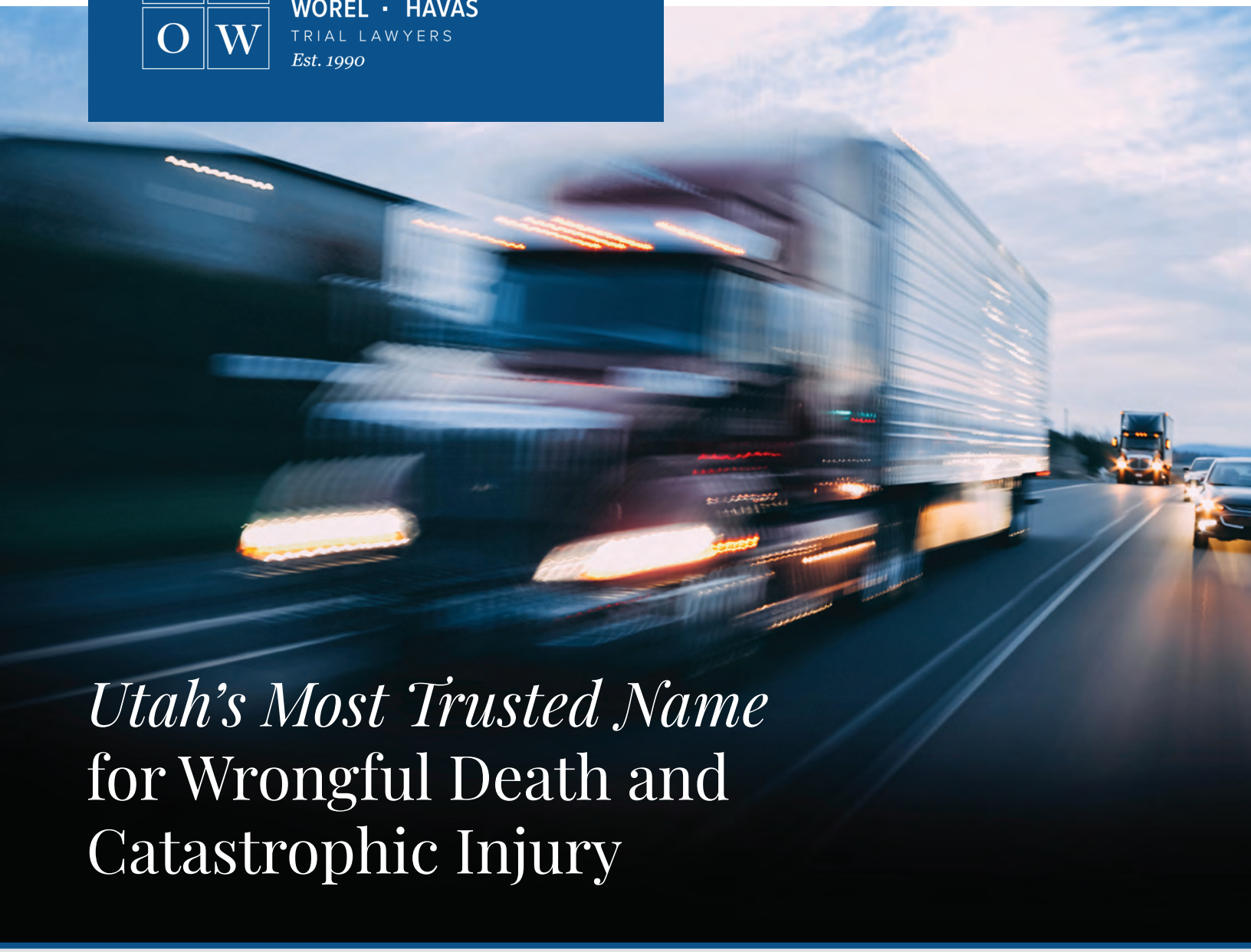

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The *Utah Bar Journal* encourages the submission of articles of practical interest to Utah attorneys, paralegals, and members of the bench for potential publication. Preference will be given to submissions by Utah legal professionals. Articles germane to the goal of improving the quality and availability of legal services in Utah will be included in the *Bar Journal*. Submissions that have previously been presented or published are disfavored, but will be considered on a case-by-case basis. The following are a few guidelines for preparing submissions.

ARTICLE LENGTH: The *Utah Bar Journal* prefers articles of 5,000 words or less. Longer articles may be considered for publication, but if accepted such articles may be divided into parts and published in successive issues.

SUBMISSION FORMAT: Articles must be submitted via email to barjournal@utahbar.org, with the article attached in Microsoft Word or WordPerfect. The subject line of the email must include the title of the submission and the author's last name.

CITATION FORMAT: All citations must follow *The Bluebook* format, and must be included in the body of the article. Authors may choose to use the "cleaned up" or "quotation simplified" device with citations that are otherwise *Bluebook* compliant. Any such use must be consistent with the guidance offered in *State v. Patton*, 2023 UT App 33, ¶10 n.3.

NO FOOTNOTES: Articles may not have footnotes. Endnotes will be permitted on a very limited basis, but the editorial board strongly discourages their use and may reject any submission containing more than five endnotes. The *Utah Bar Journal* is not a law review, and articles that require substantial endnotes to convey the author's intended message may be more suitable for another publication.

ARTICLE CONTENT: Articles should address the *Utah Bar Journal* audience – primarily licensed members of the Utah Bar. Submissions of broad appeal and application are favored. Nevertheless, the editorial board sometimes considers timely articles on narrower topics. If in doubt about the suitability of an article, an author is invited to submit it for consideration.

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PUBLICATION: Author(s) will be required to sign a standard publication agreement prior to, and as a condition of, publication of any submission.

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2. Letters shall not exceed 500 words in length.
3. No one person shall have more than one letter to the editor published every six months.
4. Letters shall be published in the order they are received for each publication period, except that priority shall be given to the publication of letters that reflect contrasting or opposing viewpoints on the same subject.
5. No letter shall be published that (a) contains defamatory or obscene material, (b) violates the Rules of Professional Conduct, or (c) otherwise may subject the Utah State Bar, the Board of Bar Commissioners, or any employee of the Utah State Bar to civil or criminal liability.
6. No letter shall be published that advocates or opposes a particular candidacy for a political or judicial office or that contains a solicitation or advertisement for a commercial or business purpose.
7. Except as otherwise expressly set forth herein, the acceptance for publication of letters to the Editor shall be made without regard to the identity of the author. Letters accepted for publication shall not be edited or condensed by the Utah State Bar, other than as may be necessary to meet these guidelines.
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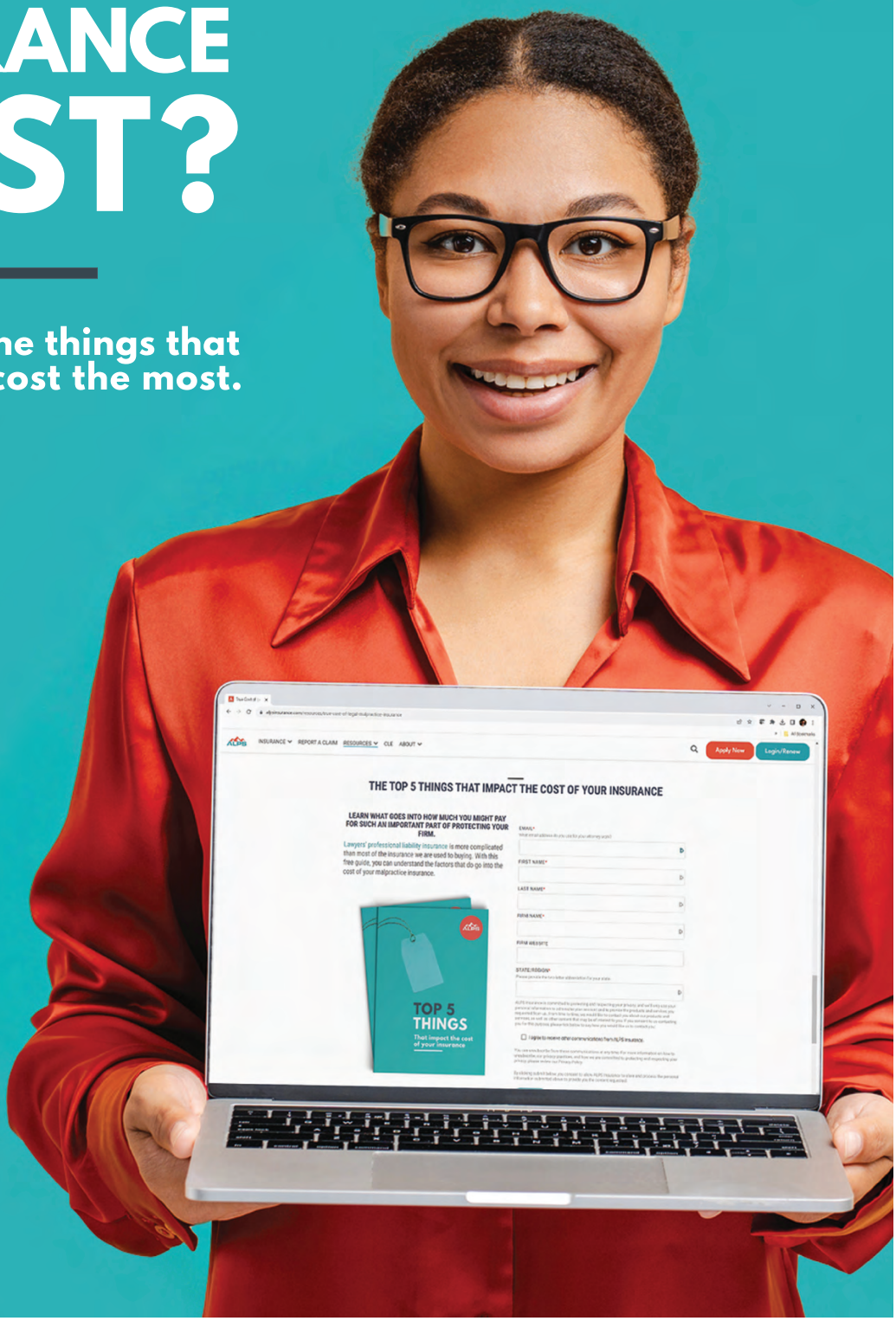

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It's Been A Momentous Year: Thank You!!

by Erik A. Christiansen

That's a wrap. On July 12, Cara Tangaro was sworn in as President of the Utah State Bar, and Kim Cordova was sworn in as President-Elect of the Utah State Bar. After serving as President for the last year, I will now become the Immediate Past-President of the Utah State Bar. The Immediate Past-President has been described as the best job in Bar service. But I have to admit that I will miss serving as the Utah State Bar President. I really enjoyed my year of service.

That said, it has been a momentous year. During the last year, the Utah State Bar has seen seismic movements and tectonic changes in the legal profession. On April 25, 2024, the Utah State Bar prevailed on summary judgment in *Pomeroy v. Utah State Bar*, which involved a constitutional challenge to various activities of the Utah State Bar. The decision has been appealed to the 10th Circuit Court of Appeals and remains pending. Numerous similar lawsuits have been filed across the country, with the ultimate goal of attempting to de-integrate mandatory bar associations. There is no question that lawyers, just like the judiciary, are under attack. Lawyers and judges have a special role and obligation to safeguard the rule of law, and we often stand in the way of forces that want to alter our present form of government, weaken the judiciary, and jettison the rule of law. The forces intent on weakening the roles that lawyers and judges have in protecting democracy will not cease with the end of my term, and those forces will continue to challenge those who succeed me in the coming years.

Keeping with this trend, during the last year, the Utah Legislature and the Governor also removed the Utah State Bar from providing him names of lawyers to serve on judicial nominating committees and removed the Utah State Bar from having a seat at the table on the Utah Commission on Criminal and Juvenile Justice (CCJJ). Utah is not alone in such legislation, which again, attempts to weaken the role that lawyers play in insuring that judges are nominated based on merit and that the criminal rules of justice are both fair and equitable. Attempts to politicize the judiciary and to weaken the role lawyers play in the fair and impartial administration of justice will also continue after the end of my term and present ongoing challenges for future Bar leaders. I hope you will join me in continuing to work to protect the rule of law and the fair, equal, inclusive, and impartial administration of justice.

On the bright side, there is much to be proud of at the Utah State Bar. The Fall Forum and the Spring Convention are sell-out events, so much so, that the Fall Forum is going to be expanded this fall to provide even more quality legal education to Utah's lawyers. The virtual Summer Convention continues to break attendance records, with thousands of Utah lawyers from all across the state attending virtual CLEs before the compliance deadline. I am in awe of the work of Michelle Oldroyd, Lydia Kane, David Clark, and all of the hardworking Bar staff that work tirelessly to provide the best CLEs at the lowest cost to Utah lawyers.

We should all also be incredibly proud of our Utah Supreme Court. Led by their embrace of innovation, Utah in the last year lowered the score required for admission to the Utah State Bar, and a record number of lawyers are set to take the July bar examination this year. Hopefully, this innovative change will result in more lawyers serving the unmet legal needs of Utah citizens. In the past year, the Utah Supreme Court also successfully moved the Utah Office of Legal Services Innovation from an Office of the Utah Supreme Court into the Utah State Bar and hired a new director, Andrea Donahue, which resulted in significant cost savings for the regulatory sandbox. The Utah Supreme Court is busy looking at other innovative changes to the practice of law, including adoption of the NextGen Bar exam and alternative paths to licensure. We are incredibly lucky to have a Utah Supreme Court that looks seriously at the unmet legal needs of Utah citizens and evidences its commitment to Utah citizens by openly embracing innovation and alternatives to the status quo.

One of the great gifts of serving as the President of the Utah State Bar has been the opportunity I had to observe close up the incredible hard work that members of the Utah Supreme Court freely give to Utah's citizens. Before I served on the Bar Commission and as President of the Utah State Bar, I incorrectly assumed that members of the Utah Supreme Court simply made judicial decisions and wrote lengthy legal opinions. I was wrong. They do that, but the court also is intimately involved in every aspect of the Utah State

Bar, the admissions process, and the licensing process. The court is constantly looking for ways to improve the legal services offered to Utah citizens. We are incredibly lucky to have a dedicated and hard working Utah Supreme Court, and I will miss the opportunity to work with them and to see them up close and in action outside of the courtroom. Our Utah Supreme Court works incredibly hard to improve the lives of every citizen in Utah, and they take the access to justice issue as a real challenge that they will solve. I will look forward to watching all of their efforts in the coming years.

Finally, I have to take a moment and thank a few people whom I truly admire. At the top of that list is Elizabeth Wright, who is the Executive Director of the Utah State Bar. In the last year, Elizabeth has dealt with a myriad of challenges, from a constitutional lawsuit, to a legislative audit, to staff changes, to new licensing requirements, to assimilation of the Utah Office of Legal Services Innovation into the Utah State Bar. I've had the opportunity to see Elizabeth in action, and she is a problem solver. She digs into challenges. She is unflappable in the face of change. She is a deep thinker, and cool under pressure. I've learned a great deal about leadership from Elizabeth and will take with me so many lessons from my time with Elizabeth Wright. The Utah State Bar is in great shape, and the credit really goes to Elizabeth. Thank you, Elizabeth, for making me look better than I am this last year. I will consider you a friend for life, and a mentor in all things. We are all lucky to have your service.

One more brief thank you. When I was President-Elect, I got to work with Katie Woods, who was then President of the Utah State Bar. Katie is a bright light, a positive soul, and a warm and wonderful human being. She is also incredibly young. Thank you, Katie, for your friendship, your great humor, your warmth, and your great big heart. You make the world a better place, and I am lucky to have gained you as a friend.

Well, now it's time: that's a wrap. I'm off to my next public service. In August 2024, I will join the Board of Governors of the American Bar Association, where I will continue to work to improve the legal profession, to safeguard the rule of law, to work for the fair and impartial administration of justice, and to help lawyers to continue to improve the lives of lawyers and the citizens of Utah. Thanks to all of you for letting me be of service this last year. It was a great gift.

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The Current Status of Justice Court Reform

by The Honorable Paul Farr

The Utah Judiciary's Justice Court Reform Efforts

In the past, municipal courts nationwide have largely been ignored by scholars and even much of the legal community. That has started to change over the past decade. Greater attention is now being focused on these courts that adjudicate a majority of all cases filed in this country and that play such a critical role in our judicial system. Utah's municipal courts, called justice courts, were created in 1989. There have been ongoing efforts to improve and refine these courts since their creation, with significant movement in the last eight years.

In 2016, the Utah Supreme Court began looking into procedural changes involving the justice courts. This work resulted in the court, in coordination with the Utah Judicial Council, creating a joint Task Force in 2019. The primary charge of the Task Force was to identify a path to eliminate de novo appeals to the district court, and to do so without the need for a constitutional amendment, if possible.

The Task Force worked for approximately two years, and in August of 2021, presented its final Report and Recommendations (the Report) to the Utah Supreme Court and Utah Judicial Council. The full Report is available here: https://legacy.utcourts.gov/utc/jc-reform/wp-content/uploads/sites/47/2021/09/Reform-Proposal-Final.pdf.

The Report recommended the creation of a division within the district court where misdemeanor and small claims cases would be heard "on the record" by new division judges. It also recommended leaving justice courts in place to handle traffic cases and other infractions. This proposal would result in the elimination of de novo appeals for small claims and misdemeanor cases, but by leaving the justice courts in place it would not require a constitutional amendment to enact. The Task Force and the Judicial Council envisioned a gradual state-wide process where, for example, changes would be implemented over a number of years to transfer cases as division judges were funded, justice courts were consolidated, and justice court judges retired.

Following the presentation of the Report, the Judicial Council began to study how the recommended reforms could be implemented, and also reached out to the legislature, which was largely receptive to the recommendations.

House Bill 210 (2023)

In the 2023 General Session, the legislature passed House Bill 210. This bill adopted several of the Report's recommendations that were able to be implemented without significant cost or structural changes. This included the following:

Enacting language clarifying that justice courts, while sponsored by local government, are part of the state judiciary, and not a department of local government. While this has always been the judiciary's position, there had been some confusion with local governments.

Narrowing the range in which a local government must set a justice court judge's salary. Previously a justice court judge's salary was required to be between 50% and 90% of a district court judge's salary. This bill narrowed that range to 70% to 90%. The Report recommended eliminating the range and setting a fixed salary at 90%. This issue is not about money, but judicial independence. The Judiciary believes it is inappropriate and creates potential conflicts when a judge has to negotiate his or her salary with the sponsoring entity.

Providing that applicants throughout the state may apply for a justice court judge position if they relocate to the county, adjacent county, or judicial district upon appointment. Previously, an applicant had to already live in the county or adjacent county to be eligible to apply. It is hoped that this will increase the pool of qualified applicants.

JUDGE PAUL FARR is a justice court judge serving in Sandy City and the Town of Alta. He has been a member of the Judicial Council since 2015 and served as the Chair of the Judiciary's Justice Court Reform Task Force. The views expressed here are his own and do not necessarily reflect the views of the Judicial Council or the Judiciary.

Providing that all justice court judges must have a law degree, while grandfathering in current justice court judges and providing that if there are not at least two qualified applicants the position may be re-advertised and non-lawyer applicants may apply.

