

Utah Bar. JOURNAL



Volume 37 No. 6
Nov/Dec 2024



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Cover Photo

Provo Canyon Fall by Utah State Bar licensee – and first time cover photographer – Robert Trombly.

BOB TROMBLY is the Deputy City Attorney – Criminal Division for Provo City. He was born and raised in Florida but fell in love with Utah's mountains while attending BYU. After being away from Utah for several years while serving in the US Army JAG Corps, Bob has worked for Provo City since 2008, and now spends every free moment hiking all over the state with his dog and taking pictures of his travels. This picture was a quick shot taken with a waterlogged Sony RX10 in between rain showers during a cold, wet, and wonderful morning hike last fall.



HOW TO SUBMIT A POTENTIAL COVER PHOTO

Members of the Utah State Bar or Paralegal Division of the Bar who are interested in having photographs they have taken of Utah scenes published on the cover of the Utah Bar Journal should send their photographs by email .jpg attachment to barjournal@utahbar.org, along with a description of where the photographs were taken. Photo prints or photos on compact disk can be sent to Utah Bar Journal, 645 South 200 East, Salt Lake City, Utah 84111. Only the highest quality resolution and clarity (in focus) will be acceptable for the cover. Photos must be a minimum of 300 dpi at the full 8.5" x 11" size, or in other words 2600 pixels wide by 3400 pixels tall.



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Interested in writing an article or book review for the *Utah Bar Journal*?

The Editors of the *Utah Bar Journal* want to hear about the topics and issues readers think should be covered in the magazine. If you have an article idea, a particular topic that interests you, or if you would like to review one of the books we have received for review in the *Bar Journal*, please contact us by calling 801-297-7022 or by emailing barjournal@utahbar.org.

GUIDELINES FOR SUBMITTING ARTICLES TO THE UTAH BAR JOURNAL

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.

NEUTRAL LANGUAGE: Modern legal writing has embraced neutral language for many years. *Utah Bar Journal* authors should consider using neutral language where possible, such as plural nouns or articles "they," "them," "lawyers," "clients," "judges," etc. The following is an example of neutral language: "A non-prevailing party who is not satisfied with the court's decision can appeal." Neutral language is not about a particular group or topic. Rather, neutral language acknowledges diversity, conveys respect to all people, is sensitive to differences, and promotes equal opportunity in age, disability, economic status, ethnicity, gender, geographic region, national origin, sexual orientation, practice setting and area, race, or religion. The language and content of a *Utah Bar Journal* article should make no assumptions about the beliefs or commitments of any reader.

EDITING: Any article submitted to the *Utah Bar Journal* may be edited for citation style, length, grammar, and punctuation. While content is the author's responsibility, the editorial board reserves the right to make minor substantive edits to promote clarity, conciseness, and readability. If substantive edits are necessary, the editorial board will strive to consult the author to ensure the integrity of the author's message.

AUTHOR(S): Author(s) must include with all submissions a sentence identifying their place of employment. Unless otherwise expressly stated, the views expressed are understood to be those of the author(s) only. Author(s) are encouraged to submit a headshot to be printed next to their bio. These photographs must be sent via email, must be 300 dpi or greater, and must be submitted in .jpg, .eps, or .tif format.

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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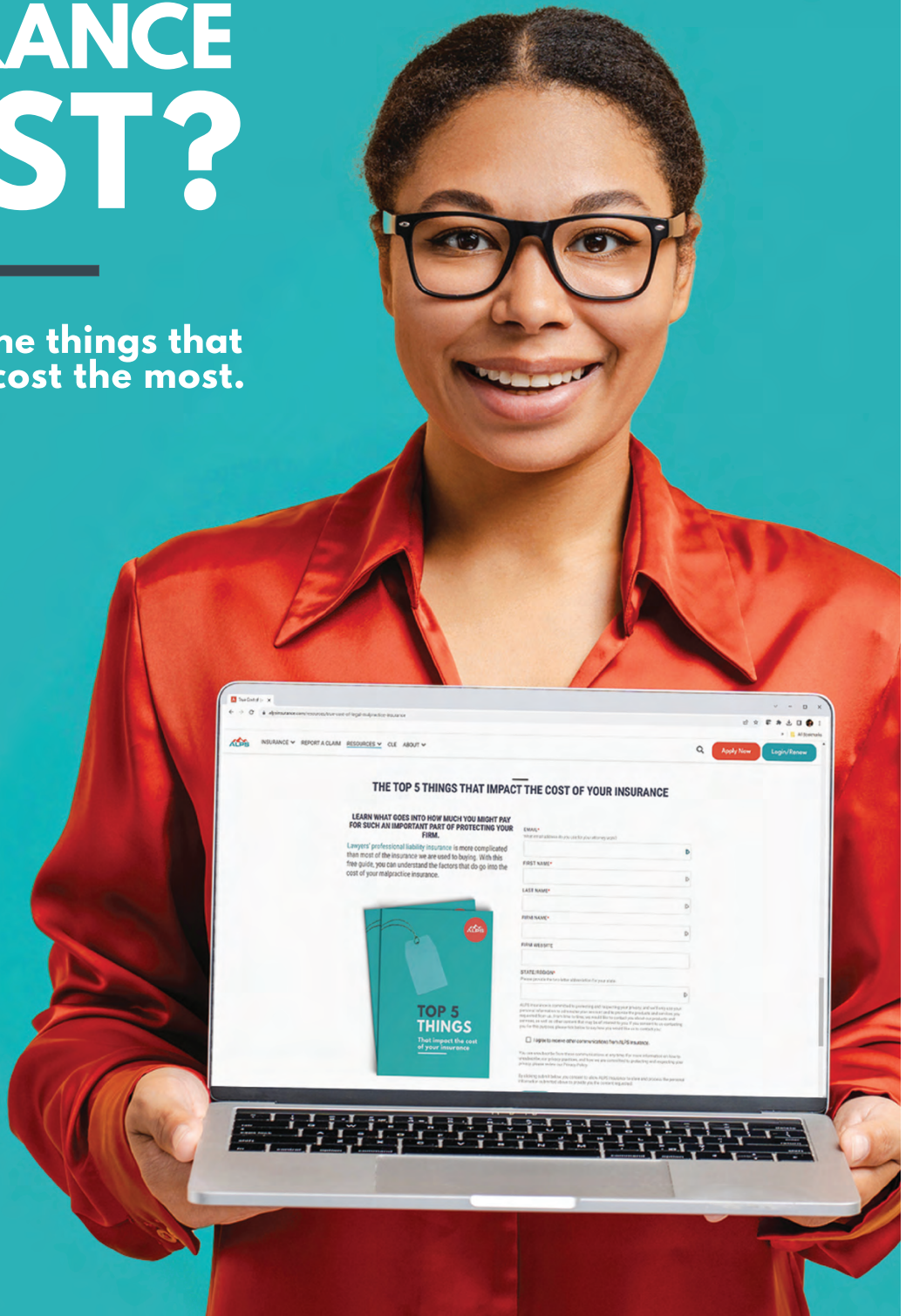