In addition to the changes identified above, H.B. 210 also created the legislature's own task force to further study justice court reforms. Following the 2023 legislative session, justice court reform has primarily been in the hands of the legislature.

The Legislature's Justice Court Reform Task Force

The legislature's Task Force, created in 2023, includes the following members:

Sen. Kirk Cullimore

Rep. Nelson T. Abbott

Sen. Stephanie Pitcher

Rep. Doug Owens

Eric Bunderson
West Valley City Attorney

Eric Clarke
Washington County Attorney

Matt Dixon
South Ogden City Manager

Tom Ross
Executive Director,
Commission on Criminal and
Juvenile Justice

Jim Peters
Justice Court Administrator,
Administrative Office of
the Courts

That Task Force met throughout 2023 at monthly meetings. Following a break for the 2024 legislative session, it is anticipated they will continue to meet monthly leading up to the 2025 legislative session. Unless extended by future legislation, that Task Force is scheduled to sunset on July 1, 2025.

The legislative Task Force did use the Judiciary's Report as a baseline for its work but has also received additional input and recommendations from stakeholders. The Task Force ultimately recommended two pieces of legislation for the 2024 session, House Joint Resolution 1 (H.J.R. 1) and House Bill 49 (H.B. 49). Neither of these measures passed. However, it did not appear that these measures failed due to opposition, but due to the fact that neither measure was necessary to move this work forward and 2024 was a very busy session with a record number of bills being passed (591).

H.B. 49 would have extended the sunset date for the legislature's Task Force from the current date of July 1, 2025 to December 31, 2026. The Task Force will continue to meet and function, and if additional time is needed, legislation to this effect could be reintroduced in the 2025 session.

H.J.R. 1 would have forecast the legislature's current plans for reform. Following is the language from that resolution:

> NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah supports justice court reform and the Justice Court Reform Task Force's proposal to bring certain cases from the justice court into the state court system, including class B and C misdemeanors and small claims cases where the plaintiff is a business.

BE IT FURTHER RESOLVED that the Legislature intends to implement justice court reform in phases with a completion date of January 1, 2031.

BE IT FURTHER RESOLVED that the Legislature intends for the first phase to begin in the 2025 General Session by implementing legislation to pilot justice court reform in two counties starting January 1, 2026.

While this measure did not pass, the legislature could decide to run the same resolution next year and just delay the project by a year. The timeline in H.J.R. 1 was ambitious, and at least from this judge's perspective, the longer the runway the better. There are still many policy decisions that need to be made and issues that need to be addressed, including fiscal impacts, consequences to judges and court personnel, courtroom space, and many more. As the legislative Task Force addresses these details throughout the coming year, they could decide to run the resolution again or forgo the resolution and move straight into enacting legislation. They could also decide to take a different approach to reform, or do nothing at all. Some of the other reform options that could be considered are discussed below.

County Attorneys' Letter

On January 19, 2024, the Utah County District Attorneys Association sent a letter to the Utah State Legislature (signed by twenty of the twenty-nine members). While the association supports the idea of reform, they expressed opposition to the legislature's stated plan, and instead proposed studying "whether it would be more efficient to amend the state constitution and simply change the structure of justice courts into courts of record."

This was one of the ideas that the Judiciary's Task Force evaluated. As discussed in the Report at page 11, this idea has its merits. This proposal would eliminate de novo appeals, could be implemented with relatively little expense, and would be the least disruptive to current operations. It would, however, require a constitutional amendment to at least one, and possibly several, sections of Article VIII of the Utah Constitution to implement. It would also require additional legislation aimed at the justice courts in order to address some of the other concerns raised by the Judiciary's Task Force. Because the Judiciary's Task Force was asked to chart a path that did not involve a constitutional amendment, this proposal was not recommended in its Report. However, it does present a viable option for reform.

Magistrate System

Another proposal that was discussed by the Judiciary's Task Force was to create a magistrate or commissioner system, similar to the federal court model. Idaho also operates a similar magistrate system. This model would allow magistrates or commissioners to handle preliminary matters in all cases, and to preside over misdemeanor cases. While this system is very attractive, there is a roadblock that would keep it from currently being implemented in Utah.

In 1994 the Utah Supreme Court heard a case involving a challenge to the authority of criminal commissioners that were presiding over misdemeanor cases. In *Salt Lake City v. Ohms*, 881 P.2d 844 (Utah 1994), the court held that the Utah Constitution requires that in a court of record, only a judge duly appointed through the nominating process outlined in Article VIII, Section 8, may exercise "ultimate judicial power of entering final judgements and imposing sentence in criminal misdemeanor cases." *Id.* at 855. This was a 3–2 decision, and both the majority opinion as well as the dissent addressed the federal magistrate system.

Following this decision, criminal commissioners were no longer able to do the bulk of their work and the courts discontinued their use. The courts did continue to use commissioners for domestic relations cases, but their authority was limited to comply with the constitutional limitations. The Third District has also recently hired a criminal court commissioner for the first

time since *Ohms*. That commissioner's duties will be restricted to comply with the constitutional limitations recognized in *Ohms*. It will be interesting to see how the criminal commissioner position is reintegrated into the courts.

Enacting a magistrate system where magistrates/commissioners would hear and decide misdemeanor cases would require either an overturning of *Ohms* by the Utah Supreme Court, or a constitutional amendment specifically addressing the issues raised in that case. Because of the necessity for a constitutional amendment, this proposal was also not recommended by the Judiciary's Task Force. However, it also presents another viable path for reform.

Constitutional Amendments

The alternative reform proposals discussed above, as well as others not addressed here, would require amendments to different sections of Article VIII of the Utah Constitution. The first provision that would need to be addressed is Section 1 of Article VIII, which states:

> The judicial power of the state shall be vested in a Supreme Court, in a trial court of general jurisdiction known as the district court, and in such other courts as the Legislature by statute may establish. The Supreme Court, the district court, and such other courts designated by statute shall be courts of record. *Courts not of record shall also be established by statute.*"

(Emphasis added).

The emphasized language has been discussed at great length at the Task Force level. There are two possible interpretations. The first interpretation, and the one that seems to have the most support based on its plain language, is that courts not of record (currently the justice courts) are required by the constitution. The second interpretation is not that such courts are required, but that if they are going to be established it must be done by statute, as opposed to local governments establishing them by ordinance under their own authority. If the first interpretation is the correct one, then any proposal that would directly or indirectly eliminate justice courts would require a constitutional amendment.

Section 8 of Article VIII establishes the selection process for judges and requires that the governor appoint individuals to fill vacancies in courts of record. If the state were to make justice courts "of record" then the governor would be required to fill

all justice court vacancies. This may not be a welcome process, in its current form, for local governments sponsoring justice courts. Considering there are over sixty-five justice court judges, this would also add a significant burden on the governor's office. It is possible this section would need to be amended in order to enact some of the recommendations.

Section 10 of Article VIII states, "Supreme court justices, district court judges, and judges of all other courts of record while holding office *may not practice law*, hold any elective nonjudicial public office, or hold office in a political party." (Emphasis added). Currently, more than half of justice court judges serve less than half-time. In other words, the court's caseload requires less than half of one full-time equivalent judge. While there are some restrictions on the legal practice, part-time judges who are lawyers are able to practice law. If we made justice courts "of record," judges would have to discontinue their law practice. It is questionable how many lawyers would want to give up a law practice for a half-time judgeship with its associated half-time salary. This could significantly limit the size and quality of the applicant pool. An option to remedy this problem would be to require that all justice court judges serve full time, which would require consolidation of courts. Consolidation of courts, or judges serving in multiple courts, is something that has been happening gradually and naturally over time. However, a forced consolidation could have its own consequences, such as local governments choosing to close their courts. In any event, it is possible this section would need to be amended in order to practically enact some of the recommendations.

From the very beginning the Judiciary has proposed reforms that would not require constitutional amendments. I often get asked why. The structure which Utah's Judiciary currently enjoys is the product of significant efforts culminating in changes to Article VIII of the Utah Constitution in 1984. For those that are interested, the history of the courts leading up to those changes is detailed in the Utah Judicial Council History published in March 1998, and found here: https://www.utcourts.gov/content/dam/knowcts/adm/docs/Judicial_Council_History-1973-1997.pdf.

The changes enacted in 1984 included the Judicial Council (formed just a decade earlier by statute) being recognized as a constitutional body, ongoing efforts towards the unification of Utah's state court system, and enactment of the process for merit-based judicial selection. Utah's current selection process utilizes nominating commissions, executive appointment followed by legislative confirmation, and subsequent retention elections. This process avoids much of the politics and financial influence prevalent in appointed or popular election systems. This selection system, along with the structure of a separate Judicial Council, is often viewed throughout the country as models to be emulated. The Judiciary is hesitant to propose anything that would open Article VIII to what could become unwelcome changes to its structure or to judicial selection.

The Future Of Justice Court Reform

Structural changes to Utah's court system are extremely complex. They involve difficult policy decisions and significant reallocation of expenses and revenues. Changes involve many stakeholders with different interests and involvement. A significant amount of effort has already been expended by the Judiciary, the legislature, and other involved stakeholders. There is still significant momentum towards, and need for, reforms. Given the complexity of such changes, it is difficult to project what reforms will ultimately look like, or when they will be implemented.

The legislature's Justice Court Reform Task Force will continue to tackle these issues over the several months leading up to the 2025 legislative session, and perhaps beyond. They could discuss many options, including the following: (1) pursuing the plan laid out in 2024's H.J.R.1., (2) consider the county attorneys' proposal to make justice courts "of record," (3) consider amendments to allow a magistrate/commissioner system, or (4) do nothing at all.

No matter the outcome, the time and effort spent on this subject by legislators, prosecutors, defense attorneys, city and county officials, judges and court administrators, and many other individuals are valued and appreciated. These efforts are motivated by a desire to ensure that our court system provides the most open, fair, and impartial forum for Utahns.


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Remembering The Honorable Raymond S. Uno

by The Honorable Augustus G. Chin

The Honorable Raymond S. Uno was a judge for all seasons. His carbon footprint is forever etched in Utah history because of his accomplishments as a judge, lawyer, civil rights advocate, military service member, and human being. Judge Uno made a significant difference – especially within the legal profession to the many whom he encouraged, offered support, and mentored.

Judge Uno considered himself an average person. However, an examination of his life during his ninety-three years confirms that he was by no means average. Retired Third District Judge Tyrone E Medley describes Judge Uno as not just a role model, but an extraordinary person who treated everyone with respect and dignity, and who was a positive influence on many including himself as he joined the small number of minority judges in Utah. When asked about Judge Uno, Chief Justice Matthew Durrant of the Utah Supreme Court said:

> Judge Uno has been an inspiration to many minority attorneys and judges. He was a genuine pioneer in the fight for equal opportunity. His courage, his commitment, his dedication to fairness and justice is legendary. We in the judiciary and the citizens of our great state owe him an enormous debt of gratitude.

Raymond Sonji Uno was born on December 4, 1930 in Ogden, Utah. He and his family were incarcerated for three-and-a-half years during World War II at the Heart Mountain Wyoming Concentration Camp. His father, Clarence Hachiro Uno, passed away during his family's first year at the Heart Mountain Internment Camp in Wyoming. In a 2013 interview with Wyoming Public Media, Judge Uno said:

> My father was an American citizen, he was a veteran of World War I, active in the American Legion – to me, a very loyal American. That was something I really didn't understand until I went to college and started taking constitutional law, and going through law school and going through all the different kind of cases that something like this could happen in America to Americans, and that is something I have been working on so it wouldn't happen to anybody else.

Raymond S. Uno 1930–2024

He joined the U.S Army in 1948. Upon completion of basic training at Fort Ord, California, he was assigned to the Military Intelligence Language School (now known as the Defense Language Institute) in Monterey, California. Upon graduation

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from the Military Intelligence Language School, he was sent to Japan and assigned to the 319th Military Intelligence Service, Allied Translator and Interpreter Service, in Tokyo, Japan. When the Korean War started, he interrogated Japanese prisoners of war repatriated from Russia. He was honorably discharged as a Korean War Veteran on May 22, 1952, with the rank of corporal.

Judge Uno graduated in 1955 from the University of Utah with a Bachelor of Science degree in Political Science. He attended the University of Utah College of Law, graduating in 1958. Judge Uno notes that while in law school he became involved in the civil rights movement because of personal encounters of discrimination, and observed discrimination of other minorities, especially blacks. He initially had no interest in the practice of law. In 1960, he attended the Graduate School of Social Work at the University of Utah, receiving his Masters in Social Work in 1962.

In 1963, he was the first minority appointed by the Commission of the Utah State Welfare Department as a Referee of the Juvenile Court in Utah. From 1964–1965, he served as a Deputy Salt Lake County Attorney. From 1965 until 1969, he served as an Assistant Attorney General. He then left the Utah Attorney General's Office, entered private practice, and formed the firm of Madsen, Uno and Cummings with Gordon Madsen and Robert Cummings, until his appointment as a Salt Lake City Court Judge in 1976 by Salt Lake City Mayor Ted Wilson.

Judge Uno also has a collection of papers (1950–2019) in the Raymond S. Uno Social Justice Legacy Archive housed in the University of Utah's J. Willard Marriott Library Special Collections. His autobiography: *A Simple Man: To Swear to Tell the Truth the Whole Truth So Help Me Somebody: The Personal Life and Legal History of the Honorable Raymond Sonji Uno* (2019), can be found in the collection.

In 2014, Judge Uno was awarded the Order of the Rising Sun, Gold Rays with Rosette by the consul general of Japan in Denver for his contributions to the promotion of Japan-US relations. The consul general also praised Judge Uno for his role in protecting Japan town in Salt Lake City, his involvement in spreading Japanese culture in Utah, roles as a judo instructor, and in the maintenance of the Japanese garden in Salt Lake City.

In 2005, the Utah Minority Bar Association (UMBA) hosted a gala event celebrating the First 50 Minority Attorneys admitted to the practice of law in Utah. Professor Robert L. Flores, a founding member of UMBA and a retired Professor of Law at the S. J. Quinney College of Law said:

> He [Judge Uno] has personally borne an inordinate share of the burden of bringing us to our present state of progress and can aptly be described as a hero among us. From his overcoming the humblest of beginnings – including the World War II years spent in the Heart Mountain Wyoming relocation center, and his fatherless family living in poverty on the rough streets of post-war Ogden – through his pursuit of education including professional degrees

> in social work and law, his years of law practice, his groundbreaking election to become the first minority in the state judiciary and the subsequent long service on the bench, and always through his community activism – including energetic voluntary service in such organizations as the local and national Japanese American Citizens League and more recently the Utah Minority Bar Association – he has modeled every important facet of what our First 50 mean to us. It is appropriate that our state Bar has already recognized the stature of Number 8 on our list of fifty by establishing the Raymond S. Uno Award for those who contribute to the advancement of minorities in the legal profession.

Robert L. Flores & Karthik Nadesan, *The First 50: "Celebrating Diversity in the Law,"* 19 UTAH B.J. 22, 22 (Mar./Apr. 2006).

Judge Uno envisioned a diverse legal profession and a diverse judiciary. His goal was to have the judiciary in Utah reflect the community it serves. In 2000, he said "the leader of our state … should be the leader in whatever is going to make the state more progressive, and diversity is one of those things." Ray Rivera, *Leavitt Says Qualification, Not Race or Gender, Is His Top Priority for High Court Appointments*, S.L. TRIB., Jan 3, 2000, at B1.

Judge Uno was the last person elected in a contested judicial election in Utah. After sitting on the city and circuit court benches for six years, he observed that no (ethnic) minority lawyers/judges were being appointed, especially at the district court level. His name had been submitted to the governor for a juvenile court and a district court judgeship; but he was not appointed. He then turned to the electoral process which he viewed as a rare opportunity for an ethnic minority to get a position on the state bench. Judge Uno was not the first minority attorney to seek election to the bench. Jimi Mitsunaga and Steven Lee Payton both ran unsuccessfully for the district court bench previously.

As a city and circuit court judge, Judge Uno understood that running against an incumbent judge was going to be difficult task; especially as a non-Mormon minority who was Japanese, which constituted less than half of one percent of the population. In spite of his experience and qualifications, Judge Uno faced much opposition running against a rather well-supported incumbent judge. Earlier in the 1960s, Judge Uno served briefly as a referee in the then Fifth District Juvenile Court, which at the time covered Summit, Salt Lake, and Tooele Counties. These counties are now in the Third Judicial District.

During his election to the district court bench in 1985, Judge Uno recounts an interesting event that took place in Tooele County. Tooele had an ordinance that if 5% of the population was of any ethnic group, the ballot must also be printed in that ethnic groups' language. With Hispanics constituting over 5% of the Tooele County population, the ballot was also printed in Spanish. The printed ballot listed the incumbent judge's name above Judge Uno's name. Printed on the top of the English ballot above both names were the instruction "Vote for One." The Spanish language ballot state "Vota Por Uno" above both candidates' names. Judge Uno considered the Spanish Ballot instruction to be a stroke of luck (fortuitous) that likely assisted in the outcome in Tooele County.

During his time on the bench, Judge Uno commented on a full heavy caseload of about 1,000 cases, which he diligently managed to whittle down to about 600 cases. Judge Uno also mentioned getting little to no assistance from other judges, which he attributed in part to his defeating an incumbent judge. Even after retirement, Judge Uno remained engaged within the legal community. He visited regularly with minority law students and lawyers to encourage diversity in the profession and on the bench.

Judge Uno also considered himself to be a lonely "maverick Ronin Samurai" who lived by a Rudyard Kipling quote from The Winners (first stanza only):

What is moral? Who rides may read.
When the night is thick, and the tracks are blind
A friend at a pinch is a friend indeed.
But a fool to wait for the laggard behind.
Down to Gehenna or up to the Throne,
He travels the fastest who travels alone.

Attorney Jani Iwamoto, a former Utah State Senator recalls: "Judge Uno had a clear vision and commitment to fighting racial prejudice – his 'dream' was that all diverse groups be merged into the greater community – that their separate existence would no longer be necessary because racial and ethnic minorities would be truly and unconditionally accepted into our society."

Judge Uno lived the honored virtues of integrity, respect, discipline, fairness, and justice. The distinction of being the first ethnic minority judge was an honor that Judge Uno carried with integrity. His humility and dignity, despite what he endured, and optimism helped to shape my career. Judge Uno has been a good mentor and friend. His departure is bittersweet.

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- Why substandard nursing home care is a worsening national problem
- Medicare and Medicaid Regulations the trial lawyer must know
- Medicine in Residential Injury and abuse cases: The role of medical experts
- An introduction to litigation under the Federal Nursing Home Reform Act and USC 1983
- Navigating the corporate maze: How to determine who must be sued in a nursing care injury case
- Probate issues in Elder Care Injury cases
- How the nursing home industry defends cases

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Mastering Complex Litigation: Essential Strategies for Small Trial Firms

by Richard D. Burbidge

Over the years, I've engaged in discussions with my talented colleagues from small firms who were eager to explore the path to success in handling complex litigation. Despite the trend for firms to grow larger, my team has remained small, focusing on catastrophic injury cases for plaintiffs and high-stakes commercial disputes on both sides. Through decades of practice, we've honed certain elements and practices that have significantly bolstered our trial practice in tackling complex cases. Drawing upon talent, assembling a dedicated group of individuals who are not only skilled but also deeply committed to each case, serves as a baseline. The key to success with complex litigation includes five essential principles:

No. 1: Work like Hell

Hard work is fundamental, but it doesn't have to mean drudgery. Intense, focused effort, especially in the early stages of a case, pays big dividends later. Working hard doesn't just mean individual effort but rather collective dedication toward a common goal and with a shared narrative of the case. It's remarkable how many brilliant ideas emerge when you're fully focused and immersed in the intricacies of the case alongside your team, where every team member's unique perspective and input contribute to the collective brainstorming process. For small firms especially, collaborative teamwork is essential.