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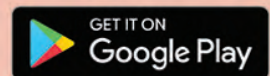
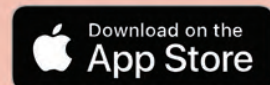
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1. All letters submitted for publication shall be addressed to Editor, *Utah Bar Journal*, and shall be emailed to BarJournal@UtahBar.org at least six weeks prior to publication.
2. Letters shall not exceed 500 words in length.
3. No one person shall 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.
8. If and when a letter is rejected, the author will be promptly notified.



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Leadership Academy

by Jenifer Tomchak and Nick Stiles

Utah State Bar President, Cara Tangaro, has elected to offer her "President's Message" space in this issue of the Utah Bar Journal to Jenifer Tomchak and Nick Stiles to highlight the Utah State Bar's Leadership Academy program.

The Utah State Bar Leadership Academy is a prestigious program aimed at nurturing the next generation of legal leaders within Utah. Long before COVID, the Utah State Bar Commission recognized that fewer young attorneys were applying for and participating in its committees, sections, divisions, and on the commission itself. As a result, those positions were largely filled by attorneys in the later stages of their careers, mostly located in Salt Lake County. The commission was concerned that there would be a lack of leadership as those individuals aged and retired, and that the committees and various legal groups were missing important perspectives of lawyers from different backgrounds and parts of the state. To address this concern, and at the request of then-Bar President, Angelina Tsu, the Bar Commission established the Utah State Bar Leadership Academy. This program, now in its eighth year, aims to teach leadership skills to attorneys from all over the state in exchange for their promise to serve on a Bar Committee for one year after graduating the program.

Each year, in November, up to twelve participants are selected from a competitive nomination process to participate in the program. The Leadership Academy Board strives to select nominees from every judicial district and with varying backgrounds and practice areas. A preference is given to nominees who have been practicing for less than ten years. As a result of the careful selection process, the Leadership Academy is able to bring together a unique cross-

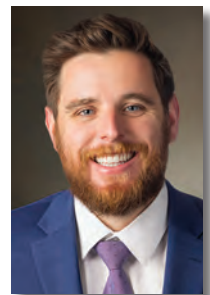
section of attorneys with a demonstrated ability and desire to lead. The number of participants is limited to make sure that each participant is given ample mentoring in a supportive and nurturing environment. The Leadership Academy Class participates in a weekend long retreat and in monthly leadership presentations from local and national presenters. These presentations cover a wide variety of leadership topics such as traits and practices of highly effective leaders, goal-setting, identifying and capitalizing on leadership styles, public speaking, skills for having difficult conversations, identification and support of colleagues in crisis, intentional leadership, bystander training, and topics specifically requested by each class. The participants also have special opportunities to meet other leaders from the legal community, including a lunch with all of the past-presidents of the Bar and the Bar Commission, and a lunch with the members of the Utah Supreme Court.

At the conclusion of the program, the participants have not only honed their leadership skills, but also developed deep connections with other leaders from all over the state. The class members are then expected to use their leadership skills to serve our profession and community by seeking out and accepting roles in the leadership of the Bar, public office, and professional associations, beginning first with their mandatory one-year of service on a Bar Committee. These opportunities have led to very fulfilling experiences, with many of the participants eventually becoming the chairs of the committee to which they were originally assigned. For example, there are former Leadership Academy members serving on almost all Utah State Bar Committees, the Bar Commission, and many of the Utah Supreme Court's Committees. There are also Leadership Academy

JENIFER TOMCHAK is a co-founding partner at Tomchak Skolout, past president of the Utah Young Lawyers Division, and co-chair of the Utah State Bar's Leadership Academy.



NICK STILES is the Administrator of Utah's Appellate Courts. He is a 2019 graduate of the Utah State Bar's Leadership Academy and sits as an ex officio member on the Utah State Bar Commission where he represents the Utah Supreme Court.



members serving on or leading many of the affinity and regional bars, UCLI, UMBA, and as representatives to the ABA. Finally, there are former members serving in judgeships, in the Utah Legislature, and in senior leadership positions in the Utah Judiciary and U.S. Attorney's Office for the District of Utah.

The board members – Jen Tomchak (co-chair), Judge Clemens Landau (co-chair), Jonathan Hafen, Cheryl Mori, Grace Pusavat, Lance Dean, Nick Stiles, and LaShel Shaw – serve as mentors and presenters. In return they are rewarded with seeing the participants blossom into admirable leaders of the legal community. The impact this program has had on the programs and activities of the Bar will be long-lasting. These future leaders will be valuable contributors to our profession for years to come.

The following is a quote from Lance Dean, Leadership Academy Class of 2019, and current member of the Board. Lance applied for the Leadership Academy because of a promotion to lead a regional public defender's office and concern about his new role in a leadership position.

Five years ago, I was chosen to be a part of the Leadership Academy. Participating in the Leadership Academy has been the best decision I ever made professionally.

Being from a small judicial district had limited my exposure to other attorneys, and through the Leadership Academy I was able to network with more than a dozen lawyers and judges throughout

Utah, who assisted and guided me in my new position in leadership. The workshops and lectures from experts helped me shape my career and add value to what I can offer to clients, fellow attorneys, and the profession generally.

I have watched as my leadership class members, who are a tight knit group now, have advanced their careers and moved into positions better suited to their personal needs. Legal work can be overwhelming with the pressures of workloads. My class members call me when a criminal defense question comes up. I call them when I need advice and direction about Indian law, how a prosecutor thinks, ways to persuade a cantankerous judge, or just to vent to each other about the pressures of this career. Networking has expanded my outlook on my legal career. Sharing with my group my legal goals allowed them to assist me in obtaining them.

If you are interested in applying for the 2025 Leadership Academy, follow this link for the application: <https://utahbar.org/leadership-academy/>. Applications are due December 6, 2024. The time commitment to participate in the Leadership Academy is one 1.5 day retreat, and one meeting a month for the year. If you have questions about the Academy you're welcome to contact any member of the Board.

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Utah's Nursing Homes Need Serious Reform

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DID YOU KNOW?

- A recent study ranked Utah 50th in the nation after examining elder abuse, abuse prevention, long-term care nursing home quality, and 13 other measures of elder abuse protection!¹
- Most Utah Nursing Homes are owned by two small, municipal entities, but operated by for-profit corporations and private equity groups!
- Many nursing home corporations and private equity groups have created a “corporate shell game” structure, making it hard to reach assets and difficult for even Medicare and Medicaid regulators to identify who owns and operates the nursing homes!²

- Citing deficient care and a “lack of oversight” Utah’s Disability Law Center recently filed a complaint with federal regulators against the Utah Dept. of Health and Human Services, requesting an investigation and audit of Utah’s nursing home regulators!³

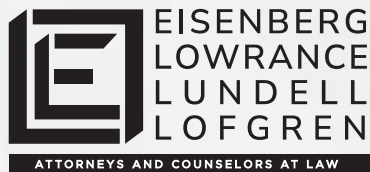
In this environment, winning Utah nursing home cases demands more than knowing the “standard of care”—it means mastering the corporate structures and operations of the industry.

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¹ [Wallethub.com/edu/states-with-best-elder-abuse-protection/28754](https://www.wallethub.com/edu/states-with-best-elder-abuse-protection/28754).

² GAO-23-104813 “Nursing Homes: CMS Should Make Ownership Information More Transparent for Consumers” (available online).

³ Disability Law Center Complaint Against Utah Department of Health and Human Services and Request for OIG, OCR and CMS Assistance and Intervention, July 10, 2024. See <https://healthlaw.org/resource/hhs-and-ocr-complaint-complaints-filed-against-utah-medicaid/>.



Contact Jeff Eisenberg or Brian Lofgren at **801-446-6464**, jeisenberg@3law.com or blofgren@3law.com if you have a case you'd like to discuss.



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In Memoriam: Peter Billings

by Jason W. Hardin

Peter Billings lost his courageous eight-year battle against stage IV prostate cancer on June 29, 2024.

I first met Peter as a summer law clerk at Fabian & Clendenin back in 1999, when he was president of the firm. As many readers who knew him no doubt appreciate, it was hard not to be intimidated by Peter. He had presence, obvious self-confidence, and a memorable deep voice. His intellect was palpable. And it was clear to me, and to everyone else, that he loved to learn and compete. Peter took to me, and I immediately took to him.



Over the next two decades, I worked closely with Peter on numerous complex civil litigation matters spread across the country. Peter was always involved in cases of significance. And for a decade, I learned to navigate the intricacies and difficulties of law firm management while serving with Peter on our firm's board of directors. During that time, Peter influenced me greatly, both as an attorney and a person. In the end, for me, Peter was a teacher, mentor, promoter, and father figure. I have extremely fond memories of him that will last forever.

But what sticks with me the most, and why I agreed to write this in memoriam, is what I believe was Peter's most impactful core trait. He was one of the most accepting, open-minded individuals I have ever met. He valued and learned from our differences as humans. He knew that it would be easy and comforting to surround himself with like-minded people who were educated like him, thought like him, and came from similar backgrounds as him. But Peter chose otherwise, actively surrounding himself with diversity of all kinds, thereby evolving and bettering himself and others because of that diversity.