Part of working hard is taking command, at the outset of a case, of the story (the facts) and the documents and witnesses (the proof). Effective trial themes can only be developed and presented based on the facts that can be proven at trial. And, with few exceptions, those facts lie in the documents. However, small firms must avoid getting buried in document overload. Even in the blizzards of hundreds of thousands of documents commonly produced in high-stakes litigation, there are only five or ten documents that will be determinative. Therefore, it is essential to find these documents through careful discovery, planning, and assiduous execution of those plans. Currently, it is a litigation strategy to bury the other side in documents – not to inform the other side, but to bury them. This is where an outside document processing firm is essential. The documents can be effectively gathered, scanned, and word searched. This ability levels the playing field for small firms dramatically.

Early on, we work with the client to prepare a "cast of characters" and a chronology. These will be developed and augmented as the case develops. As the case develops, these materials provide an essential source of reference and orientation to keep the facts straight and identify the critical timing of conduct, which in many cases is determinative. These will also help to identify the key witnesses that must be interviewed and disclosed, and who ultimately will be the key witnesses in the presentation of the case.

Trial practice is always, and in all respects, "a game of inches." Every member of the crew, especially in small trial firms, must ensure unforced errors are kept to a minimum and the devil (which, as you know, lies in the details) is always given its due.

No. 2: Give a Damn

It is essential to care. And that applies to every matter taken on by the firm.

When I practiced in Los Angeles, it occurred to me that an attorney would rarely see the same judge more than once, even over a substantial period of time. When I moved back to Salt Lake City, it became clear that an attorney would see the same judge multiple times even in short periods. I therefore made sure that every appearance, before every judge, was reflective of our best effort. Judges do not remember average performances, but they do

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remember and register when a performance was out of the ordinary. It can lead to some odd surprises, as when Federal District Judge David Winder called on me in his courtroom to weigh in on a securities issue that others lawyers were in the middle of arguing. These were the old days of "cattle calls" when we all went down on "motion day" to wait our turns. I had apparently impressed Judge Winder in a prior securities case we tried, and it was flattering to be asked to weigh in on an issue that our crew had sometimes wrestled with. (Though when Judge Winder agreed with me on the issue, I had to buy lunch for a colleague who came out on the short end of the argument.)

Every member of the crew must have personal ownership of all work product and case results. That personal ownership does not end when pieces of the projects in which they were more directly involved are completed. Everyone must see that what they have contributed and will contribute has impact through to the conclusion of the matter. I use the crude analogy that small trial firms must function in the same way that wolves hunt. In every instance, there needs to be close coordination and joint effort by team members who are all fully engaged.

I can't tell you the number of times that one of the crew who was involved in a part of the preparation made observations or brought to our attention particular facts that made a huge difference in the outcome of the case. That is because they were personally involved and committed. As an example, a recent complex commercial trial involved a document with a somewhat ambiguous date, and the document had been misidentified in discovery. A member of our team was sufficiently conversant with the document, and its place in the chronology, that we knew just how to handle the ambiguity. At trial, the document's date was "clarified" by the opponent's own witness. With the date of the document corrected, we were able to show that the Plaintiff's claimed damages of $1.3 million were the sum total of "0."

In another matter, a judge appeared to agree with our legal theory, but he was troubled by another federal court decision that went against us. When asked if we could distinguish the troubling decision, we candidly responded no. However, one of our team had taken the initiative to look at the underlying briefing and even call the attorneys in the other matter. We thus discovered that the other attorneys had not considered, and thus had not made, the arguments we were now making. When

we explained this to our judge, the judge was persuaded. We prevailed on the issue. Think: "game of inches."

No. 3: Make Sure Your Clients Know You Are Between Them and the Problem

It is essential to make sure that every client (big or small) knows and understands that you, and everyone on your crew, stands between the client and the problem. Clients intuitively pick up on this because it is of such critical importance to them. They are, by definition, struggling with problems that may overwhelm them. Demonstrating a commitment to understanding what happened and using your best efforts to protect them, is game-changing. The kindest words I have ever heard from a client are: "Whenever you speak, I feel safe."

Years ago, we prevailed in court against a real estate developer. After the trial, the developer asked to speak to me. When I advised him that he was represented by counsel and shouldn't speak to me, he waived off that caution and said, "I don't want to talk to you about what just happened, I want to talk to you about how you took care of your client." He went on to say that he had learned something: "The next time I'm in this building," he said, "[Y]ou're going to be at my table." He became a long-time client and dear friend.

More recently, we tried a $40 million arbitration on behalf of that man. In a break during the arbitration, he entertained our crew by recounting how we had first met. "It cost me a million and a half dollars, but it was worth it." He had grasped how much our team cared and put its all into protecting his interests.

Even to sophisticated parties, litigation is bewildering. Having someone step up and demonstrate that they have a personal stake, and that they will do their best to protect their client's interests is perhaps the greatest service that can be delivered by a lawyer to his or her client.

I am always amazed at lawyers who suggest that they should not take their relationship with their client too personally. Maybe that's a fault in my makeup, but I find that the rewards of personal involvement far outweigh any downsides. There is simply nothing like a client falling into your arms at the conclusion of a successful trial. I suppose if it wasn't personal, I would just as soon deliver mail.

No. 4: Utilize Client Resources

In complex cases, the client's employees can and must provide essential assistance. At the outset, key employees must be identified and engaged to download critical information, including the critical facts leading to the dispute, and the elements the client views as the source of conflict. As importantly, the client can identify the key witnesses to the transactions and the documents essential to understanding and presenting the evidence.

In any number of trials, we have utilized, as non-retained experts, employees of the client who were very knowledgeable and articulate. Many such witnesses have outdistanced even our most experienced experts in terms of clarity and credibility. Often these witnesses, who clearly have a stake in the outcome, are typically not seen by the jury as biased, but rather deserving of the jury's or judge's attention and assistance. They usually do not come off as "hired guns" and often bring to the trial an informed but down-to-earth touch. Best of all, they often have a considerable history with the business, and can fill in occasional gaps in the story.

In a large commercial trial a few years ago, we had interviewed and placed on our cast of characters an officer who was somewhat shy and soft spoken. When our first choice could not be available for trial, we reviewed our notes and found this reticent individual also had sufficient expertise to present critical background to the court on several key issues. He was such a strong witness that during our bench trial, the court asked him to comment on several aspects of the plaintiff's business that went beyond the scope of the testimony we had planned to present.

No. 5: Look for Opportunities to Collaborate

Finally, as strong, agile, and forceful as your crew might be, there are always times when you need to collaborate with other firms. Build those bridges and relationships. It is very awkward to have complete strangers come in on a case. Developing relationships throughout your practice can come in handy. Our firm was able to take on "Big Tobacco," by joining a consortium of other small firms. By the same token, our trial firm was able to join in the prosecution of the claims for the families of the victims of United 93 with the September 11, 2011 terrorist attack. Our consortium was able to prevail against The Republic of Iran and obtain a $7 billion verdict. Standing at Ground Zero, with the victims' families, was a privilege, and a harrowing and humbling experience that we will never forget. It would not have been possible without collaboration.

Conclusion

These principles have guided us through many complex personal injury and commercial cases, shaping our approach to litigation and contributing to our success. I hope they serve as valuable insights for your endeavors as well. Here's to mastering the intricacies of complex litigation and achieving success in your practice. Best of luck.

RAY QUINNEY & NEBEKER

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The Government Relations Committee's 2024 Legislative Efforts and Updates

by Frank Pignanelli and Stephen Styler

Overview

Every legislative session has a different theme or flavor depending upon unique external and internal dynamics. The 2024 General Session possessed unusual characteristics. A noteworthy discussion topic among insiders and observers was the increasing workload on lawmakers. This year, 591 bills passed (out of 942 sponsored) – a record. The January 8 filing deadline for candidates seeking election to office created an unprecedented feature in that lawmakers were aware of their opponents during the session. Also, appropriations were more constrained as the budget surplus was more limited than prior bountiful years.

Bar Involvement

Because legislative activities regularly impact attorneys, either directly or indirectly, the Bar is vigilant in active monitoring and, when permitted, engagement on legislative deliberations. During the 2024 session, the Government Relations Committee (GRC) reviewed 280 bills and resolutions (almost a third of all legislation). Each of these bills and resolutions were provided to the appropriate sections for their examination. The results of this scrutiny, and accompanying recommendations, were expressed to the full GRC.

The GRC is co-chaired by Jaqualin Peterson and Sara Bouley, and each section of the Bar has a designated representative. The GRC meets weekly during the legislative session, with meetings conducted online again this year as a virtual setting provides greater accessibility to participate in these discussions. The Bar posts its legislative positions to the public on its website so practitioners are provided transparency and clarity into this process.

The Utah State Constitution mandates a forty-five-day legislative session, which adjourns in early March. But within those parameters, lawmakers impose a heavy workload upon themselves, lobbyists, and many organizations. The GRC performs a tremendous service to Utah attorneys by expeditiously examining so much legislation. The Bar is grateful to GRC Chairs Peterson and Bouley, and the entire committee for their dedication.

The Utah State Bar's legislative activities are limited by design and follow United States Supreme Court precedent outlined in *Keller v. State Bar of California*, 496 U.S. 1 (1990). When the Utah Supreme Court adopted rules that directed the Utah State Bar's engagement in legislative activities, it identified specific guardrails to align with the limitations expressed in *Keller*. These defined areas of the Bar's involvement in legislative activities include matters concerning the courts, rules of evidence and procedure, the administration of justice, the practice of law, and access to the legal system. After receiving recommendations from the GRC, the Commission votes on whether to take a position on

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any particular piece of legislation, with consideration for whether it falls within the Bar's purview.

Many of the bills sent by the GRC to Bar sections prompted discussions between lawyers and lawmakers. Legislators have expressed their gratitude and appreciation for this expertise. (Of course, these communications were conducted with the understanding the attorney was not representing the Bar but providing advice as a practitioner.)

Session Actions

Of the 280 bills analyzed, the GRC made recommendations on sixteen bills to the Bar Commission. These recommendations were each within the confines of the *Keller* restrictions. After careful consideration, the Bar Commission adopted the following positions. Unless otherwise noted, each of these bills passed:

HB 021 Criminal Accounts Receivable Amendments (Rep. Wheatley, M.) [Creates a process to allow certain individuals to request a credit towards debt owed as part of a criminal judgment upon a payment of restitution] – **Support**

HB 049 Justice Reform Task Force Sunset Extension (Rep. Abbott, N.) [Extends the sunset date for the Justice Court Reform Task Force from July 1, 2025, to December 31, 2026.] – **Support** (this legislation did not pass)

HB 338 Mentally Ill Offenders Amendments (Rep. Abbott, N.) [Adds specific disorders to a definition of mental illness and provides additional requirements for the provision and use of documents and arrest reports for treatment assessments and hearings relating to mentally ill offenders] – **Support**

HB 414 Due Process Amendments (Original title: Student Right to Counsel) (Rep. Teuscher, J.) [Enacts provisions related to disciplinary proceedings in institutions of higher education, including: requiring an institution of higher education to allow certain parties to have legal representation at a disciplinary proceeding; governing the exchange of evidence at a disciplinary proceeding; and prohibiting certain conflicts of interest in a disciplinary proceeding] – **Support**

HJR 008 Joint Resolution Amending Rules of Civil Procedure on the Disqualification of a Judge (Rep. Gricius, S.) [Amends Rule 63A of the Utah Rules of Civil Procedure to allow for a change of judge by a party in a civil action] – **Oppose**

SB 070 Judiciary Amendments (Sen. Weiler, T.) [Increases the number of district court judges in the Third Judicial District; increases the number of juvenile court judges in the Fourth Judicial District] – **Support**

SB 160 Indigent Defense Amendments (Sen. Weiler, T.) [Amends provisions related to assigning an indigent defense service provider to represent an indigent individual; amends the duties of the Indigent Defense Commission and the Office of Indigent Defense Services to incorporate the duties of the Indigent Defense Funds Board; and amends provisions related to using and administering the Indigent Aggravated Murder Defense Fund] – **Support**

SB 163 Expungement Fee Waiver Amendments (Sen. Stevenson, J.) [Amends provisions related to expungement] – **Support**

SB 167 Court Transcript Fee Amendments (Sen. Weiler, T.) [Modifies state certification requirements for state certified court reporters; and modifies the cost and cost structure of court transcript fees] – **Support**

SB 180 Court Jurisdiction Modifications (Sen. Plumb, J.) [Clarifies the jurisdiction of the juvenile court and the justice court] – **Support**

SB 200 State Commission on Criminal and Juvenile Justice Amendments (Sen. McKell, M.) [Amends provisions regarding the State Commission on Criminal and Juvenile Justice] – **Oppose**

After these positions were established by the Bar Commission with the recommendations from the GRG, Bar lobbyists were authorized to communicate with legislative bill sponsors regarding the support or concerns with the legislation as articulated by the GRC and the commission. Legislative committee members were informed of the Bar's position and, when appropriate, members of the Bar Commission provided public testimony.

Targeted Legislation

Two items were of deep interest to many members and Bar leaders: HJR 8 (Joint Resolution Amending Rules of Civil Procedure on the Disqualification of a Judge) and SB 200 (State Commission on Criminal and Juvenile Justice Amendments).

HJR 008 Joint Resolution Amending Rules of Civil Procedure on the Disqualification of a Judge

HJR 8, as originally drafted, created many issues for the administration of justice. The GRC and Bar Commission considered these problems when determining a position. For example, specialty courts, i.e. tax, water, chancery, etc. do not have alternate judges available in the event of a party seeking a change. Other aspects of the original resolution were equally problematic.

In the House Judiciary Committee hearing, Bar President Erik Christiansen provided articulate and compelling testimony that was well received by lawmakers who expressed support for the recommendations he suggested.

Representative Stephanie Gricius, the sponsor of HJR 8, was extremely gracious and interested in the Bar's position. After lengthy discussions with the Bar's lobbyists, she agreed to modify many provisions of the resolution to accommodate these concerns. Throughout the legislative process, she maintained contact with the Bar regarding developments in the language. Representative Brady Brammer and Senator Kirk Cullimore were also very helpful in crafting needed modifications.

As finally passed, HJR 8 entitles a party in a civil action, pending in a county with seven or more district judges, one change of judge as a matter of right. This party must file a notice of change of judge with the clerk in a timely manner as provided in the resolution. There are several exceptions to this provision. Also, HJR 8 does not preclude the right of a party to seek disqualification of a judge under Rule 63. Ultimately, the Bar did not support the bill but we appreciate Representative Gricius' willingness to work with the Bar.

State Commission on Criminal and Juvenile Justice Amendments

As our state has grown, so have the various levels of state government. This includes the many boards and commissions that require gubernatorial and legislative appointments and approvals. These entities have also increased in terms of membership and responsibility. Former Governor Gary Herbert was the first to express concerns with this bureaucracy and whether the current structure was meeting the needs of good public policy.

Last year, Governor Spencer Cox began the process of consolidating, eliminating, or reducing various boards and commissions. In the 2024 session, there were several bills that accomplished this objective, including SB 200.

With twenty-six voting members, the State Commission on Criminal and Juvenile Justice (CCJJ) was criticized as being too large. SB 200 reduced the number to seventeen.

In the last several years, some lawmakers have expressed concerns that the CCJJ had reached beyond its mission by advocating for or against legislation during the legislative process. Others felt that the commission possessed the experience and expertise to provide necessary information to lawmakers. These conflicting perspectives percolated during the deliberations on SB 200.

Many competent Bar members have served on CCJJ and provided important perspectives as prosecutors or as defense attorneys. Organizations representing these lawyers were very outspoken against the reduction of CCJJ membership. A particular concern was the removal of the Bar appointing a prosecuting attorney and a defense attorney. Those appointments are now to be made by specific organizations representing prosecutors and defense counsel.

The legislation also reduced the number of voting members of the Sentencing Commission from twenty-eight to fifteen. Among those eliminated were two appointments by the Bar Commission.

Bar President-elect Kim Cordova served as executive director of CCJJ, and therefore was a natural to speak on behalf of the Bar in opposition to this legislation. President-elect Cordova expertly articulated the concerns of many Bar members regarding the restructuring of the CCJJ.

Many lawmakers understood the concerns forwarded by Bar members. However, the drive to specifically modify the size and structure of these commissions was a priority for both the legislature and the governor. The Bar appreciates all those members who spoke to lawmakers on these bills.

Interim Committees

Beginning in May, and continuing through November, the legislature meets monthly in interim committees, task forces and ad hoc working groups to discuss legislation. In April, legislative leadership determined the study items for these committees. The following topics, which may be of particular interest to Bar members, are among those that will be reviewed in anticipation of the 2025 session:

- Victim services
- Prosecutor initiated resentencing
- Bail and pretrial release
- Children's Justice Center interviews
- Administrative law judges
- Offender management software
- High frequency offenders
- Parental contact and protective orders
- Organized crime
- Criminal law changes
- Risk-based criminal management

Prior to this year, the GRC and sections did not receive legislation to review until the general legislative session began. As the number of bills filed throughout the year has increased, the ability for productive discussions between lawmakers and lawyers in a timely manner has diminished. Lawyer legislators expressed concern about this and wanted to hear from attorneys during the interim sessions.

To remedy the situation, section leaders will now receive updates as to Interim Committee agenda items and bill files as they are opened by sponsors. This will allow section members to engage with lawmakers on an independent basis to assist in the development of legislation.

While sections may not take official positions on legislation, they may still do legislative work with safeguards.

If a section promotes legislation (including legislation based on appellate guidance), it must use the following language in substantially this form when communicating with a legislator:

> The following bill is a product of [section name]. The [section] is self-funded and voluntary, and this bill has not been approved by the Utah State Bar. The Bar has not taken, nor will it take, a position on the bill except to the extent that it addresses access to justice, the regulation of the practice of law, the administration of justice, or improving the quality of legal services for the public.

Sections may take a vote on proposed legislation that has originated within or outside of the section. But in communicating with legislators, the section must clarify that the vote was designed to get a feel for how practitioners felt about the policy and the vote is not its official position. Practitioners presenting to the legislature must make clear that they are not representing the Bar – unless specifically authorized to do so – and that they are appearing in a personal capacity. If a practitioner expresses views at variance with a Bar policy or official position, the practitioner must clearly identify the variance as the practitioner's personal views only.

The Bar Commission will continue to strengthen the rapport between Utah's attorneys and the legislature. Of course, there will be a focus on our relationship with lawyer legislators. They are the key to the success of maintaining a strong judiciary for the benefit of all citizens.

Utah State Bar members play a critical role in the legislative process. Practitioners with experience offer perspectives desired by lawmakers and their staff. Thus, we strongly encourage participation under the parameters outlined above. If you have any questions about how we can help, please feel free to reach out to the Bar or your lobbyists.