Peter grew up privileged here in Salt Lake City, a fifth generation Utahn. His parents were upstanding citizens who were involved

in the community. His father was a successful attorney (at Fabian & Clendenin, no less). Peter went to the best schools and took it upon himself to be a leader wherever he went. He was student body president at St. Mark's (which merged with Rowland Hall) and later at Brown University. After college, Peter studied at King's College, Cambridge, then became the youngest person to serve on Brown University's Board of Trustees at age twenty-four. He then graduated cum laude from Harvard Law School and practiced law in Washington D.C. for two years.

Peter returned to Utah in 1974 to manage Wayne Owens' senate campaign. It was unsuccessful. And over the next forty-five years, Peter practiced law (primarily civil litigation and trial practice) at Fabian & Clendenin, which under Peter's guidance became Fabian VanCott in 2015. Peter served as the firm's president for an unprecedented twenty-five years. As I can attest from personal experience, this is an extraordinary accomplishment. Attorneys are notoriously opinionated and finicky. They have different practices, different needs, different (and often strong) personalities, and different beliefs about how to "do things right." Leading a mid-sized law firm for such a long and uninterrupted period is a testament to Peter's leadership and to his ability and desire to overcome differences and bring people together. During his career, Peter somehow managed not only to have a thriving legal practice, but also remain extremely

JASON HARDIN practices as a civil litigator and trial attorney at Fabian VanCott, having served as its president for six years, including during the pandemic and the firm's recent move to 95 State.



active in politics and public service, while carving out time for his family.

Looking back, there is no question that Peter was an elite attorney with an elite background and an elite career. But make no mistake, Peter was not an elitist. He absolutely loved to learn. And he loved to be challenged and to find ways to solve those challenges. So, at Fabian & Clendenin and later at Fabian VanCott, Peter steadfastly sought to surround himself with people from different places, with different upbringings, and from different socioeconomic, educational, and cultural backgrounds.

I know this first-hand. He sincerely welcomed me, taught me, and promoted me—despite being someone who grew up poor in a broken family in rural Texas, who was able to escape those circumstances only with the help of a Naval ROTC Scholarship

and submarine stint, and who, without question, lacked much of the refinement one might expect someone with Peter's background to look for in a colleague and mentee. And I was not the exception. There are many stories just like my own. Indeed, over the twenty-five years I knew Peter, he never wavered from seeking out and hiring not just the law school graduates with the highest GPAs or class ranks, but also those from diverse walks of life and circumstances. He valued life experience just as much as he did pedigree.

In the end, Peter knew and believed, as I do now largely due to his influence, that diversity of background, culture, and thought in a law firm not only makes us better attorneys—because we are challenged by and learn from different ways of thinking about, looking at, and solving problems—but also makes us better human beings. This legacy of Peter's lives on not just in me, but others. And the world needs more of it.

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CHRISTENSEN & JENSEN: 75 YEARS OF EXCELLENCE

Christensen & Jensen, a full-service law firm based in Salt Lake City, proudly celebrates its 75th anniversary. Founded in 1949, Christensen & Jensen has consistently set the standard for expertise in litigation and appeals.



“For 75 years, our top priority has been to deliver the best legal services while maintaining fair and reasonable pricing,” said Jonathan T. Nish, Managing Shareholder of Christensen & Jensen.

“We are dedicated to ensuring that each client feels valued, receiving personalized attention and care as if they were our only client. As we look ahead, we remain dedicated to delivering outstanding service and upholding the highest standards of legal excellence.”

To mark this milestone, Christensen & Jensen reaffirms its commitment to providing exceptional legal services and fostering strong relationships with clients and the community.

As the firm reflects on its legacy, it remains focused on the future, continuing to offer innovative legal solutions and uphold the values that have defined its success over the past 75 years.

“This anniversary is a testament to the trust our clients have placed in us over the years and

the dedication of our talented team,” added Nish. “We look forward to delivering outstanding legal services for many more years to come.”

For more information about the firm and its 75 years of service, visit www.chrisjen.com.



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Small Firm and Solo Lawyers' Duty to Protect Data

by Talar Herculian Coursey

"I'm just a solo so I don't need complicated cybersecurity. Besides, that's what I have my IT person for."

Wrong.

First, hackers use automated systems trying to find vulnerable networks. They aren't looking to see whether you've got juicy intel or big clients. You're just as susceptible, if not more, than a big law firm that has better security controls.

Second, relying on your IT person to ensure you have all the protection is like expecting your dentist to let you know if you're going to have a heart attack. Sure, they're both doctors but they serve a different purpose.

Third, if you have cybersecurity insurance (which you should), you probably filled out an application about your security controls, and you need to ensure that you actually have them or your claim might get denied when you need it.

So, what are the essentials? What do you really need?

Here's what the ABA says you need if you're a solo or small firm:¹

Multifactor Authentication (MFA)

If you do any online banking, you'll notice that after you enter your username and password, you will get an option to receive a code via text or phone call. This is MFA. You should be using it for your hardware and software too.

Supported Systems

The "update software" notifications can drive us nuts sometimes, but they are so important. By failing to keep everything updated, you're creating vulnerabilities. Hackers get a list of vulnerabilities, then use automated scans to identify companies that haven't made the updates. These updates are time sensitive so if your IT

person is only checking it once a month, that's not frequent enough. You need to ensure that there is regular monitoring of your systems and timely patches and updates.

Vendor Due Diligence

Since solos and small firms have limited resources, they often outsource their IT. But does your IT person/company have the proper security controls themselves? Do they have a security certification, and do they conduct regular internal and external vulnerability and penetration testing to see if there are issues? Are their systems up-to-date and regularly patched? You can't rely on the IT person/company to tell you that they're doing their job properly so either you need to determine this yourself or use another software or company to do it.

Vendor Contracts

Review your contracts. Many vendor contracts will limit liability to the fees paid over a certain period. If your vendor suffers an attack that affects you, is that contractual amount going to be sufficient? Does the vendor have a cybersecurity insurance policy, and if so, how much is it? Is it going to be enough to account for your downtime and cost of recovering your data?

Training

Let's face it, if you have humans working for you (including yourself), then there's bound to be human error. In fact, human error is commonly the way hackers get into your system.

TALAR HERCULIAN COURSEY is General Counsel and Vice President of ComplyAuto Esquire.



While ethical and state privacy laws require you to take reasonable measures to protect data, you may also be contractually obligated to your clients to protect the data as well.

Nothing beats regular training, especially simulated phishing attacks that help keep you and your team vigilant.

Written Information Security Program

Outline the security controls for your system, both for your own sake and for the benefit of clients who may have already started asking for this. While ethical and state privacy laws require you to take reasonable measures to protect data, you may also be contractually obligated to your clients to protect the data as well.

Backups

Make sure that you have created backups in the event of an attack. Importantly, ensure that access to cloud backups is protected by MFA. Hackers will gain access to your system and monitor your activity to gain access to even your backup if not properly protected.

Security Incident Plan

Don't wait for the disaster to happen before having a plan in place about who to call and what to do. The question isn't "if" you'll experience a cybersecurity incident but rather "when." Be prepared and ensure that your plan is printed out somewhere and not on the computer or software that you can no longer access.

Cyber Insurance

Cybersecurity claims are getting more and more expensive so it's no surprise that it's creating a rise in premiums and more stringent requirements from insurers. Check your policy to find out:

- (1) What representations have you made about your security controls? Do you actually have those controls in place?
- (2) What is the coverage? Will it be enough to cover the amount of time you will be unable to work and possibly respond to claims from others? Will it cover a ransomware claim?
- (3) What's the effective date of coverage? Some hackers will gain access for months before an incident.
- (4) Will the policy help you recover data?

Cybersecurity and Data Compliance

Some of your clients have to comply with cybersecurity and privacy requirements depending on their location or industry. As a result, some data may require additional protection, e.g., intellectual property, medical records, financial records, and etc.

Encryption

If you've had a cyber incident, it doesn't mean that your data will be compromised if you have the data encrypted. Make sure that your laptops are encrypted as well as databases containing sensitive information. When transferring sensitive information, make sure to use encrypted file sharing methods.

Document Retention Policy

Don't keep anything longer than you need it. Once you don't need it, delete it. The less data you have in your systems, the less data you need to protect.

"There are only two types of companies: those that have been hacked, and those that will be." — Robert Mueller, Former Dir., FBI, Address at RSA Cyber Security Conference (Mar. 1, 2012), <https://archives.fbi.gov/archives/news/speeches/combating-threats-in-the-cyber-world-outsmarting-terrorists-hackers-and-spies>. Take the precautions necessary to ensure that even if you are hacked, the consequences won't be catastrophic and that you will have the peace of mind to know you took the reasonable measures required by your ethical and legal duties.



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1. Melissa Ventrone, *Small Firms and Sole Practitioners*, in *THE ABA CYBERSECURITY HANDBOOK: A RESOURCE FOR ATTORNEYS, LAW FIRMS, AND BUSINESS PROFESSIONALS* 279 (Jill D. Rhodes et al. eds., 3d Ed. 2022).

A photograph of two men and a woman in a modern office setting. One man in a blue shirt sits on a brown leather armchair, looking towards the woman whose back is to the camera. Another man in a dark blue suit and striped tie sits on a matching armchair to the right, looking towards the woman. The background shows a contemporary office interior with wooden furniture and large windows.

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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 Supreme Court

League of Women Voters v. Utah State Legislature **2024 UT 21 (July 11, 2024)**

In this appeal, the Utah Supreme Court answered the question “what happens when Utahns use their initiative power to exercise their ‘right to alter or reform their government’ by passing an initiative that contains government reforms, and the Legislature repeals it and replaces it with another law that eliminates the reforms the people voted for.” It held, “when Utahns exercise their right to reform the government through a citizen initiative, their exercise of these rights is protected from government infringement.” Consistent with this holding, the court **rejected defendants’ argument that the Legislature’s general power to amend, repeal, and enact statutes defeats the plaintiffs’ claim that the Legislature violated their constitutional rights by enacting S.B. 204, which repealed Proposition 4 and replaced it with a new law that nullified the proposition’s key provisions.**

Mulligan v. Alum Rock Riverside, LLC **2024 UT 22 (July 18, 2024)**

Mulligan purchased property held in a trust created by Brett Del Valle and his wife. Prior to the purchase, Alum Rock obtained a judgment against Del Valle in California, which it recorded with the Weber County Recorder’s Office. It did not, however, file the judgment in the registry of judgments. The relevant statute, Utah Code section 78B-5-201, states in subsection 201(2) that judgment filed “[o]n or after July 1, 1997” must be filed in the registry of judgments to create a valid lien; while in subsection 201(3) it provides that for judgments “[o]n or after July 1, 2002,”

a judgment must be filed with the county recorder to create a valid lien. Mulligan argued that because Alum Rock failed to meet both requirements, it did not have a valid judgment lien. The Supreme Court held that **Alum Rock created a valid lien because “[t]he structure of section 201 itself signals that the registry-of-judgments and county-recorder requirements are to be read sequentially, creating independent requirements for successive time periods.”**