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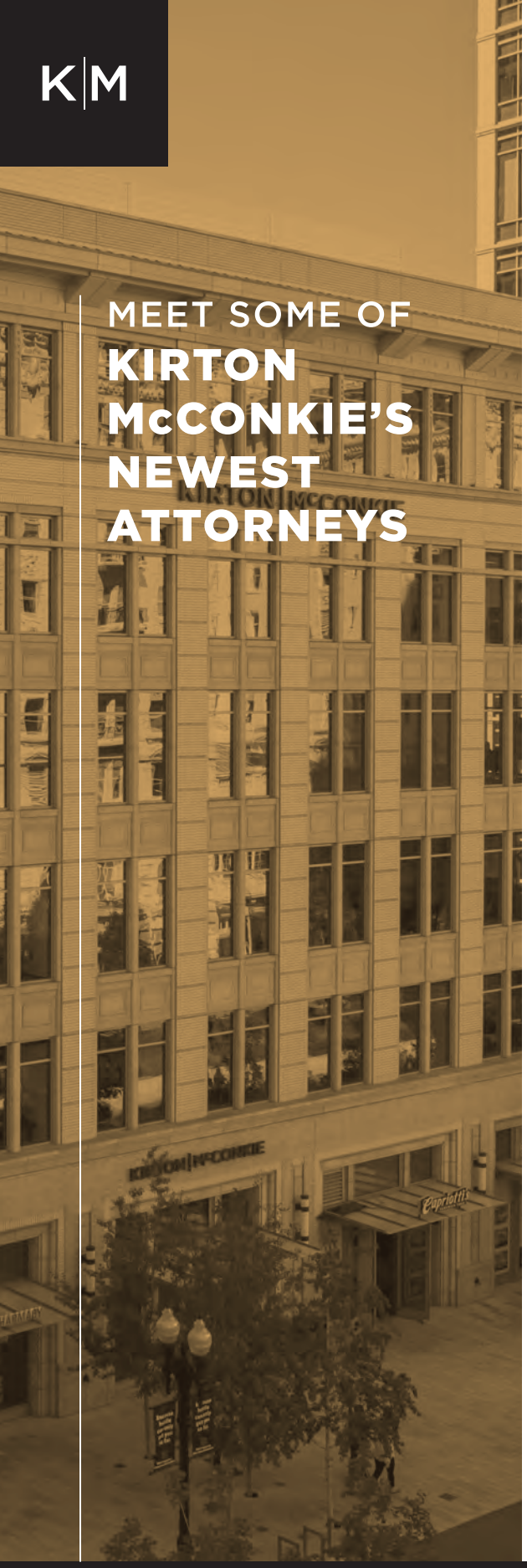

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Highlights from the 2024 Utah Legislative General Session

by Jacqueline Carlton and Andrea Valenti Arthur[1]

AUTHORS' NOTE: *The following summaries of selected passed bills from the 2024 Utah Legislative General Session may be of interest to practicing attorneys and other legal professionals. As employees of a nonpartisan legislative office, the authors take no position on the policies or relative importance of these bills to the practice of law. These bill summaries are provided for educational purposes only and are not a substitute for reading the language of the bills. Full bill language, the applicable code sections, and other legislation not included here may be found at le.utah.gov. Unless otherwise noted, the bills took effect on May 1, 2024.*

Business Law

S.B. 79, Estate Planning Recodification, reorganizes and renumbers statutes found in Title 22, Fiduciaries and Trusts, and Title 75, Utah Uniform Probate Code, to two new titles called Title 75A, Fiduciaries, and Title 75B, Trusts. S.B. 79 takes effect on September 1, 2024. Helpful information about the recodification can be found at https://le.utah.gov/lrgc/recodification.htm. Sponsors: Senator Todd Weiler and Representative Brady Brammer

S.B. 202, Regulations for Legal Services, establishes a thirty-day period during which a person is prohibited from contacting a potential client for legal services following disaster, personal injury, or death. There are exceptions to the thirty-day period. S.B. 202 took effect on May 2, 2024. Sponsors: Senator Michael McKell and Representative Nelson Abbott

H.B. 55, Employment Confidentiality Amendments, makes nondisclosure, non-disparagement, and confidentiality clauses related to sexual assault and sexual harassment, as a condition of employment, unenforceable. H.B. 55 also provides that a person who attempts to enforce such a clause is liable for costs and attorney fees under certain conditions. H.B. 55 has retrospective operation to January 1, 2023. Sponsors: Representative Kera Birkeland and Senator Todd Weiler

H.B. 174, Automatic Renewal Contracts Act, requires that if a person provides a contract that contains a provision that automatically renews the contract at the end of a definite time period, the person must provide notice of the renewal date of the contract, the total renewal cost, and options for the cancellation of the contract. H.B. 174 also requires that if a person provides a contract that contains a provision for a free trial period, the person must provide notice of the trial period expiration date, the price to be charged or other purchase obligations to be imposed after the expiration date, and options for cancellation of the contract. H.B. 174 takes effect on January 1, 2025. Sponsors: Representative Cheryl Acton and Senator Todd Weiler

H.B. 209, Amendments to Civil and Criminal Actions, allows a plaintiff to bring an action to dissolve a nonprofit corporation when the plaintiff has also brought certain misconduct claims in an action against the nonprofit corporation. H.B. 209 also clarifies the requirements for a civil action for a human trafficking offense. H.B. 209 took effect on March 18, 2024. Sponsors: Representative Stephanie Gricius and Senator Stephanie Pitcher

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Court Operations & Procedure

S.B. 180, Court Jurisdiction Modifications, clarifies the jurisdiction of the justice and juvenile courts, including jurisdiction over an offense committed on school property by a high school student who is eighteen years old at the time of the offense. Sponsors: Senator Jen Plumb and Representative Anthony Loubet

H.J.R. 8, Joint Resolution Amending Rules of Civil Procedure on Change of Judge as a Matter of Right, amends Rule 63A of the Utah Rules of Civil Procedure to allow for a change of a judge in certain civil actions in a court in a county with seven or more district court judges. The changes to Rule 63A take effect on January 1, 2025. Sponsors: Representative Stephanie Gricius and Senator Keith Grover

H.J.R. 22, Joint Resolution Regarding District Court Operations, approves the removal of district court operations from American Fork City and recognizes that district court operations in American Fork City will move to the Fourth Judicial District Courthouse in Provo City. Sponsors: Representative Val Peterson and Senator Michael McKell

H.B. 300, Court Amendments, makes various changes to the Utah Code to address the new Business and Chancery Court. H.B. 300 modifies the jurisdiction of the Business and Chancery Court and clarifies when the Business and Chancery Court may exercise supplemental jurisdiction over a claim. H.B. 300 also clarifies that the Business and Chancery Court is required to transfer an action or claim to the district court if a party demands a trial by jury in accordance with the Utah Rules of Business and Chancery Procedure and the Business and Chancery Court finds that the party has a right to trial by jury on a claim in the action. H.B. 300 removes the requirement that the Business and Chancery Court be located in Salt Lake City. H.B. 300 has a special effective date with most provisions taking effect on July 1, 2024. Sponsors: Representative Brady Brammer and Senator Kirk Cullimore

Criminal and Juvenile Justice Law

S.B. 76, Evidence Retention Requirements, is a continuation of the Utah Legislature's efforts to clarify the requirements for retaining evidence by providing the time periods for which law enforcement agencies are required to retain evidence of a felony

offense. Sponsors: Senator Wayne Harper and Representative Ken Ivory

S.B. 139, Competency Amendments, creates a procedure under which a court may order the ongoing administration of antipsychotic medication to a criminal defendant to maintain the defendant's competency to stand trial. Sponsors: Senator Stephanie Pitcher and Representative Nelson Abbott

S.B. 163, Expungement Revisions, makes changes to expungement statutes, including clarifying venue for an expungement petition and modifying the indigency requirements for receiving a filing fee waiver for a petition for expungement. Sponsors: Senator Jerry Stevenson and Representative Tyler Clancy

S.B. 200, State Commission on Criminal and Juvenile Justice, decreases the number of members on the State Commission on Criminal and Juvenile Justice and the Utah Sentencing Commission. S.B. 200 also requires the Utah Legislature to annually reauthorize the Sentencing and Supervision Length Guidelines and the Juvenile Disposition Guidelines. Sponsors: Senator Michael McKell and Representative Karianne Lisonbee

S.B. 213, Criminal Justice Modifications, addresses various criminal justice issues, including modifying the crimes of unlawful sexual activity with a minor and unlawful adolescent sexual activity. S.B. 213 also requires a magistrate to order temporary pretrial detention of a defendant who has committed a felony offense in certain circumstances. Sponsors: Senator Kirk Cullimore and Representative Karianne Lisonbee

H.B. 14, School Threat Penalty Amendments, increases criminal penalties for individuals who threaten a school or make a false report of an emergency. H.B. 14 also removes the requirement that, for an individual to be guilty of false emergency reporting, the report had to be of an ongoing emergency rather than a future emergency. Sponsors: Representative Ryan Wilcox and Senator Don Ipson

H.B. 21, Criminal Accounts Receivable Amendments, creates a process for an individual, who was sentenced before July 1, 2021, to receive credit towards a debt owed to the state when the individual makes a payment of restitution. H.B. 21 seeks to address individuals who are not eligible for remittance under legislation enacted on July 1, 2021. Sponsors: Representative Mark Wheatley and Senator Michael Kennedy

H.B. 68, Drug Sentencing Modifications, creates a presumption of a prison time for individuals who are convicted of a first-degree felony for distributing a controlled substance and while distributing the substance used, drew, or exhibited a dangerous weapon, used a firearm or had a firearm readily accessible for use, or distributed a firearm. A court may overcome this presumption and sentence the individual to probation if the court makes certain findings on the record regarding public safety and the interests of justice. Sponsors: Representative Andrew Stoddard and Senator Keith Grover

H.B. 158, Criminal Defamation Amendments, repeals the criminal offense of defamation. Sponsors: Representative Rex Shipp and Senator Michael Kennedy

H.B. 259, Juvenile Interrogation Amendments, addresses the admissibility of an interrogation of a child when a police officer fails to comply with the requirements of the juvenile interrogation statute. H.B. 259 also clarifies the requirements for an interrogation of a child held in a juvenile detention or secure care facility. Sponsors: Representative Marsha Judkins and Senator Todd Weiler

H.B. 338, Mentally Ill Offenders Amendments, adds specific disorders to the definition of "mental illness" for purposes of a defense against prosecution. H.B. 338 makes changes to competency proceedings, including the documentation that must be provided to a forensic evaluator. Sponsors: Representative Nelson Abbott and Senator Todd Weiler

H.B. 352, Amendments to Expungement, amends expungement statutes, including redefining what it means to "expunge" and allowing a court to order an expungement of an offense as part of a plea in abeyance. The most significant changes in H.B. 352 are to the automatic expungement process, placing a temporary pause on the court automatically issuing expungement orders until January 1, 2026, and only requiring the court and the Bureau of Criminal Identification to expunge all records of a case when an automatic expungement order is issued. H.B. 352 takes effect on October 1, 2024. A new expungement working group was created and took effect on May 1, 2024. Sponsors: Representative Karianne Lisonbee and Senator Michael Kennedy

H.B. 350, Criminal Intent Amendments, modifies the applicable mental state for the criminal offenses of stalking, threatened or attempted assault on an elected official, and

tampering with or retaliating against a juror. Sponsors: Representative Nelson Abbott and Senator Heidi Balderree

H.B. 362, Juvenile Justice Revisions, addresses a variety of juvenile justice issues, including the referral of a minor to the juvenile court for habitual truancy. H.B. 362 also makes significant changes to the criminal offenses of criminal solicitation of a minor and possession of a dangerous weapon by a minor. Sponsors: Representative Karianne Lisonbee and Senator Kirk Cullimore

H.B. 395, DUI Offense Amendments, makes numerous changes related to the offense of driving under the influence (DUI), including penalties for wrong-way driving while under the influence; a reduction in the alcohol level allowed for purposes of a plea down to impaired driving; various clarifications related to ignition interlock restriction periods and violations of ignition interlock restrictions; new sentencing guidelines for certain offenses related to ignition interlock restricted drivers and of negligent operation of a vehicle that results in injury when there is evidence that the individual was also driving under the influence; and pretrial detention requirements for certain DUI related offenses. H.B. 395 takes effect on July 1, 2024. Sponsors: Representative Steve Eliason and Senator Curtis Bramble

H.B. 424, Lewdness Involving a Child, modifies the elements that constitute the offense of lewdness involving a child. Sponsors: Representative Colin Jack and Senator Evan Vickers

H.B. 459, Blended Plea Amendments, clarifies that a court may not accept a plea bargain for a criminal offense from a minor

that results in a combination of a juvenile adjudication and disposition and a criminal conviction. Sponsors: Representative Jordan Teuscher and Senator Stephanie Pitcher

Cyber Law

S.B. 131, Information Technology Act Amendments, addresses the use of synthetic media and artificial intelligence (AI) in political advertising and criminal offenses. For political advertisements intended to influence voting in Utah that contain synthetic media (audio or visual content substantially produced by generative AI), S.B. 131 requires disclosures both within the advertisement itself and in embedded digital content provenance information. Failure to include the required disclosures can result in civil penalties. S.B. 131 also allows the sentencing judge or Board of Pardons and Parole to consider the defendant's intentional or knowing use of AI as an aggravating factor if the AI provided material assistance in the planning, commission, or concealment of the criminal offense. Sponsors: Senator Wayne Harper and Representative Ariel Defay

S.B. 149, Artificial Intelligence Amendments, clarifies that the use of generative AI is not a defense to a violation of the Utah Consumer Sales Practices Act or other consumer protection laws. S.B. 149 requires disclosure when a consumer is interacting with generative AI rather than a human in certain contexts, including in the provision of regulated occupations. The bill also establishes an Office of Artificial Intelligence Policy within the Department of Commerce to study AI policy issues through a learning laboratory program. Finally, the bill provides that a person can be guilty of a criminal offense if the person commits the offense with the aid of generative AI or prompts the AI to commit the offense. Sponsors: Senator Kirk Cullimore and Representative Jefferson Moss

S.B. 194, Utah Minor Protection in Social Media Act, requires social media companies to verify the age of Utah users and implement strict privacy settings and data protections for those under 18. The Division of Consumer Protection will enforce the act and establish safe harbor rules for compliance. Fines and legal action may result from violations. S.B. 194 takes effect on October 1, 2024. Sponsors: Senator Michael McKell and Representative Jordan Teuscher

H.B. 464, Social Media Amendments, establishes a private right of action against social media companies for harm caused to minors by excessive use of their algorithmically curated social media services. Utah minor account holders or their parents may sue if the minor is diagnosed with an adverse mental health outcome resulting from excessive use of the service. H.B. 464 creates rebuttable presumptions regarding causation but provides an affirmative defense for companies that implement certain restrictions on minor users' access to the service. H.B. 464 takes effect on October 1, 2024. Sponsors: Representative Jordan Teuscher and Senator Kirk Cullimore

Education Law

S.B. 13, Education Entity Amendments, requires each county and municipality to consider a home-based microschool and micro-education entity as a permitted use in all zoning districts within the county and municipality. Sponsors: Senator Lincoln Fillmore and Representative Stephanie Gricius

H.B. 84, School Safety Amendments, is a comprehensive overhaul of school safety and requires public schools to do several things, including hiring an armed professional for every school building. H.B. 84 creates new misdemeanors regarding the sharing of information related to the identity of an armed professional. Sponsors: Representative Ryan Wilcox and Senator Don Ipson

H.B. 202, Student Athlete Amendments, enacts provisions relating to the use of the name, image, or likeness of a student athlete who participates in a higher education institution's intercollegiate athletic program. Sponsors: Representative Jordan Teuscher and Senator Todd Weiler

H.B. 347, Educational Rights Amendments, establishes a right to education free from continual disruption and a right to an environment for all staff and students that does not pose a predictable threat of serious bodily injury. H.B. 347 also adds a prohibition on private rights of action from the additions to the law. However, the prohibition expires in three years. H.B. 347 takes effect on July 1, 2024. Sponsors: Representative Raymond Ward and Senator Lincoln Fillmore

H.B. 278, Inmate Education Amendments, directs the Higher Education and Corrections Council to facilitate

postsecondary education for inmates housed in county jails and provide certain assistance to an inmate participating in postsecondary certificate or degree programs. Sponsors: Representative Melissa Ballard and Senator Luz Escamilla

H.B. 414, Due Process Amendments, requires an institution of higher education to allow certain parties, primarily students, to have legal representation at a disciplinary proceeding. Sponsors: Representative Jordan Teuscher and Senator Todd Weiler

H.B. 418, Student Offender Reintegration Amendments, creates civil liability for a parent of a student under certain circumstances for crimes committed by the student on school property. H.B. 418 takes effect on July 1, 2024. Sponsors: Representative Ashlee Matthews and Senator Keith Grover

Environmental and Natural Resources Law

H.B. 31, Agritourism Amendments, modifies civil liability protections for an operator of an agritourism activity, including redefining what constitutes an inherent risk of an agritourism activity. Sponsors: Representative Carl Albrecht and Senator Scott Sandall

H.B. 353, Mining Operations Amendments, addresses notice of intentions in mining, including the process for approval of notice of intentions for large mining operations and procedures for review of permit orders. Sponsors: Representative Bridger Bolinder and Senator David Hinkins

H.B. 407, Eminent Domain Modifications, provides when eminent domain related to mining is prohibited. Sponsors: Representative Bridger Bolinder and Senator Scott Sandall

H.B. 478, Animal Care Amendments, authorizes civil penalties for violating animal care requirements and criminalizes a violation of the animal care requirements by an animal care facility. Sponsors: Representative Norman Thurston and Senator Jen Plumb

H.B. 453, Great Salt Lake Revisions, addresses issues related to the Great Salt Lake, including severance taxes, mineral lease and royalty agreements, water distribution management plans, and the use of eminent domain. H.B. 453 has a split effective date with some provisions taking effect May 1, 2024, and others taking effect January 1, 2025. Sponsors: Representative Casey Snider and Senator Scott Sandall

Family Law

S.B. 95, Domestic Relations Recodification, reorganizes and renumbers all statutes found in Title 30, Husband and Wife, and Title 78B, Chapter 12, Utah Child Support Act, to a new title called Title 81, Domestic Relations Recodification. S.B. 95 takes effect on September 1, 2024. Helpful information about the recodification can be found at https://le.utah.gov/lrgc/recodification.htm. Sponsors: Senator Todd Weiler and Representative Brady Brammer

H.B. 20, Parental Rights Amendments, clarifies the requirements and procedure for an individual to consent to the termination of parental rights or to voluntarily relinquish parental rights. Sponsors: Representative Kera Birkeland and Senator Luz Escamilla

H.B. 220, Divorce Amendments, amends the factors for determining alimony and creates a rebuttable presumption regarding equalizing the parties' standard of living in certain circumstances. H.B. 220 also addresses the imputation of income for a spouse that has diminished workplace experience or a disability. Sponsors: Representative Jordan Teuscher and Senator Michael McKell

H.B. 272, Child Custody Proceedings Amendments, amends the factors a court considers when determining child custody and parent-time, modifies requirements for supervised parent-time, addresses expert evidence and reunification treatment in the context of child custody proceedings, and requires the state court administrator to develop or propose a child abuse and domestic abuse training and education program for judges, court commissioners, and court personnel. Sponsors: Representative Paul Cutler and Senator Michael McKell

H.B. 337, Amendments to Mandatory Courses for Family Law Actions, clarifies the mandatory course requirements for parties in divorce or separation actions. H.B. 337 also requires parties in a parentage action dealing with issues of custody and parent-time to attend the parenting course described in section 30-3-11.3. Sponsors: Representative Joseph Elison and Senator Michael McKell

Government and Administration

S.B. 107, Election Process Amendments, repeals the in-state residency requirement for individuals who collect signatures for a statewide or local initiative petition or referendum petition.