In re A.H. **2024 UT 26 (July 25, 2024)**

Seven children were removed from parents, with the two youngest placed in foster care and the older five placed with grandparents. The juvenile court terminated the parents’ rights as to the two younger children. The court of appeals reversed, reasoning that termination must be “materially better” for the child than a kinship placement. The supreme court reversed the court of appeals, holding that **the correct, statutory, standard is whether termination is “strictly necessary to promote the child’s best interest.”** The court also held that the court of appeals had improperly reweighed the evidence and considered evidence outside the record.

Thompson v. State **2024 UT 27 (August 1, 2024)**

Under the Post-Conviction Remedies Act, a person convicted of a felony may petition the district court for a hearing to determine factual innocence. But the petitioner must present “newly discovered material evidence . . . that, if credible, establishes that the petitioner is factually innocent,” and any determination of factual innocence must be “based upon” that new evidence. Utah Code Ann. §§ 78B-9-402(2)(a)(i), 404(8)(b). Interpreting this language, the Utah Supreme Court held that **the PCRA requires that a determination of factual innocence be**

Case summaries for Appellate Highlights are authored by members of the Appellate Practice Group of Spencer Fane Snow Christensen & Martineau.

based *solely* upon the “newly discovered material evidence” presented in the petition. The fact that new evidence may cast old evidence “in a new light” is insufficient – the new evidence itself must prove the petitioner’s innocence.

Nelson v. Phillips

2024 UT 30 (August 8, 2024)

When numerous out-of-state defendants moved to dismiss for lack of personal jurisdiction and submitted declarations undermining the plaintiff’s allegations establishing jurisdiction, the plaintiff chose to rest on those allegations, arguing that Utah precedent required the district court to accept them as true. The district court agreed and denied the motions. The Utah Supreme Court reversed, clarifying “**that if a defendant introduces evidence to contradict the complaint’s allegations that establish personal jurisdiction, the burden shifts to the plaintiff to support those assertions with something more than what is in the complaint.**” Once the plaintiff makes his own evidentiary showing, “such that there is evidentiary support on both sides of the jurisdictional question,” any dispute will be resolved in favor of the plaintiff.

Doe H.P. v. Broadbent

2024 UT 31 (August 8, 2024)

Suit by 94 plaintiffs against an OB-GYN whom they alleged sexually assaulted them. The trial court dismissed the case for failure to comply with the prelitigation requirements of the medical malpractice act. It reasoned that the injuries occurred “in the course of obstetrical treatment” and so arose out of health care provided by the doctor. The supreme court reversed, agreeing with the plaintiffs that **what had happened to them was not health care; rather, it was sexual assault under the pretense of providing health care.**

D.W. v. FPA Sandy Mall Associates

2024 UT 32 (August 8, 2024)

The plaintiffs, who were customers of a massage therapist offering services in the defendant’s shopping center, sued the shopping center for premises liability and negligence after the massage therapist sexually assaulted them during their massage appointments. The shopping center moved to dismiss the claims, arguing it owed no legal duty to the plaintiffs. The district court denied the motion, holding the shopping center did owe a duty to the plaintiffs based in part on the factors set out in *B.R. ex*

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rel. Jeffs v. West, 2011 UT 11. On interlocutory appeal, the Utah Supreme Court emphasized that “*Jeffs* and its progeny help courts determine whether a previously unrecognized duty exists; the *Jeffs* framework does not apply when a plaintiff invokes a categorical duty already recognized by Utah law.” Because the plaintiffs had invoked categorical duties already recognized under Utah law – specifically, sections of the Restatement (Second) of Torts and (Second) of Property that have been adopted in Utah – the district court erred in considering the *Jeffs* factors.

State v. Baugh
2024 UT 33 (August 15, 2024)

Baugh was charged with two counts of aggravated sexual abuse of a child, but the State presented evidence of three different episodes. The jury returned a conviction on one count, but defense counsel did not seek a jury instruction requiring the jury’s unanimity as to which conduct met the elements of the charged counts. The supreme court reversed the conviction, holding that a jury must be unanimous as to which conduct met which elements. “Caselaw is clear that the jury must be unanimous as to each element of each count of that crime. In

practice, this means that the jury must agree on which incident of touching satisfies each count. **If the jury does not agree on which act relates to each count, then its verdict violates the Unanimous Verdict Clause.**”

State v. Chadwick
2024 UT 34 (August 15, 2024)

The Utah Constitution’s Unanimous Verdict Clause reads: “In criminal cases the verdict shall be unanimous.” In this criminal appeal, the Utah Supreme Court set out, for the first time, “a standard identifying when the clause has been violated.” The court held that the clause is violated when a defendant “shows that the circumstances of the case undermine [the court’s] confidence in the unanimity of the verdict.” For example, **a court’s confidence is inherently undermined when a defendant is charged with multiple acts under multiple counts of the same crime “and the counts are not linked to specific underlying conduct” in the jury instructions.** Once a violation is shown under the clause, the burden shifts to the prosecution to establish that the error was harmless beyond a reasonable doubt.

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Utah Court of Appeals

Thorup v. Thorup 2024 UT App 93 (July 5, 2024)

This appeal involved the review of an informal divorce trial regarding various financial issues, including the allocation of equity in the marital home that the husband owned prior to the marriage. The district court found that the marital home constituted comingled marital property based upon payment of the mortgage with marital funds. Based on this finding, the district court also split the equity between the parties. In reversing the decision, the court of appeals held the trial court made insufficient findings as to intentional commingling of the home beyond marital funds being used to pay the mortgage. Similarly, as to the home's equity, the court found insufficient evidence in the record to establish the husband's home lost its separate nature. **"One spouse's residence at, and assistance with the day-to-day maintenance of, the other spouse's separate real property will not usually be enough to render the entirety of that property's appreciation comingled into the marital estate."**

In re B.D. 2024 UT App 104 (August 1, 2024)

In this case, the court of appeals was asked to decide whether a child's unproven and apparently unsupported allegations of abuse against a parent, coupled with the child's stated desire not to live with that parent, are enough to support a determination that the child is "dependent" as to that parent. The court

concluded that they did not warrant the determination. **"We conclude that a child is 'without proper care,' and therefore 'dependent,' where that child has no parent or guardian at all or where the child's parent or guardian – through no fault of their own – is unable to provide the level of care and attention that the child reasonably needs under the circumstances."**

Ackley v. Labor Commission 2024 UT App 119 (August 22, 2024)

Ackley had a ganglion cyst on her hand. While working at Lowe's and standing on a ladder, Ackley grasped a hammer tight as it slipped which caused extreme pain leading her to faint and fall off the ladder with substantial injuries. The Labor Commission rejected her claim for benefits because, pursuant to *Allen v. Industrial Commission*, 729 P.2d 15 (Utah 1986), her injuries were not the result of "extraordinary and unusual exertion" related to her job. The court of appeals reversed, holding that the idiopathic doctrine provided the appropriate test. **"A fall originating from an internal or personal weakness or condition of the employee is deemed 'idiopathic,' and the compensability of injuries resulting from such a fall depends on whether employment conditions increased the dangerous effects of the fall. If the employment does not increase the severity of the injuries resulting from the fall, then there is no causal link between employment and the injury, and the injuries are not compensable."**

ZACHARY J. WEYHER

November 1977 – August 2024

With deep sadness and heavy hearts, we are announcing the sudden passing of our colleague and friend, Zach Weyher.

Zach was a partner with the Pia Hoyt law firm for the past three years, specializing in complex civil litigation.

Zach's presence and wit will be missed significantly by all of us at the firm, his family, friends, pets, and colleagues. Zach's song has ended but his melody remains with us.



*"It's hard to forget
someone who gave us
so much to remember"*

10th Circuit

Whitson v. Board of County Commissioners of the County of Sedgwick

106 F.4th 1063 (July 5, 2024)

In this civil rights case brought by a prisoner who was sexually assaulted by the sheriff while he transported her between jails, the Tenth Circuit addressed whether this assault – committed by a final policymaker in the course of carrying out official duties for which he was changed with setting policy – subjects the municipal defendants to liability. The court held that it does. In doing so, **the court explained that the determinative factor is whether the policymaker is responsible for an unconstitutional act within his or her final policymaking authority; the motive of the policymaker is irrelevant.** Judge Phillips dissented on the basis the sheriff was not acting as a final policymaker in his decision to sexually assault the plaintiff, but rather pursued a purely personal agenda and acted outside of his authorized law-enforcement policymaking authority.

Estrada v. Smart

107 F.4th 1254 (July 16, 2024)

In this civil rights case brought by a prisoner who was shot while attempting to escape, the officer moved for summary judgment on his affirmative defense that the plaintiff had failed to satisfy the exhaustion of administrative remedies requirement of the Prison Litigation Reform Act. The court of appeals **held, as a matter of first impression, that the district judge may resolve factual disputes relevant to whether the**

exhaustion requirement is satisfied; and as a matter of first impression, the court should ordinarily hold an evidentiary hearing in the context of summary judgment to resolve issues of fact related to exhaustion.

Bartch v. Barch

111 F.4th 1043 (July 29, 2024)

May a federal district court lawfully resolve a dispute over a business which operates legally under state law but illegally under federal law? That was the thorny question confronting the Tenth Circuit on this appeal, which centered on a marijuana business licensed under state law but operating in violation of the Federal Controlled Substances Act. The district court entertained the parties' contractual dispute and entered a judgment that required continued operation of the business (i.e., sale of marijuana) to preserve the value of the judgment creditor's equity shares. The judgment debtors countered that the creditor lacked standing to seek redress which effectively violated federal law, making the judgment void. **The Tenth Circuit upheld the judgment, concluding that, regardless of the ultimate illegality of the contract under federal law, the judgment creditor had standing because he alleged an injury-in-fact which was remediable under state law.** Whether the judgment could be lawfully enforced, however, is a different question, and the appellate court vacated the judgment enforcement order and remanded for further consideration of whether the judgment required the debtors to violate federal law.

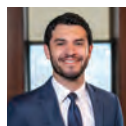


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In Memoriam - Cary Dee Jones

February 1, 1952 – September 14, 2024



We are all profoundly saddened by the sudden, unexpected passing of our dear friend, colleague, mentor, leader, community advocate, husband, father, and grandfather, Cary D. Jones. Cary was one of the firm's preeminent real estate partners and his legacy lives on in innumerable ways.