S.B. 107 took effect on February 28, 2024. Sponsors: Senator Todd Weiler and Representative Jordan Teuscher

S.B. 150, Exercise of Religion Amendments, creates Utah's version of the Religious Freedom Restoration Act, which provides legal protections for religious freedom. Sponsors: Senator Todd Weiler and Representative Jordan Teuscher

S.B. 174, Safe Leave Amendments, establishes "safe leave" as a new form of paid leave available to a state employee. In particular, S.B. 174 requires most state employers to allow an employee to use up to one week of paid leave per calendar year for a reason related to the employee, or the employee's immediate family member, having been the victim of domestic violence, sexual assault, stalking, or human trafficking. S.B. 174 takes effect on January 1, 2025. Sponsors: Senator Stephanie Pitcher and Representative Tyler Clancy

H.B. 13, Infrastructure Financing Districts, authorizes the creation of a new kind of special district for the purpose of financing infrastructure through an assessment of property within the district. Sponsors: Representative James Dunnigan and Senator Kirk Cullimore

H.B. 36, Open and Public Meetings Act Amendments, makes significant clarifications to the Open and Public Meetings Act, including rewriting the definition of "meeting," eliminating provisions describing what a "meeting" is not, and prohibiting certain action outside a meeting to predetermine action to be taken at a meeting. Sponsors: Representative James Dunnigan and Senator Michael McKell

H.B. 69, DUI Testing Amendments, clarifies requirements for the Department of Health and Human Services regarding testing of blood and urine samples related to driving under the influence and other offenses. H.B. 69 requires timely testing and clarifies how the test results and information may be used by law enforcement and the Driver License Division. Sponsors: Representative Ryan Wilcox and Senator Wayne Harper

H.B. 138, Lobbyist Disclosure and Regulation Amendments Act, prohibits a person from communicating with an elected official's employer with the intent to influence, coerce, or intimidate the elected official's action on a vote or another official act. H.B. 138 defines the term "elected official" to include a member of the state legislature, the legislative body of a local government, a member of a board of education, or the mayor of a city or town. Sponsors: Representative Raymond Ward and Senator Daniel McCay

H.B. 228, Public Employee Leave Amendments, requires government employers to provide unpaid leave to an employee who is a state legislator on legislative days unless that requirement would impose an undue hardship on the employer. Sponsors: Representative Norman Thurston and Senator Stephanie Pitcher

H.B. 249, Utah Legal Personhood Amendments, prohibits a governmental entity, including a court, from granting or recognizing

legal personhood in certain categories of non-humans. Sponsors: Representative Walt Brooks and Senator Don Ipson

H.B. 330, Unincorporated Areas Amendments, allows a community council area within Salt Lake County to incorporate and provides for the automatic annexation of unincorporated islands within Salt Lake County. Sponsors: Representative Jordan Teuscher and Senator Kirk Cullimore

H.B. 430, Local Government Transportation Services Amendments, allows local governments to apply for transit innovation grants. These grants would allow the cities to provide pilot public transit services in areas where transit services are not available or in fast growing areas. Depending on the success of the pilot, the Utah Transit Authority would have to consider expansion of services to those underserved areas. H.B. 430 takes effect on July 1, 2024. Sponsors: Representative Candice Pierucci and Senator Kirk Cullimore

H.B. 491 Data Privacy Amendments, establishes the Government Data Privacy Act, setting requirements for governmental entities regarding the collection, use, and protection of personal data. H.B. 491 creates the Office of Data Privacy to support entities' privacy practices, requires notices and procedures for personal data, provides for enforcement, and expands the Utah Privacy Commission's duties. Sponsors: Representative Jefferson Moss and Senator Kirk Cullimore

Health Law

S.B. 61. Electronic Cigarette Amendments, criminalizes the distribution of flavored electronic cigarettes as well as electronic cigarettes that have not obtained FDA authorization to be sold in the United States or are not in the process of obtaining the FDA authorization. S.B. 61 also creates an electronic cigarette product registry and requires electronic cigarette products be on the registry to be sold in the state. S.B. 61 takes effect on July 1, 2024. Sponsors: Senator Jen Plumb and Representative Brady Brammer

H.B. 203, Involuntary Commitment Amendments, amends the criteria by which an adult may be involuntarily committed under court order to include circumstances where the adult has been charged with a crime, is incompetent to proceed, has a mental illness, and has a persistent unawareness of their mental illness or unreasonably refused to undergo mental health treatment. Sponsors: Representative Nelson Abbott and Senator Stephanie Pitcher

Tax Law

S.B. 29, Truth in Taxation Modifications, enhances the notice and public hearing requirements associated with property tax increases. S.B. 29 also modifies the required contents of the property tax valuation notice. S.B. 29 takes effect on January 1, 2025. Sponsors: Senator Chris Wilson and Representative Keven Stratton

S.B. 33, Individual Income Tax Act Amendments, modifies how domicile is established for purposes of state income tax liability. S.B. 33 took effect for the taxable year that begins on or after January 1, 2024. Sponsors: Senator Curtis Bramble and Representative Steve Eliason

S.B. 69, Income Tax Amendments, lowers the state's income tax rates from 4.65% to 4.55%. S.B. 69 took effect for the taxable year that begins on or after January 1, 2024. Sponsors: Senator Chris Wilson and Representative Kay Christofferson

S.B. 182, Property Tax Assessment Amendments, creates additional remedies for property owners who experienced increases in their tax bills due to a 150% or more increase in property valuation during the 2023 and 2024 calendar years. S.B. 182 also modifies the burdens of proof for an appeal of the valuation of locally assessed property to a county board of equalization or the State Tax Commission. S.B. 182 has retrospective operation. Sponsors: Senator Wayne Harper and Representative Steve Eliason

H.B. 34, Tax Refund Claim Amendments, adds an additional mechanism for challenging the assessment of a tax penalty or interest. H.B. 34 has retrospective operation to January 1, 2024. Sponsors: Representative Steve Eliason and Senator Stephanie Pitcher

H.B. 423, Residential Valuation Appeal Procedures Amendments, gives greater weight to certain sales contract evidence in appeals to the county board of equalization regarding the valuation of residential property. H.B. 423 also requires the county board of equalization to only consider evidence submitted by the parties to the appeal in determining the value of residential property. H.B. 423 has retrospective operation to January 1, 2024. Sponsors: Representative Norman Thurston and Senator Daniel McCay

1. Other attorneys from the Office of Legislative Research and General Counsel helped with the identification and summarization of bills for inclusion in this article.

Appellate Highlights

by Rodney R. Parker, Dani Cepernich, Robert Cummings, and Andrew Roth

EDITOR'S NOTE: *The following appellate cases of interest were recently decided by the Utah Supreme Court, Utah Court of Appeals, and United States Tenth Circuit Court of Appeals. The following summaries have been prepared by the authoring attorneys listed above, who are solely responsible for their content.*

Utah Court of Appeals

In re O.N.
2024 UT App 27 (Mar. 7, 2024)

In this appeal from a child welfare case, the appellant's initial appeal was dismissed for lack of jurisdiction based on appellant's failure to sign the notice of appeal, a requirement under statute and Utah R. App. P. 53(b). Appellant argued pursuant to Utah R. App. P. 23A that her appeal should be reinstated because failure to sign the notice of appeal was a "failure to take a step other than timely filing a notice of appeal," thereby providing a basis for her appeal to be reinstated. The court of appeals disagreed, holding **failures "to take other steps within the scope of [Rule 23A] are administrative matters in the appeal process rather than jurisdictional defects," but "the signature requirement is a jurisdictional element of a notice of appeal in a child welfare proceeding."**

Smith v. Volkswagen SouthTowne, Inc.
2024 UT App 33 (Mar. 14, 2024)

The trial court vacated a judgment and granted JNOV in favor of the defendant. On appeal, the supreme court reversed. In this second appeal, the court of appeals held that **post-judgment interest should accrue from the date of the judgment that was vacated by the trial court's JNOV (i.e., during the time there was no judgment and the case was on appeal).**

Utah Associated Municipal Power Systems v. 3 Dimensional Contractors Inc.
2024 UT App 35 (Mar. 21, 2024)

This case involved a dispute regarding the platting of a new residential subdivision over existing structures, including a support pole placed by Utah Associated Municipal Power Systems. Relevant here, the developer asserted a counterclaim pursuant to Utah Code § 10-8-14.5 seeking an order allowing the developers to relocate the pole and related infrastructure, which requires expert testimony as to whether the moving party's proposal is feasible. The district court dismissed the claim based on it finding that while an engineer and surveyor submitted reports, they were inadequate. In reversing the dismissal, the court noted that the "submissions are far shorter than expert reports usually are," but they nonetheless included "at least *some* 'basis and reasons for' the stated opinions." **"[T]he proper remedy – and the one the court should have imposed here – is not complete exclusion of the experts' testimony but, instead, exclusion only of the testimony about matters 'not fairly disclosed' in the reports."**

BGTS Properties, LLC v. Balls Brothers Farm, LLC
2024 UT App 37 (Mar. 21, 2024)

The court of appeals held that **proof of boundary by acquiescence does not require proof of the subjective state of mind of the landowners or their predecessors.** Once plaintiff presented uncontradicted evidence of its predecessors' twenty-year occupation of the parcel and treatment of a fence line as the boundary, the element of mutual acquiescence was satisfied because defendant's predecessors remained silent during that period.

Bailey v. Bailey
2024 UT App 51 (Apr. 11, 2024)

In this appeal from an order modifying child support provisions of a divorce decree, the husband sought review of the district court's order sanctioning him for waiting approximately two months after a tax return was completed to disclose it. The district court had excluded all of husband's evidence, including witnesses, regarding his income under Rule 37. **After discussing the differing purpose, scope, and effect of Rule 26(d) and 37(b) sanctions, the court held the district court had erred in imposing Rule 37(b) sanctions.** The husband was not in violation of a court order, as required for application of that rule.

Brigham City v. Bywater
2024 UT App 53 (Apr. 11, 2024)

In this easement dispute, the lower court concluded that Bywater had a right to access his property via a newly constructed public road owned by Brigham City. The City appealed but did not seek to stay the ruling. In the meantime, Bywater began construction of a permanent "curb cut" to allow access from the road to his property. The City issued a construction permit to Bywater and inspected the project in person, all without mention of the ongoing litigation. Based on these developments, the court of appeals dismissed the City's appeal, concluding that **the City's failure to stay the ruling pending appeal and affirmative allowance of Bywater's construction project had mooted the appeal.**

Tilleman v. Tilleman
2024 UT App 54 (Apr. 11, 2024)

The court of appeals reversed the trial court's award of sole custody to mother, holding that the trial court erred in treating the factors listed in Utah Code § 30-3-10(2) as discretionary; and because the trial court analyzed certain factors only as they related to father but not to mother. The case also **discusses the appropriate considerations for imputation of income, and reverses an award of attorney's fees because the trial court conflated the "need" and "prevailing party" grounds, which are in different sections of the statute.**

Washington County Water Conservancy District v. Washington Townhomes, LLC
2024 UT App 55 (Apr. 11, 2024)

The court of appeals **reversed the district court's order appointing a special master to resolve all remaining issues in this case involving impact fees, which had a lengthy history.** Appointment of a special master under Rule 53(b) requires a "showing that some exceptional condition requires it." The district court had abused its discretion in relying on the judge's impending retirement, the length of the case, court calendar congestion, and alleged legal complexity and uncomplicated facts; none constitute an "exceptional condition." In reaching this conclusion, the court explained that one of the few prior Utah appellate cases regarding appointment of a special master – *Plumb v. State*, 809 P.2d 734 (Utah 1990) – was limited to its facts and did not establish a different test for application of Rule 53(b). The court also considered as part of its abuse of discretion analysis the district court's initial order that, with the appointment of a special master, the rules of evidence and civil procedure could be relaxed – a statement the court described as "simply legally wrong."

10th Circuit

United States v. Hay
95 F.4th 1304 (Mar. 19, 2024)

Aligning with several other regional circuits, the Tenth Circuit held that **the months-long use of a pole camera installed across the street from the defendant's home to surveil his activities did not amount to a "search" for purposes of the Fourth Amendment.** The court emphasized that the camera was technology "readily available to citizens and law enforcement alike" and did not capture any activity except that which was already "visible to any passerby."

Dartez v. Peters
97 F.4th 681 (Mar. 26, 2024)

In this appeal involving a claim under 42 U.S.C. § 1983 brought by a prisoner, the Tenth Circuit held that the defendants' offer of judgment, which provided for a set amount "plus reasonable attorneys' fees and costs allowed by law, if any," was ambiguous as to its effect on statutory limitations placed on a prisoner-plaintiff's right to recover attorney fees under 42 U.S.C. § 1988. This ambiguity was resolved against the defendants, who had drafted the offer, such that **the defendants were found to have waived the statutory cap and the requirement that the plaintiff contribute a portion of the judgment to the attorney fees.**

Freyja Johnson Melissa Jo Townsend Cherise Bacalski Hannah Leavitt-Howell Jessica Holzer
Anna Grigsby Rachel Phillips Ainscough Emily Adams Sara Pfrommer (of counsel)

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Attorney Confidentiality, the Ethics Advisory Committee, and the Rules of Professional Conduct

by The Ethics Advisory Opinion Committee

A recent article that appeared in the *Utah Bar Journal*[1] requires further explanation of Utah State Bar Ethics Advisory Opinion No. 21-01 (issued April 13, 2021), by the Utah State Bar Ethics Advisory Opinion Committee (the Committee). The Committee wishes to reiterate its purpose and authority.

The Committee is a standing committee of the Utah State Bar. The Committee's duties are to receive and respond to requests for ethics advisory opinions relating to the conduct of Utah attorneys under the Utah Rules of Professional Conduct as adopted by the Utah Supreme Court. Modifying the Utah Rules of Professional Conduct is the prerogative of the Utah Supreme Court. Section V of the Rules Governing the Ethics Advisory Opinion Committee provides, in pertinent part: "The Office of Professional Conduct shall not prosecute a Utah lawyer for conduct that is in compliance with an ethics advisory opinion that has not been withdrawn at the time of the conduct in question." *See* Utah State Bar, Rules Governing the Ethics Advisory Opinion Committee (Apr. 27, 2007), https://www.utahbar.org/governing-rules/. This is often referred to as the "safe harbor" provision. A lawyer is free to ignore an Ethics Advisory Opinion Committee opinion knowing that, if the lawyer's conduct is questioned by the Utah State Bar's Office of Professional Conduct, the lawyer is not entitled to safe harbor protection. Because the Committee's opinions limit the ability of the Office of Professional Conduct to prosecute an attorney, the safe harbor provision requires the Committee to opine conservatively.

In Ethics Advisory Opinion No. 21-01, the Committee was asked to opine as to a lawyer's handling of confidential information under Rule 1.6 of the Utah Rules of Professional Conduct. Specific questions were asked concerning the propriety of keeping the name and extent of the representation, as well as the source of compensation, confidential. Rule 1.6(a) provides that with certain exceptions, a lawyer "shall not reveal information relating to the representation of a client." The Preamble to the Utah Rules of Professional Conduct explains the scope of the Rules: "Some of the Rules are imperatives, cast in the terms 'shall' or 'shall not.' These define proper conduct for purposes of professional discipline." Utah R. Pro. Conduct, Preamble [14]. The Preamble further explains that other Rules "generally cast in the term 'may,' are permissive and define areas under the Rules in which the lawyer has discretion to exercise professional judgment." *Id*.

The word "shall" is deliberately used throughout the Utah Rules of Professional Conduct. "Shall" is not limited to Rule 1.6 and is widely used to indicate obligations and prohibitions that are binding on all lawyers. "Shall" encompasses the lawyer's duties to provide competent representation, to make diligent efforts on behalf of the client, and to communicate with the client. Rule 1.15 uses the word consistently in connection with the protection of third-party property. Rule 4.1 uses "shall" in connection with lawyer honesty. Thus, the Utah Rules of Professional Conduct deliberately use "shall" to describe professional conduct of the upmost importance.

In Rule 1.6 of the Utah Rules of Professional Conduct, the imperative "shall" – rather than "may" – emphasizes the importance of keeping client confidences. Confidentiality under Rule 1.6 is all-encompassing. Unless Rule 1.6 or another Rule provides an exception, "shall" means that disclosure is otherwise prohibited. If this were not the case, the Utah Supreme Court would have used the term "may" in Rule 1.6. Confidentiality is perhaps the essence of lawyering. The official comment to Rule 1.6 states: "A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to the representation…. This contributes to the trust that is the hallmark of the client-lawyer relationship." Utah R. Pro. Conduct 1.6 cmt. [2]. Confidentiality is essential to trust. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matters. Simply put, when a client confides in a lawyer, the reasonable expectation is that the lawyer will respect those confidential disclosures.

Granted, there are exceptions to the duties of confidentiality.

One exception to the duty of confidentiality is the informed consent of the client. "Informed consent" is defined as "the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct." Utah R. Pro. Conduct 1.0(f). Informed consent requires this discourse with the client as to the advisability of disclosure of otherwise confidential and protected information. As in other circumstances, "a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued." Utah R. Pro. Conduct 1.2(a).

There are circumstances when disclosing the name of a client or the extent of the representation can be very harmful to the client. For example, a lawyer may be hired to represent a client who wishes to investigate potential criminal or civil liability. In a criminal case where the burden of proof lies with the government and the client chooses not to testify, information given to the lawyer may impact the trial if the lawyer does not protect that confidential information. Other examples would include protecting client confidentiality in hostile takeovers or protecting proprietary information in a non-litigation setting.

A further exception to the duty of confidentiality is that a lawyer may disclose information "impliedly authorized in order to carry out the representation." Utah R. Pro. Conduct 1.6(a). This is a broad exception. If a complaint or answer is filed, the name of the client is public. If the attorney is an employee of a public entity, the client is known. If a lawyer represents a business engaged with a public entity, the identity of the client is usually not confidential. Pleadings or discovery not subject to a confidentiality order or grand jury deliberations are usually public information. Such disclosures are necessary for the representation of a client and are impliedly public.

The lawyer must keep any disclosures of information related to the representation of the client, beyond those authorized by the client with the client's informed consent or impliedly authorized in order to carry out the representation of the client, confidential, unless an exception under Rule 1.6(b) applies. *See* Utah R. Pro. Conduct 1.6(a). The official comment to Rule 1.6(a) states:

> Paragraph (a) prohibits a lawyer from revealing information relating to the representation of a client. This prohibition also applies to disclosures by a lawyer that do not in themselves reveal protected information but could reasonably lead to the discovery of such information by a third person. A lawyer's use of a hypothetical to discuss issues relating to the representation is permissible so long as there is no reasonable likelihood that the listener will be able to ascertain the identity of the client or the situation involved.

Utah R. Pro. Conduct 1.6 cmt. [4]. Rule 1.6(a) allows a lawyer to use hypotheticals to discuss the client's confidential information without violating the Utah Rules of Professional Conduct, so long as the hypotheticals are authorized by the client giving informed consent, are impliedly authorized in order to carry out the representation, or are being used for one of the purposes set forth in Rule 1.6(b). One such purpose would be to "detect and resolve conflicts of interest arising from the lawyer's change of employment." Utah R. Pro. Conduct 1.6(b)(7). Rule 1.6 does not allow a lawyer to disclose information related to a client's representation in any other settings, including to nonlawyers outside of the lawyer's office. "The confidentiality rule … applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct or other law." Utah R. Pro. Conduct 1.6 cmt. [3].

If a client representation is terminated, the lawyer still owes duties of confidentiality to the former client under Rule 1.9. *See* Utah R. Pro. Conduct 1.9. The lack of contact with the client may present challenges for the lawyer, but the lawyer, owing a duty of confidentiality under Rule 1.9, would still be obligated to refrain from disclosing information about the client until ordered by a court of competent jurisdiction.

A lawyer's inability to discuss information related to the representation of their clients with friends and family members may, in some cases, adversely impact the lawyer's mental health, but the Utah Rules of Professional Conduct regarding a lawyer's duty of confidentiality are nonetheless mandatory and must be followed.

The Committee wishes to emphasize that the mandatory duty of confidentiality found in Rule 1.6 of the Utah Rules of Professional Conduct is binding upon members of the Utah State Bar unless and until the Utah Supreme Court amends the rule.

1. Keith A. Call & Gregory S. Osborne, *Our Client Confidentiality Rules are Stricter Than You Think*, 36 Utah B.J. 51 (Sep/Oct 2023).

Commit to Being Well

by Anaya Gayle

As lawyers, we inherently operate in high-pressure environments. The nature of our jobs may include demanding clients, tight deadlines, high stakes, ethical dilemmas, and competing priorities of work, family, and personal life – all of which contribute to mounting stress levels. Research has consistently shown that lawyers struggle with higher rates of substance abuse, depression, anxiety, suicidal ideation, and suicide than almost all other professional populations. Young lawyers in their first ten years of practice are particularly at risk.

Our well-being affects us individually, of course, but also affects our clients, colleagues, friends, partners, spouses, and families. It affects our ability to think clearly, make decisions, manage our time, and engage in every other cognitive ability in every aspect of our lives. When we are firing on all cylinders and are at the top of our mental and emotional game, it feels rewarding and easy to deliver high-quality work product and meet the needs of our clients. However, when we ignore the tell-tale signs of burnout, depression, anxiety, and other illnesses that chip away at our well-being, our work and personal lives suffer immensely – often with profoundly serious consequences. Here are some initial thoughts about how we might think about and improve our own well-being so that we can show up differently (and hopefully better) in all aspects of our lives.

Myth of Work-Life Balance

We are all too familiar with the phrase "work-life balance." By a certain point in law school, we had to have all wondered whether there actually was such a thing. The problem with work-life balance is that it encourages thinking about your "work" separate and apart from your "life." As attorneys, our work makes up the bulk of our life. It is simple mathematics. A large majority of our waking (and sometimes sleeping) hours are devoted to being an attorney. Trying to separate work from life is generally not helpful and can lead to feelings of guilt and shame, which then just contribute to an ever-increasing lack of well-being. Give yourself grace by giving up the flawed concept of work-life balance. We all have twenty-four hours every day. What is vital is that we learn to prioritize those things that are most important in a day and then set boundaries around the time we will spend on each thing. Did you commit to have lunch with your life partner? Then put it on your calendar and treat it like any other meeting – do not cancel unless you absolutely *have* to. Have an intense trial coming up? Let your child know you are going to miss their school play and arrange for it to be recorded. Then sit and watch the recording with your child after the work intensity eases. Put that on your calendar, and again, do not cancel unless there is a true emergency. Manage your time thoughtfully and with intention, knowing that being an attorney is often more like keeping several plates spinning at once. Some will be fine while you deal with spinning others. Sometimes the plates fall but guess what?! The plates are most often made of rubber. Those that are not should be your first priorities at all times. Just be thoughtful in deciding which of your plates are actually fine porcelain, and always attend to keeping those up and spinning.

Physical Activity

We all know that research shows regular physical activity can help manage stress levels. Attorneys are particularly susceptible to "sitting disease." Our work is generally sedentary and requires that we sit at our computers for extended periods of time. Consider setting a timer as a reminder to get up and take a brisk walk around the office or engage in a five to ten minute yoga flow. Anything to increase your level of physical activity helps. Research also shows that even thirty minutes a day (total, not even all at once) of activity can reverse the effects of sitting

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disease. Commit to getting up and clearing your head with some kind of activity throughout the day. Small five-minute segments add up quickly. Before you know it, your thirty minutes will be in the bag!

Mindfulness

Mindfulness practices help significantly to reduce stress and increase mental clarity. They also help when managing anxiety, working to improve focus, and dealing with high-pressure and high-stakes situations. How many times have we heard the admonition to "take a breath"? Mindfulness can be as simple as that. When you feel your blood pressure rising – think, "take a breath" and then actually take a breath (or two or three). It is a remarkably simple practice that can clear your mind and calm your body enough that you can reengage more effectively afterwards. If you want something that goes deeper, explore mediation practices. Meditation can be brief or long, can use breathing techniques or mantras, and can be as simple as just sitting quietly for a period of time. If you want to engage in meditation and do not know how, the Unmind app[1] available through our Bar membership is a fantastic resource. Check it out if you have not already.

Healthy Diet

Diet does not just affect our physical health; it plays a crucial role in mental health as well. A balanced, nutritious diet can contribute to overall well-being and help manage stress levels. Try to get a good breakfast in before you leave for work – something with healthy carbs and protein to fuel your morning. Prone to skipping lunch? Keep some nutritional shakes in your office and drink one for lunch. It is much better than skipping the meal entirely. Eat out frequently? Scan the menu for healthier options like grilled or poached protein with raw, steamed, grilled, or broiled veggies. Keep rice, potatoes, and bread to a minimum. Remember to drink lots of water throughout the day. It does not require a lot of complexity or math, just pick up a few healthier habits and you will soon feel the results in your overall well-being.

Peer Support and Networking

Well-being suffers when we feel like we are alone in our feelings or struggles. Find colleagues and friends that you trust and talk with them honestly about how you are doing. These kinds of interactions can provide meaningful emotional support and an opportunity to share experiences and strategies for coping with

the stress of the profession. Talking with folks honestly about how you are feeling may feel risky, but, generally, those folks you care about also care about you and will be more than willing to engage in honest conversations about your struggles. Almost without fail, you will learn that they struggle too (or have in the past) and their struggles, though different from yours, have taught them empathy – something you will need when your well-being is sinking into the red.

Professional Help

Lawyers are particularly reluctant to seek professional help. We are so steeped in a culture of stigma and beliefs that asking for help is somehow showing weakness or incompetence. Seeking help from a good therapist or psychiatrist (or both) is a choice that prioritizes you and your well-being. That is one of, if not the most important plates that you can keep spinning. This is the case even when things seem to be going well and is much more so when you are experiencing symptoms of depression, anxiety, or suicidality.[2] It is never a sign of weakness to seek help.

Our profession's demanding nature necessitates a proactive approach towards well-being. Ignoring mental health issues will seriously impair our ability to serve clients, contribute to our firms or organizations effectively, and engage meaningfully with family and friends. A commitment to well-being is an essential aspect of a lawyer's professional obligation. Commit now to create a lifestyle and environment that supports your own mental and emotional health. It will benefit you, your family, your clients, your colleagues, and undoubtedly your career.

Remember, it is not a sign of weakness to seek help. Prioritizing well-being is a choice that reflects strength, resilience, and an unwavering commitment to the ideals of the legal profession.

1. The Unmind app may be downloaded from your app store or accessed from your desktop at utahbar.unmind.com. Search for "Utah State Bar" when prompted to enter your company name and register using your Bar #. You will then confirm your account through the confirmation link that will be sent to your registered email address.
2. If you or someone you know is experiencing suicidal thoughts or ideation, call the suicide hotline at 988.

From Competence to Excellence: How Utah's Law Schools Are Training Tomorrow's AI-Savvy Lawyers

by Nick Hafen

Last fall, a Massachusetts lawyer asked his associate and two law clerks to draft memoranda of law opposing four motions to dismiss filed by the defendants. *See generally* Findings, Rulings and Order Imposing Sanction, *Smith v. Farwell*, Mass. Super. Ct., No. 2282CV01197 (Norfolk County Feb. 12, 2024), available at https://masslawyersweekly.com/wp-content/blogs.dir/1/files/2024/02/12-007-24.pdf. He reviewed, signed, and filed the papers. *Id*. at 6. When the attorney arrived in court for oral argument on the motions, the judge informed him that the court had been unable to locate several of the cited cases. *See id*. at 4–5. Upon investigation, the lawyer learned that his associate had used a generative AI tool in preparing the memoranda. *See id*. at 6. He disclosed the situation to the court and apologized, explaining that he was "unfamiliar with AI systems and was unaware … that AI systems can generate false or misleading information." *Id*. at 6–7. While the court was sympathetic to the situation, it imposed sanctions in the amount of $2,000 for the attorney's violation of Rule 11 of the Rules of Civil Procedure. *See id*. at 14.

The Ethical Imperative to Understand Generative AI

This lawyer is not alone. Generative AI (genAI) tools predict statistically likely sequences of words to produce convincing – but not always accurate – summaries of and citations to case law. *See, e.g., People v. Zachariah C. Crabill*, No. 23PDJ067 (Colo. Nov. 22, 2023) (suspending a lawyer for citations to fictitious cases), available at https://coloradosupremecourt.com/PDJ/Decisions/Crabill,%20Stipulation%20to%20Discipline,%2023PDJ067,%2011-22-23.pdf; *Mata v. Avianca, Inc*., 678 F. Supp. 3d 443, 466 (S.D.N.Y. June 22, 2023) (imposing a $5,000 sanction for citations to fictitious cases). At first glance, these cases may appear to require that attorneys personally check every citation in every filing they sign, but a close reading of the Massachusetts case reveals an important distinction. According to the court, Rule 11 required the disciplined attorney to "review the case citations … for accuracy, *or at least ensure that someone else in his office did*." *Farwell*, No. 2282CV01197, at 14 (emphasis added). Attorneys can delegate certain responsibilities, but they must "know whether AI technology is being used" and "ensure that appropriate steps are being taken to verify the truthfulness and accuracy of any AI-generated content." *Id*. at 15. In other words, ignoring AI is not an option, even for attorneys who do not use or plan to use generative AI tools.

Rule 1.1 of Utah's Rules of Professional Conduct requires lawyers to provide competent representation, and comment 8 to the rule explains that competent representation includes "keep[ing] abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology." Utah R. Pro. Conduct 1.1 cmt. 8. It may be reasonable to delegate legal research or citation checking to a subordinate attorney, but attorneys keeping abreast of technological developments should know it is unreasonable to rely on generative AI for the same tasks. Others have recently addressed potential ethical violations in using genAI for legal work. *See* Romaine C. Marshall & Gregory Cohen, *Artificial Intelligence Applications and the Rules of Professional Conduct*, 36 Utah B.J. 18 (Sept./Oct. 2023). This article explains how Utah's law schools are preparing law students for legal practice in the age of genAI and how practicing lawyers might do the same.

Equipping Future Lawyers: Utah's Proactive Approach to AI Education

Law schools must equip students to fulfill their duty of competence and excel in a legal industry continuously transformed by technological advancements. Law schools should prepare students to understand today's technology and to adapt and thrive amid inevitable future developments.

These goals fit naturally into the unique mission of Brigham Young University's J. Reuben Clark Law School to "advance justice, mercy, liberty, opportunity, peace, and the rule of law" in an environment that

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"promotes innovation." *Who We Are*, Brigham Young Univ., J. Reuben Clark L. Sch., https://law.byu.edu/explore/about/who-we-are (last visited May 27, 2024). The law school established its Legal Tech Initiative (LTI) to accomplish these goals. The LTI's two core ambitions are developing competence and driving excellence in legal technology education. We seek to train students to not only meet the minimum standard of technological competence as dictated by professional ethics but also to leverage these tools to excel in the legal arena.

The LTI is a comprehensive program that trains students in a variety of technology tools and topics, from Microsoft Word to legal analytics, in hands-on workshops and guest lectures from subject-matter experts and vendors. The LTI's genAI training has spanned a wide range of tools, from general-use AI applications like ChatGPT to specialized legal research applications – such as Lexis+ AI – that are rapidly adding genAI-enabled capabilities. We have also brought in AI experts from the tech and legal industries to talk to students about appropriate AI use and developments in those industries. But we want technology education to be integrated into other courses where appropriate, so we have also launched training to equip faculty to integrate AI effectively into their curricula and to craft appropriate policies for students' use of genAI tools. This allows faculty members to tailor their approaches to AI to their courses, ensuring that technology enhances educational outcomes without compromising the integrity of traditional legal training.

We are also continuously developing a curriculum to help students distinguish themselves through excellence in legal technology. That curriculum includes our Artificial Intelligence & Law course. This course provides students with a foundation in the technical aspects of AI and engages with its ethical, legal, and social implications. Students explore issues such as algorithmic bias and the impact of AI on access to justice, gaining vital insights for modern legal practice. In the winter 2024 semester, students heard from experts in law firms, tech companies, and government. Students also completed assignments comparing various genAI tools and participated in pilots of vLex's Vincent and Paxton's legal research platforms. The course also covers AI's interaction with various areas of law such as intellectual property, national security, and public policy. We also offer our LawX legal design clinic, established in 2017, which provides students with real-world opportunities to integrate and apply their legal and technology skills in developing solutions to pressing access to justice issues. Past projects have addressed debt collection defense, eviction, expungement, and divorce, and we are actively seeking AI-related projects for future cohorts.

The LTI's dual emphasis on competence and excellence equips our students to meet their professional standards of competence

and to turn their tech skills into a competitive edge in the future of legal services delivery. But given the rapid pace of technological development, particularly in AI, we can't train students on the technology they'll see within a few short years. We help students develop a forward-thinking mindset so they can navigate and embrace technological change while being aware of the issues that may arise. Our Future of Law lecture series brings in experts from around the country to speak on developments and issues at the cutting edge of legal technology. Often, students are able to meet with these speakers in small groups where they can ask questions and learn more from the speakers' expertise. Students who engage with the LTI programming graduate ready for the technology of today's legal practice and prepared to meet future challenges head-on.

The University of Utah's S.J. Quinney College of Law has taken a similar approach. To develop student competence, faculty have begun experimenting with AI tools in and outside of the classroom, including in legal research and writing, trial practice, and contract drafting courses. The law school has also drafted policies for student use of AI in their research and assignments, and it has a dedicated instructional designer who is developing an expertise in the use of AI in legal instruction. To turn technology and AI into an area of excellence, the law school has offered a course on the law of AI. And last year, the University announced a $100 million Responsible AI initiative to solve societal problems while protecting individuals' rights, which includes members of the law school leadership as advisors. Amy Choate-Nielsen, *Responsible AI Initiative Seeks to Solve Societal Problems*, Univ. Of Utah (Oct. 13, 2023), https://attheu.utah.edu/facultystaff/responsible-ai-initiative-seeks-to-solve-societal-problems/. Additionally, the law school recently appointed Anastasia Boyko as its inaugural Chief Innovation Officer with a charge to rethink how to deliver and who delivers legal services, including legal tech solutions and expanding access to justice by connecting changemakers with resources across campus and in the community to maximize positive societal impact.

Practical Strategies for Lawyers Embracing AI

Practicing lawyers can embrace the same educational framework employed by Utah law schools – focusing on competence, excellence, and a forward-thinking mindset – to harness AI as a strategic asset in their legal practices.

Lawyers can begin developing competence by immersing themselves in continuous learning opportunities such as CLEs and webinars on AI, especially those that focus on ethical obligations. But the best way to quickly build skills and expertise is to start applying this knowledge practically by integrating AI into everyday tasks. Ethan Mollick, AI expert and associate professor of management at the University of Pennsylvania's Wharton School, recommends that beginners spend ten hours using AI tools to understand how AI applies to their specific fields. Ethan Mollick, *A Beginner's Guide to*

Using AI: Your First 10 Hours, WALL ST. J. (May 10, 2024, 1:00 PM), https://www.wsj.com/lifestyle/careers/ai-beginner-tips-guide-5c8cf7eb. The landscape of AI can seem vast, but starting small can lead to significant gains. While paid tools will provide the best experience, lawyers can experiment with free AI tools to handle administrative tasks. Testing those free tools on legal tasks – within the ethical guidelines – can also be instructive, even if the output ultimately goes unused. By taking this gradual approach, lawyers can build their technological proficiency without becoming overwhelmed.

In experimenting with AI tools in their practice, attorneys must ensure they comply with three sets of rules. First, they must comply with the rules of professional conduct in their jurisdictions, including maintaining client confidentiality, exercising supervision, and verifying AI-generated content. Second, lawyers should ensure they comply with any specific court orders and guidelines regarding genAI use. The organization Responsible AI in Legal Services maintains a database of court orders related to AI. *Analysis of AI Use in Courts*, RAILS, https://rails.legal/resource-ai-orders/ (Apr. 3, 2024). Third, lawyers should follow any internal policies set by their law firms or companies. If these rules are so restrictive that using genAI for work-related tasks is not possible, lawyers should seek other opportunities for experimentation with AI, such as personal or pro bono projects. These guardrails will help protect lawyers and their clients as they learn more about genAI.

Once attorneys gain a baseline of experience and competence, they can work towards excellence by exploring new tools and use cases in ways that make sense for their practice within the previously described guardrails. The initial time investment begins to pay significant dividends, as lawyers find better, faster, and cheaper ways to serve clients. Using genAI effectively can increase profitability and reduce workload, especially for attorneys who explore alternative fee structures beyond the billable hour. In seeking out these possibilities, lawyers help close the justice gap for those who cannot afford traditional legal services.

Lawyers can future-proof their careers by remaining curious about AI and other technological advancements. Just as learning to touch-type initially slows typing speed, learning about genAI takes an up-front time investment, but it pays increasing dividends over time. Lawyers who make the investment will position themselves as trusted advisors, adept not only in navigating the current legal landscape but in anticipating future shifts. By staying informed and adaptable, lawyers ensure they are prepared to meet the evolving needs of their clients and the legal profession.

Avoiding Imputed Disqualification with Prospective Clients

by Keith A. Call and Hailey Winn-Cotton

You're sitting in your office when you get a call from a prospective client, who was referred by a trusted friend. The prospective client gives you details about quitting their job and taking a new job with a competitor. After a lengthy conversation, you decline the representation. Two days later, your partner gets a call from the former employer who wants to sue your former prospective client for stealing trade secrets and violating a non-compete agreement. Is your partner disqualified from representing the employer because of your conversation with the former employee, even though you did not form an attorney-client relationship?

The answer is "maybe." This article discusses the applicable rules and a recent ABA ethics opinion that will help you avoid imputing conflicts to other members of your firm when you discuss a matter with a prospective client.

Applicable Rules and an ABA Opinion

Under Utah Rule of Professional Conduct 1.18(b), a lawyer may generally not reveal or use information learned from a prospective client, even if no attorney-client relationship is formed. Under Rule 1.18(c), the information you learn from a prospective client may disqualify you from representing another client in a related matter. And this disqualification is imputed to other members of your firm unless you comply with Rule 1.18(d).

Rule 1.18(d) provides that other members of your firm may represent an adverse party even if you have received "disqualifying information" if you have taken "reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary," and you are timely screened, and written notice is promptly given to the prospective client.

That's a lot to digest. The biggest questions we see are: what is "disqualifying information?" and what are "reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary?" Fortunately, a recent ABA ethics opinion addresses these issues. *See* ABA Comm. On Ethics and Pro. Resp., Formal Op. 510 (Mar. 20, 2024).

What is "disqualifying information?"

Disqualifying information is "information from a prospective client that could be significantly harmful to the prospective client." *Id.* at 2 (cleaned up). If the information you learn is limited to what is reasonably necessary to determine whether representation is permitted under the Rules of Professional Conduct and to determine whether you are willing to accept representation, your consult with the prospective client will likely not disqualify your law firm. *Id.* at 9.

Formal Opinion 510 includes a few examples of inquiries that are typically reasonably necessary to determine whether to represent a prospective client. These two are particularly relevant:

1. **Avoiding Frivolous Complaints:** Information that is reasonably necessary to ensure that the prospective client's claims or defenses are not frivolous is not "disqualifying information." That is because it could potentially prejudice a client if you accept the representation, but later withdraw to avoid filing a frivolous complaint. *Id.* at 5. This inquiry

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would be limited compared to the extensive inquiry you should perform after you take on representation of the client to ensure you are complying with Rule 3.1 (meritorious claims and contentions) and 1.4 (communication). *Id.*

2. **Conflicts:** An inquiry to ensure that representing a prospective client will not violate the Rules of Professional Conduct – including conflict of interest rules – is not "disqualifying information." *Id.* at 6–7. Making reasonable inquiries to ensure compliance with the rules is reasonably necessary, and therefore not disqualifying.

What are "reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary?"

Ideally, lawyers want to avoid learning any disqualifying information during an initial consultation, but it is difficult to predict what the prospective client may tell you. Thus, lawyers should take measures to "avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client." Utah R. Pro. Conduct 1.18(d)(2).

Formal Ethics Opinion 510 gives examples of reasonable measures to take during a consultation with a prospective client. First, in your initial meeting with a prospective client, try to avoid a free-flowing discussion with the prospect. Instead, have some kind of structure to guide your discussion. ABA Formal Ethics Op. 510 at 7. One good practice is to limit the first discussion to identifying the parties involved for conflict purposes, and the general nature of the case for a preliminary analysis of "fit." After a conflict check comes back clear, you might have a second structured discussion to determine if the prospect's claims or defenses appear to have merit, and to make a more informed decision on whether you are the right lawyer to handle their case.

Second, you should clearly warn the prospective client that you have not yet agreed to take on their matter. Warn them that they should only tell you what is necessary for both of you to determine whether they have a valid claim or defense, whether there is a conflict, and whether you are a good fit for each other. *Id.* at 8.

Third, you should only seek information that is reasonably necessary to determine whether the Rules of Professional Conduct permit representation and whether you are willing to accept this representation. *Id.* at 9.

Fourth, once you determine there is a reason you do not want to or must not represent the client, stop the consultation. This will put you in the "best position to avoid potential imputation of a conflict" to other lawyers in your firm. *Id.* at 7.

In summary, when interviewing a prospective client, you may want to avoid imputing a conflict to other members of your firm. To avoid this, carefully limit the information you receive from the prospect only to what is reasonably necessary to determine if you can or want to represent them. This will keep other members of your firm happy, make your firm more profitable, and help steer you clear of lawsuits and Bar complaints.

Be careful out there!

Every case is different. This article should not be construed to state enforceable legal standards or to provide guidance for any particular case. The views expressed in this article are solely those of the authors.

Please Welcome Four New Members of the Utah State Bar Staff

Stephanie Arroyo is ecstatic to join the Utah State Bar as the new receptionist! Having worked as an intake worker at Utah Community Action and as a Photographer Assistant prior, she enjoys learning anything! She is also an avid lover of films, music, and just in general the arts scene. On her free time, she enjoys going out to eat at new places, spending time with her family and friends, and writing film reviews or working on screenplays. One of her ultimate goals is to help her community daily and spread Latin American storytelling.

Aubrey Schade is the new Assistant Executive Director for the Utah State Bar. She comes with a background in education and non-profit, most recently working for The Leukemia & Lymphoma Society as a Campaign Development Director. Aubrey brings her experience in sponsorship activation, relationship building and talent development. She looks forward to getting to know more people in the law community and being a resource for people to reach out to.

Utah State Bar®

Mary Turville is the CLE Events Manager & Outreach Coordinator. Mary graduated from Joyce University with a degree in nursing. After working some time as a registered nurse and experiencing burnout, she decided to look at other career options. Mary joined the CLE department staff and is excited to be a part of the team. She has thoroughly enjoyed her new role and is excited to continue working with the CLE department as well as the rest of the Utah State Bar staff.

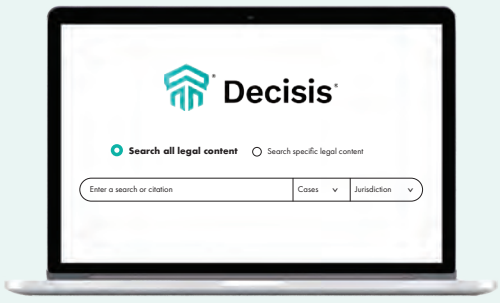
Jennifer K. Weaver is the newly hired director of communications for the Utah State Bar. She is an award-winning print and TV journalist and former podcast host. She is certified in AI, website design and development, and has prior strategic communications experience with state government and nonprofit foundations. She is also an international best-selling author on Amazon and Kindle for "Women Who Dream." She has worked in management for Fox and CBS local TV news affiliates and has served as a judge for the Edward R. Murrow Awards in the multi-media and social media categories. She serves on the advisory board of a nonprofit mentoring program that helps women transform their lives from the inside out, and volunteers on the executive communications committee for A Bolder Way Forward – an initiative of the Utah Women & Leadership Project.

Introducing Decisis – a New Utah State Bar Licensee Benefit

The Utah State Bar is now offering a free legal research tool for licensees, recognizing the essential need for quick and reliable research access. We are transitioning from Fastcase to Decisis, a new service valued at $1,740 annually, which is now accessible to all licensees via the Practice Portal. Fastcase will be discontinued after August 30, 2024. To explore Decisis, simply log on to the Practice Portal. For questions or assistance, please contact support at 833-332-4747.

Decisis®

A fast, reliable legal research tool available, for free, to Utah State Bar licensees!



UTAH STATE BAR ORGANIZED 1931

Decisis is clean and intuitive, and is loaded with what matters most: content. With Decisis, you will receive access to federal and state case law, codes, and regulations.

2024 Annual Meeting & Summer Social

MADE in the 80s
PARKING LOT PARTY

Tease up your hair!

& put on your ACID WASHED JEANS!

'cause...like, you're totally invited!

July 12, 2024
4:00–7:00 pm

Family Games
Food Trucks
Face Painting
80s Karaoke

@ the c. 1988
Utah Law & Justice Center
645 South 200 East | SLC

FREE for attorneys & their guests. Registration is required.
Please pre-register by scanning this QR Code. ⟶

Annual Online Licensing

The annual Utah State Bar online licensing renewal process has begun. An email containing the necessary steps to renew online at https://services.utahbar.org was sent on June 3rd.

Your renewal and fee payment are due by July 1st and will be late August 1st. If your renewal is not complete and fees paid by September 1st, your license will be suspended.

The Bar accepts all major credit cards. Payment can also be made by ACH/E-check. **NO PAPER CHECKS WILL BE ACCEPTED**.

Upon completion of the renewal process, you will receive a licensing confirmation email.

To receive support for your online renewal, please contact us either by email to onlinesupport@utahbar.org or, call 801-297-7023. Additional information on licensing policies, procedures, and guidelines can be found on our website at www.utahbar.org/licensing.

Meet Christine T. Greenwood, OPC's New Chief

Christine T. Greenwood is the new chief of the Office of Professional Conduct (OPC). She is a distinguished legal professional with extensive experience in both commercial litigation and legal ethics. She served as the chair of the Ethics & Discipline Committee of the Utah Supreme Court from 2021 through May 2024, where she oversaw pre-hearing motions, appeals, and the administration and training of committee members.

"The Oversight Committee was very pleased with the Supreme Court's appointment. Christine brings a wealth of experience to the position," said Arthur Berger, chair of the OPC Oversight Committee.

> She has a deep knowledge of the ethical rules and Utah's attorney discipline system and is committed to public service. She will not only excel in leading the Office of Professional Conduct, but also will provide great service to the Court, members of the Bar, and the public at large.

Greenwood's legal career began with a law clerk position at the U.S. Court of Appeals for the Tenth Circuit, followed by roles at prominent firms such as Holme, Roberts & Owen LLC, later absorbed into Holland & Hart LLP, and Stoel Rives LLP. From 2005 to 2021, she was a partner at Magleby Cataxinos & Greenwood PC, specializing in trademark, trade secret, and unfair trade practices litigation and appellate work in state and federal courts.

"I am very much looking forward to working with the OPC and helping to refine and strengthen the lawyer disciplinary system in Utah, both for purposes of protecting the public and enhancing the integrity of the legal profession," said Greenwood. "Working as Chief Disciplinary Counsel will provide me with an exciting opportunity to serve the profession from a different angle."

Greenwood's academic credentials include a J.D. with honors from S.J. Quinney College of Law, where she was editor-in-chief of the Journal of Contemporary Law / Journal of Law & Family Studies. She earned her bachelor's degree in English from Reed College in Portland, Oregon. Her professional recognitions include an AV Rating from Martindale-Hubbell, consistent listings in Mountain States Super Lawyers, and inclusion in Best Lawyers in America since 2014.

Committed to community service, Greenwood has served as a pro bono volunteer for Utah Legal Services, a mentor for the Utah State Bar, and on the boards of nonprofit organizations including the Utah Rivers Council, No More Homeless Pets in Utah, and the YMCA of Greater Salt Lake.

ABOUT OPC

The Office of Professional Conduct (OPC) is part of the Utah Supreme Court's regulation of the practice of law in Utah. OPC is charged with investigating and prosecuting claims that lawyers have violated the Rules of Professional Conduct and is also responsible for educating members of the Bar regarding their ethical responsibilities. OPC works to protect the public and the administration of justice. Determinations of misconduct, and the imposition of discipline, are made by the Utah Supreme Court through either the Court's Ethics and Discipline Committee or the district courts.

Annual CLE Compliance
July 1, 2023 – June 30, 2024

Lawyers – All active status lawyers admitted to practice in Utah are required to comply annually with the Mandatory CLE requirements.

The annual CLE requirement is 12 hours of accredited CLE. The 12 hours of CLE must include a minimum of one hour of Ethics CLE and one hour of Professionalism and Civility CLE.

At least six hours must be Verified (Live) CLE, which may include any combination of In-person CLE, Remote Group CLE, or Verified E-CLE. The remaining six hours of CLE may include Elective (Self-Study) CLE or Verified (Live) CLE.

Paralegal practitioners – All active status paralegal practitioners licensed in Utah are required to comply annually with the Mandatory CLE requirements.

The annual CLE requirement is 6 hours of accredited CLE. The 6 hours of CLE must include a minimum of one hour of Ethics CLE and one hour of Professionalism and Civility CLE.

At least three hours must be Verified (Live) CLE, which may include any combination of In-person CLE, Remote Group CLE, or Verified E-CLE. The remaining three hours of CLE may include Elective (Self-Study) CLE or Verified (Live) CLE.

Filing fees, late fees, and reinstatement fees

(1) Each lawyer or paralegal practitioner shall pay a filing fee in the amount of $10 at the time of filing the Certificate of Compliance.

(2) Any lawyer or paralegal practitioner who fails to complete the MCLE requirement by the June 30 deadline, or fails to file by the July 31 deadline, will be assessed a $100 late fee.

(3) Lawyers and paralegal practitioners who fail to comply with the MCLE requirements and are administratively suspended under Rule 11-615 will be assessed, in addition to the filing fee and late fee, a $200 reinstatement fee or, if the failure to comply is a repeat violation within the past 5 five years, a $500 reinstatement fee.

For a copy of the new MCLE rules, please visit https://www.mcleutah.org.
For questions, please email staff@mcleutah.org, or call 801-746-5230.

Pro Bono Honor Roll

The Utah State Bar and Utah Legal Services wish to thank these volunteers for accepting a pro bono case or helping at a recent free legal clinic. To volunteer, call the Utah State Bar Access to Justice Department at (801) 297-7049.

Private Guardian ad Litem

Delavan Dickson
Laura Hansen
Bittani Harris
Arther Hart
Chase Kimball
Lillian Reedy
Micah Scholes
T. Christopher Wharton
Rachel Whipple
Amy Williamson

Pro Se Debt Collection Calendar

Miriam Allred
Mark Baer
John Bagley
Ashlee Burton
Alex Chang
Ted Cundick
Sarah Dewey
Shawna Doughman
Jeremy Eveland
Leslie Francis
David Gardner
Denise George
Steven Gray
Russell Griggs
Hong Her
Zach Lindley
Rachel Prickett Passey
(law student)
Jasmynn Pok
Ashton Ruff
Jessica Smith
George Sutton
Brian Tucker
Alex Vandiver
Austin Westerberg
Angela Willoughby

Pro Se Family Law Calendar

Justin Ashworth
Amanada Beers
Brent Chipman
Andrew Christensen
David Corbett
Hayli Dickey
Jeremy Eveland
James Harris
David Hatch
Jim Hunnicutt
Stefan James
John Kunkler
Joanie Low
Christopher Martinez
Sydney Mateus
Stewart Ralphs
Clay Randle
Larry Reed
Emily Smoak
Sheri Throop

ABA Talk to a Lawyer Legal Clinic

Braden Bangerter
Jared Brande
Adam Caldwell
Thomas Crofts
Kayla Gothard
Jed Harr
Maureen Minson
Chantelle Petersen
G Michael Westfall

Family Justice Center

Isabella Ang
Steven Averett
Amirali Barker
Lindsey K. Brandt
Alixa Brobbey
Nathan Carroll
Angela Cothran
Dave Duncan
Katie Ellis
Jennifer Falkenrath
Eliza Gutierrez Smith
Michael Harrison
McKenna Melander
Brandon Merrill
Keil Meyers
Alexandra Paschal
Dailyah Rudek
Stephen Salmon
Rachel Slade
Eliza Smith
Jessica Smith
Babata Sonneneberg
Kricia Tauiliili
Nancy Van Slooten
Clayton Varvel

Timpanogos Legal Center

Eyad Alsamhan
Bryan Baron
Ryan Beckstrom
Ashlee Burton

2024 Pro Bono Publico Award Winners

The Pro Bono Publico Awards were presented at the Law Day celebration on May 3. Congratulations to this year's winners!

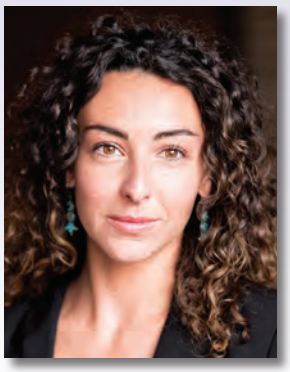
Lawyer of the Year

Alex Chang

Law Firm of the Year

Trujillo Acosta Law

Law Student or Law School Group of the Year



Alessandra Amato

Dailyah Rudek

Katie Ellis
Adrienne Ence
Chad Funk
Michael Harrison
Lisha Linsonbee
Maureen Minson
Keil Myers
Eliza Smith Gutierrez
Jessica Smith
Ellizabeth Tyler
Clayton Varvel
Emily Walter

Utah Bar's Virtual Legal Clinic

Dan Black
Douglas Cannon
Anna Christiansen
Matthew Earl
Jonathan Ence
Thom Gover
Gabrielle Jones
Greg Marsh
Gabriela Mena
Aaron Olsen
Stanford Purser
Alex Vandiver

Utah Legal Services Pro Bono Case

Jennifer Arnganbright
Eric Barnes
Shawn Beus
Eric Bjorklund
Michael Branum
Brent Brindley
James Cannon
Brian Craig
Adrienne Ence
Jeremy Eveland
Jonathan Good
Tyler Hansen
Matt Johnson
Michelle Lesue
Raymond Malouf
Ward Marshall
Ken McCabe
Chad McKay
Colton McKay
D. Michael Nielsen
Chantelle Petersen
Tamara Rasch
Lillian Reedy
Babata Sonnenberg
Ryan Simpson
Megan Sybor
Marca Tanner Brewington
Wendy Vawdrey
Greg Wall
Robert Winterton

Pro Bono Initiative

Jessika Allsop
Justin Ashworth
Amanda Bloxham Beers
Alexander Chang
Brent Chipman
Jordan Conrad
Sean Cooney
Jessica Couser
Daniel Crook
Tyler Dever
Dave Duncan
Jennie Garner
Taylor Goldstein
Bill Gray
Jason Groth
Samantha Hawe
Ezzy Khaosanga
Emelie Klott
Christopher Martinez
Kenneth McCabe
Maxwell Milavetz
Eugene Mischenko
Susan Morandy
John Morrison
Tracy Olson
Leonor Perretta
Cameron Platt
Stewart Ralphs
Earl L. Roberts
Craig Smith
Ethan Smith
Jake Smith
Richard Snow
Andrew Somers
Katy Steffey
Carlos Trujillo
Emily White
Nicholle Pitt White
Leilani Whitmer
Mark Williams
Shannon Woulfe

Volunteers Needed

for Utah State Bar Committees

The Utah Bar Commission seeks volunteers willing to commit their time and talent to one or more Bar committees. Please consider sharing your time in the service of your profession and the public through meaningful involvement with a committee that fits your interests. Utah State Bar Committees include:

Admissions: Recommends standards and procedures for admission to the Bar and the administration of the Bar Exam.

Bar Examiner: Grades examinee answers from the Bar Examination.

Character & Fitness: Reviews applicants for the Bar Exam and makes recommendations on their character and fitness for admission.

CLE Advisory: Reviews the educational programs provided by the Bar for new lawyers to assure variety, quality, and conformance.

Fee Dispute Resolution: Holds mediation and arbitration hearings to voluntarily resolve fee disputes between members of the Bar and clients regarding fees.

Fund for Client Protection: Considers claims made against the Client Security Fund and recommends payouts by the Bar Commission.

For more information or to volunteer for a Utah State Bar Committee, please visit:

utahbar.org/about/committees/

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Brown Family Law
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Lawyer Discipline and Disability

Visit **opcutah.org** for information about the OPC, the disciplinary system, and links to court rules governing attorneys and licensed paralegal practitioners in Utah. You will also find information about how to file a complaint with the OPC, the forms necessary to obtain your discipline history records, or to request an OPC attorney presenter at your next CLE event. **Contact us – Phone: 801-531-9110 | Fax: 801-531-9912 | Email:** opc@opcutah.org

Please note, the disciplinary report summaries are provided to fulfill the OPC's obligation to disseminate disciplinary outcomes pursuant to Rule 11-521(a)(11) of the Rules of Discipline Disability and Sanctions. Information contained herein is not intended to be a complete recitation of the facts or procedure in each case. Furthermore, the information is not intended to be used in other proceedings.

SUSPENSION

On March 8, 2024, the Honorable Kraig Powell, Fourth Judicial District, entered an Order of Suspension against Gregory V. Stewart suspending his license to practice law for a period of eight months. The court determined that Mr. Stewart violated Rule 1.3 (Diligence), Rule 1.4(a) (Communication), Rule 1.5(a) (Fees), Rule 1.15 (c), Rule 8.1(b) (Bar Admission and Disciplinary Matters), and Rule 8.4(c) (Misconduct) of the Rules of Professional Conduct.

In summary:

A client retained Mr. Stewart to represent her in connection with her criminal case. The client and Mr. Stewart signed an Attorney-Client Fee Agreement (Fee Agreement) which states that the client will be charged a fixed fee that is "earned upon receipt." The client paid the fee to Mr. Stewart. Mr. Stewart failed to deposit the fees into a client trust account and put the client's money directly into his personal account prior to earning the money. Mr. Stewart knew he needed to refund fees if he had not earned them, but required clients to sign an agreement which indicates he can keep the money even if not earned.

Shortly after representation began, Mr. Stewart told the client that he would write the police department to make a preservation demand for the client's property that was in their possession. Although Mr. Stewart did contact the client several times during the course of her case, he at times did not respond to the client's emails and phone calls, did not confirm with her a court date and did not apprise her fully of the status of her case.

Mr. Stewart failed to promptly enter an appearance in the criminal matter. At one point, the client contacted Mr. Stewart because she had reached out to him via voicemail, text, and email and had not received a reply. The client explained that the police department had not received notice of counsel, so she forwarded to the police department a copy of the Fee Agreement to prove she had counsel. A few weeks later, Mr. Stewart emailed the client and promised to contact the prosecutor assigned to her case to see about getting the warrant which had been issued recalled and to schedule a court date. A few days later, Mr. Stewart contacted the client notifying her that the judge's clerk had set a court date but did not confirm the date.

At the hearing, the client did not appear and Mr. Stewart incorrectly stated that the reason the client was not at the hearing was because she was engaged in substance abuse treatment. Mr. Stewart failed to get her property returned from the prosecuting city as he had promised and failed to get her arrest warrant recalled.

A few months later, the client contacted Mr. Stewart and said she had been unable to reach him or get an update on her case. The client sent a package via certified mail to Mr. Stewart. The package was returned unclaimed. The client emailed Mr. Stewart after discovering the court hearing had taken place without her in attendance. In the correspondence, she indicated that she did not understand why documents were returned to her and why the police department still had not received any confirmation of counsel.

The client requested a refund believing that no work had been done on her case. Although Mr. Stewart performed considerable work on the client's case, he did not make satisfactory or timely progress on the matter. Mr. Stewart misrepresented the amount of work he had done on the case and charged an unreasonable fee considering the amount of work performed for the client. Mr. Stewart failed to respond to OPC's multiple requests for information and failed to provide documents to OPC that would have assisted in the investigation of the case.

Aggravating circumstances:
Prior record of discipline; multiple offenses; and substantial experience in the practice of law.

Mitigating circumstances:
Good character or reputation; remorse.

RECIPROCAL DISCIPLINE

On February 22, 2024, the Honorable Eric Gentry, Fifth Judicial District Court, entered an Order of Reciprocal Discipline: Suspension against Brent Blanchard, suspending Mr. Blanchard for a period of eighteen months for his violation of Rule 1.3 (Diligence), Rule 1.4(a) (Communication), Rule 3.4(c) (Fairness to Opposing Party and Counsel), Rule 3.4(d) (Fairness to Opposing Party and Counsel), and Rule 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.

In summary:
On April 18, 2022, the Nevada Supreme Court entered an Order of Suspension, suspending Mr. Blanchard from the practice of law for eighteen months. The Nevada Order was predicated on the following facts in relevant part:

Mr. Blanchard failed to comply with the conditions placed on his reinstatement to the practice of law in Nevada. The reinstatement order required Mr. Blanchard to obtain a legal mentor for three years, who would provide quarterly reports to the Nevada State Bar, and to continue treating with a medical provider for three years who would similarly provide quarterly reports. Even after reminders from the Nevada State Bar, Mr. Blanchard failed to comply with these conditions.

Furthermore, Mr. Blanchard committed violations during the representation of a client. After asking a client to waive a conflict with a realtor, the realtor and the client became adverse parties, and Mr. Blanchard stopped doing any work on the client's case but did not move to withdraw his representation. Mr. Blanchard did not appear at court hearings, even after the Nevada State Bar contacted him regarding the client, and the district court granted summary judgment against the client. Opposing counsel in the client's case testified that Mr. Blanchard failed to respond to discovery, filed procedurally improper motions, and failed to appear at hearings even after they were rescheduled so that Mr. Blanchard could appear.

The Nevada Court found the following aggravating and mitigating circumstances to apply:

Aggravating circumstances:
Prior disciplinary offenses, pattern of misconduct, multiple offenses, bad faith obstruction of the disciplinary proceeding, vulnerability of the victim, and substantial experience in the practice of law.

Mitigating circumstances:
Absence of a dishonest or selfish motive, personal or emotional problems, cooperative attitude towards the proceeding, remorse, and remoteness of prior offenses.

SUSPENSION

On March 7, 2024, the Honorable Richard D. McKelvie, Third Judicial District, entered an Order of Suspension against Jacque M. Ramos suspending her license to practice law for a period of two years. The court determined that Ms. Ramos violated Rule 1.1 (Competence), Rule 1.3 (Diligence), Rule 1.4(a) (Communication), Rule 1.16(d) (Declining or Terminating Representation), Rule 8.1(b) (Bar Admission and Disciplinary Matters), and Rule 8.4(c) (Misconduct) of the Rules of Professional Conduct.

In summary:
After suffering a slip and fall at a restaurant, the injured woman (Client) hired Ms. Ramos to represent her regarding the incident. The daughter (Daughter) of Client provided Ms. Ramos with information about the incident and Client's contact information.

During the following years, both Daughter and Client tried to communicate with Ms. Ramos to obtain information about the case. Ms. Ramos often did not timely respond, would not provide the information requested or would not accurately inform Daughter and Client of what was happening in the case.

At one point, Ms. Ramos informed Daughter that a complaint had been finalized and would be filed and served within a week. Almost two years later, Ms. Ramos filed a complaint on behalf of Client. Ms. Ramos did not serve initial disclosures and did not

respond to discovery requests served by opposing counsel, despite receiving an extension of time to respond. Opposing counsel filed a motion for summary judgment. Ms. Ramos did not file a response to the motion, and the court entered an order granting summary judgment to the opposing party. Ms. Ramos did not inform Daughter and Client about the fact that she did not respond to the discovery requests or that a motion for summary judgment had been filed and decided.

Client terminated Ms. Ramos's representation and Daughter requested Client's file. Ms. Ramos did not send Client's file. The OPC sent a Notice to Ms. Ramos. Ms. Ramos did not timely respond to the Notice.

Aggravating circumstances:
Dishonest or selfish motive, pattern of misconduct, multiple offenses, refusal to acknowledge the wrongful nature of the misconduct, substantial experience in the practice of law, and lack of good faith effort to make restitution or rectify the consequences.

Mitigating circumstances:
Absence of prior record of discipline, personal, or emotional problems and physical disability.

RESIGNATION WITH DISCIPLINE PENDING

On February 16, 2024, the Utah Supreme Court entered an Order Accepting the Resignation with Discipline Pending of Joseph E. Wrona for violation of Rule 8.4(b) (Misconduct) of the Rules of Professional Conduct.

In summary:
Mr. Wrona plead guilty (or no contest) to Forcible Sexual Abuse, a second degree felony, and to Incest, a third degree felony.

RESIGNATION WITH DISCIPLINE PENDING

On January 24, 2024, the Utah Supreme Court entered an Order Accepting the Resignation with Discipline Pending of Dale H. Boam for violation of Rule 1.1 (Competence), Rule 1.2(a) (Scope of Representation), Rule 1.3 (Diligence), Rule 1.4(a) (Communication), Rule 1.5(a) (Fees), Rule 1.5(b) (Fees), Rule 1.5(c) (Fees), Rule 1.15(a) (Safekeeping Property), Rule 1.15(c) (Safekeeping Property), Rule 1.15(d) (Safekeeping Property), Rule 1.16(a) (Declining or Terminating Representation), Rule 1.16(d) (Declining or Terminating Representation), Rule 3.2 (Expediting Litigation), Rule 8.1(b) (Bar Admission and Disciplinary Matters), and Rule 8.4(c) (Misconduct) of the Rules of Professional Conduct.

In summary:
This case involves fourteen matters. In one matter, Mr. Boam violated Rule 1.1 (Diligence) by accepting a medical malpractice case without having the legal knowledge or skill necessary to represent a client in such a case. In one matter, Mr. Boam violated Rule 1.2(a) (Scope of Representation) by joining a client's case with claims of others in a class action lawsuit without the client's consent.

In thirteen matters, Mr. Boam violated Rule 1.3 (Diligence) by failing to appear at several hearings without providing notice to the court or to his clients, missed deadlines, failing to file documents pertinent to the client's cases and not taking timely action with respect to the client's cases after he was retained.

In eight matters, Mr. Boam violated Rule 1.4(a) (Communication) by failing to keep his clients reasonably informed about the status of their cases, failing to promptly comply with their reasonable requests for information, and stopping responding to them altogether. Many of these clients required American Sign Language communication and relied on Mr. Boam to communicate in that language. In multiple cases, he failed to explain what was being communicated verbally when there was a 3rd party involved.

In twelve matters, Mr. Boam violated Rule 1.5(a) (Fees) by charging and/or collecting fees without doing sufficient work to justify the charges. Additionally, in multiple cases, Mr. Boam did some work, but the work was not meaningful and did not assist in the resolution of the case. In one matter, Mr. Boam violated Rule 1.5(b) (Fees) by failing to communicate with his client the basis or rate of his fees and expenses prior to or within a reasonable time after he began representing them. In three matters, Mr. Boam violated Rule 1.5(c) (Fees) by taking a contingency fee case and failed to provide written retainer agreements and/or failed to clearly notify the client of any expenses and/or failed to provide a written statement stating the outcome and showing remittance to the clients.

In eleven matters, Mr. Boam violated Rule 1.15(a) (Safekeeping Property) by failing to keep client funds separate from his own. Mr. Boam failed to deposit fees paid to him in his client trust account and deposited funds directly into his operating account, commingling funds with his own. In eleven matters, Mr. Boam violated Rule 1.15(c) (Safekeeping Property) by failing to deposit client's retainer funds into his trust account and failing to keep funds in this trust account until they were earned. Mr. Boam deposited funds into his operating account and spent the funds. In three matters, Mr. Boam violated Rule 1.15(d) (Safekeeping Property) by failing to provide an accounting of the fees paid by his clients after they requested Mr. Boam provide one.

In one matter, Mr. Boam violated Rule 1.16(d) (Declining or Terminating Representation) by failing to withdraw from representing his client after they discharged Mr. Boam. In four matters, Mr. Boam violated Rule 1.16(d) (Declining or Terminating Representation) by failing to refund any portion of his client's retainer fees that he did not earn. Mr. Boam also failed to provide client files after they terminated his representation.

In one matter, Mr. Boam violated Rule 3.2 (Expediting Litigation) by failing to make reasonable efforts to expedite litigation when he repeatedly failed to make court appearances without providing any notice to the court or to his client, which resulted in a waste of time and judicial resources as well as a delay in the client's case.

In four matters, Mr. Boam violated Rule 8.4(c) (Misconduct) by being dishonest with his clients, making false statements and representations, such as repeatedly telling them he had prepared documents, filed documents, transferred cases from other states, reached out to 3rd parties, co-counsels or opposing counsel when none of this was true.

The OPC also sent a Notice in each matter requesting Mr. Boam's responses. Mr. Boam did not timely respond to the notices, violating Rule 8.1(b) (Bar Admission and Disciplinary Matters).

NEW FIRM

TRAJECTORY FORENSICS

We're thrilled to introduce **Trajectory Forensics**, Utah's freshest name in financial investigations. Our team, fueled by passion and backed by over 40 years of combined experience, is ready to redefine excellence.

Our Services:

- Litigation Consulting
- Financial Investigations
- Forensic Accounting
- Expert Witness Services

Why Choose Trajectory Forensics?

- Expert Level Credentials
- Depth of Knowledge
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2024 Paralegal of the Year: Congratulations Candace Gleed!

by Greg Wayment

On Thursday, May 16, 2024, the Paralegal Division of the Utah State Bar and the Utah Paralegal Association held the Annual Paralegal Day celebration. Maribeth LeHoux was the keynote speaker and spoke about the unauthorized practice of law. The Division would like to heartily thank all those who organized and hosted this event.

One of the highlights of this event is the opportunity to recognize individuals who have achieved their national certification through NALA. This year six individuals were recognized for obtaining a Certified Paralegal designation: Francesca Ann Alas Servellon, Christina Bird, Christopher J. Ross, Liberty Stevenson, Elizabeth Toyn, and Randalee White. In addition, one individual was recognized for obtaining an Advanced Certified Paralegal designation: Rheane Swenson. Well done!

Paralegal Day is also the day to present the Distinguished Paralegal of the Year Award. The purpose of this award is to honor a Utah paralegal who, over a long and distinguished career, has by their ethical and personal conduct, commitment, and activities, made extraordinary contributions and service to the paralegal profession.

This was again an outstanding year for nominations. We received twenty-one complete nominations, all of whom were very strong candidates. I would like to thank all those who nominated a paralegal. Please don't be discouraged if your nominee was not chosen; we'd love to see your nomination again next year!

The hard-working individuals on the 2024 selection committee included: Judge Bolinder, Scotti Hill, Sharee Laidlaw, Jacob Clark, and Michelle Yeates. We are pleased to announce that the winner of the 2024 Utah Distinguished Paralegal of the Year Award is Candace Gleed.

Candace graduated from the Westminster College Paralegal Program in 1994. Since that time, she has worked in a wide variety of legal fields. She began by working for the West Valley City Attorney's Office, Criminal Division and Ordinance Enforcement where she assisted with drafting and implementing West Valley City planning and zoning. She next worked for the Utah Attorney General's Office as a Litigation Division Employment Section Paralegal, a Pornography Ombudsman Paralegal, Public Agency, DFCM Contract Paralegal, and Commercial Enforcement Paralegal.

Her next stop was with the Salt Lake County District Attorney's Office where she participated in screening both juvenile and adult cases. Candace then transferred into the private sector, working as an in-house defense paralegal for American Family

Insurance and finally, as a trial paralegal for Cutt, Kendell & Olson, where she has worked for the last thirteen years, serving clients who have been catastrophically injured. Candace has been the lead trial paralegal in several significant cases where multi-million-dollar jury verdicts have been achieved.

From Jackie Carmichael:
Candace's skills as a trial paralegal are directly related to the successful verdicts we were able to obtain. Candace's legal skills are surpassed only by her incredible people skills and compassion for others, which has made her a perfect fit for our firm, as we serve clients who are in need of that compassion as they recover from and/or learn to deal with permanent and severe, life-altering injuries.

In addition to Candace's successful career as a paralegal, she has always made time to serve her community. For the past twenty-one years, Candace has volunteered as a Member of Compassionate Friends and served as the organization's chapter president from 2008 to 2009. She also currently participates in annual fundraising efforts for the disabled at United Cerebral Palsy, TURN, West Jordan Care Center, and South Davis Community Hospital. She also served as a court-appointed special advocate for children from 1997 to 2003 and is again serving in that capacity.

Candace has been directly involved with the Adam Valdez Tooele High School Wrestling Memorial Scholarship from 2003 to the present. She has been involved as an advocate for a special needs child with Granite School District, Jordan Valley School District, and Davis School District and with medical care providers since 1990. Previously, Candace was also involved in volunteer and fundraising efforts for the Hunter Youth Football League as well as fundraising and volunteer work for South Valley Sanctuary. Candace has also provided volunteer work for Big Brother Big Sister, the Boys and Girls Club of Murray, and the Adopt a Grandparent program.

Candace has also found the time to be of great service to her paralegal community. She is a long-term Member of the Paralegal Division of the Utah State Bar and has served as a Member of the Board from 2016 to 2020. She also served as Board Chair in 2018–2019 and as an ex-officio member of the Utah Bar Commission in 2019–2020. She is also a member of NALA.

From Jackie Carmichael:
Candace's drive to provide for her family and be a positive influence in their lives has helped her overcome obstacles and challenges that most of us can only imagine. She has been a single mother throughout her career and has carried the burden of raising her four children on her own, including a special needs child who she raised to adulthood and cared for daily until he recently passed away at the age of thirty-three. She has known unimaginable heartbreak in enduring the premature and unexpected death of her eldest son who died when he was eighteen. Through these challenges, Candace has stood like a fortress of strength and has fought to move forward in her life with positivity, hopefulness, compassion, and grace.

In recognition of Candace's dedication to the paralegal profession and her outstanding involvement with the community, we are honored to recognize her as the 2024 Utah Paralegal of the Year. Congratulations, Candace!

The Paralegal Division would also like to especially thank Judge Brian Bolinder, Scotti Hill, Sharee Laidlaw, Jacob Clark, and Michelle Yeates for their work on the Paralegal of the Year Selection Committee. We would also like to thank Jacquelynn Carmichael, Margie Coles, Lena Daggs, and Tonya Wright for their support of Candace.

From Margie Coles, attorney at Cutt, Kendell & Olson:
I met Candace in 2015 and from day one, she has made me smile and laugh. She's been a constant wealth of knowledge to me and others. She is a friend to everyone who meets her. She makes days in the office feel brighter. She is the person who makes others feel valued; she reminds you that you're cared for, that you matter, and that you're doing a good job. Candace routinely leaves notes and cards of gratitude on other's desks. Her laugh is infectious, her humor divine.

From Lena Daggs, partner at Cutt, Kendell & Olson:
Candace has endured things in her life that most people would not wish on their enemies. Candace has four children and raised them as a single mom, all while working as a paralegal. One of her sons Brett, was profoundly disabled with cerebral palsy. But Candace, being the mother she is, loved Brett fiercely and made sure he had the best care and life possible despite his medical challenges. Unfortunately, Brett passed away at the age of thirty-three a few weeks ago. In between tears and hugs, Candace could still crack a joke and make sure we both left the room better than when we entered it.

From Tonya Wright, Licensed Paralegal Practitioner and paralegal at Peck Baxter:
I have personally known Candace since 2018 when I was elected as a board member for the Paralegal Division. As a new member from an outlying area of the state, I distinctly remember being nervous. I didn't know anyone on the board because the board members tend to be from Salt Lake or Utah Counties. The first time I met Candace at a Division meeting, we were instant friends. At first, I thought it was just one of those great coincidences where you meet someone and you immediately click. But it quickly became apparent to me that to Candace, everyone is a friend. She makes everyone feel valued, important, and heard. It is just her nature.

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