Cary's roots in the legal communities of Utah, Arizona, California, and elsewhere run deep. His astute creative thinking, expert drafting, strong moral compass, and keen art for bringing people together to achieve common goals serve as a model for all of us who live and work in his memory. But Cary's life was not just about doing deals and completing complicated projects. He was all about genuinely caring for the people around him, whether they were clients, colleagues, young lawyers whom he loved to mentor, the many law students he taught, the many board members of

community organizations with whom he served, his personal friends with whom he enjoyed a good meal, a fun day fishing or golfing, and always lively conversation, and his family, who knew him as a great cook, attentive caregiver, and sage. He found humor in almost everything, and his infectious laugh filled every room he occupied.

Cary was born in Park City, but raised in Salt Lake City. He attended Olympus High School, worked for a while as a land surveyor for his father's survey company, and attended the University of Utah, where he developed a love of history. He graduated Order of the Coif from the S.J. Quinney College of Law, where he also served on the editorial board of the law review. Cary practiced law at Brown & Bain in Phoenix and at Ray, Quinney & Nebeker in Salt Lake City. He was a founding partner of Hansen, Jones, Maycock and Leta, and joined Snell and Wilmer as a partner in 1992, where he devoted the largest part of his prominent legal career. Cary also served for a time as the Vice President of Real Estate for American Stores and, after rejoining Snell & Wilmer, established the firm's Los Angeles office, where he served as its managing partner for many years. In 2023, Cary returned to Snell & Wilmer's Salt Lake office, where he was actively engaged in several major real estate projects at the time of his passing.

A lifelong Ute football fan, Cary was deeply connected to the University of Utah, to the S.J. Quinney College of Law, and to Rowland Hall. He gave generously of his time to many causes. Cary built his career around the central principal of love—love of family, love of clients, love of colleagues, and love of the law. He leaves a beautiful family: his loving wife of 30 years, Kristin Hopfenbeck; his devoted daughters, Molly Cooper and Megan Alfa Jones Shiotani (Dru); and his beloved granddaughter (and his biggest fan), Mori Cooper Shiotani. He also is survived by his brothers, Dane (Susan) and Tad (Michelle), his aunt Kathy Jones-Price (Harry) and a close family of cousins, nieces, and nephews. Our hearts go out to all of them.

All the people that Cary touched during his life feel the vacuum of his loss, but all also are uplifted and inspired by the wisdom, integrity, and joyfulness that the memory of his life leaves behind.

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A New Frontier in Housing and Land Development: the Utah Legislature's Creation of Public Infrastructure and Infrastructure Financing Districts

by Victoria Carlton

“Go West!” is a phrase that has become synonymous with the concept of “Manifest Destiny” and the exploration and expansion of the American West in the 19th century. This sentiment seems to be just as relevant today as Utah ranks as one of the fastest-growing states. From 2010 to 2020, Utah’s population grew 18.4% with the addition of 507,731 residents. *See* American Counts Staff, *Utah Was the Fastest-Growing State From 2010 to 2020*, U.S. CENSUS BUREAU (Aug. 25, 2021), <https://www.census.gov/library/stories/state-by-state/utah-population-change-between-census-decade.html>. This increase in population and tourism growth has led to increased housing demands in nearly every municipality, county, and region of our state.

The next decade will really be telling for this new concept of financing public infrastructure.

According to the Kem C. Gardner Policy Institute’s State of the State’s Housing Market Report, dated September 2023, it is estimated that “Utah’s housing shortage will likely increase to over 37,000 units by 2024.” James Wood & Dejan Eskic, *State of the State’s Housing Market, 2022–2024*, KEM C. GARDNER POL’Y INST. (Sept. 2023), <https://d36oiwf74r1rap.cloudfront.net/wp-content/uploads/State-Of-Housing-Sep2023.pdf>. The Utah housing market is attempting to keep up, and on May 18, 2023, the Census Bureau estimated that Utah, for a second year, had the “fastest growth in housing units” and “added 38,876 new units, increasing its housing stock by 3.3%.” Press Release Number CB23-79, *Large Southern Cities Lead Nation in Population Growth*, U.S. CENSUS BUREAU (May 18, 2023), <https://www.census.gov/newsroom/press-releases/2023/subcounty-metro-micro-estimates.html> (“[F]ollowed by Idaho (2.8%) and Texas (2.3%). Rhode Island (0.2%), New Jersey (0.2%),

Illinois (0.2%) [,] and Connecticut (0.3%) had the slowest rates of housing growth.”).

One of the ways that the Utah Legislature recently attempted to curb the demand for housing has been to create two new avenues for real estate developers to finance public improvements through tax-exempt bonds as opposed to traditional commercial lending: (1) Public Infrastructure Districts (PIDs) and (2) Infrastructure Financing Districts (IFDs).

These newly created special taxing districts are a means whereby developers employ the public finance markets to finance the costs of the public infrastructure.

A Historical Examination of Infrastructure Funded Districts

This long-standing popular, but also somewhat controversial, means of financing public improvements has been used historically as a mechanism to promote either development or redevelopment in local governments. This new wave of financing public improvements is not a novel idea. In 1952, California gave birth to this new, innovative approach to

VICTORIA CARLTON is a senior associate attorney at Bangerter Frazier Group in St. George, Utah, where her practice is primarily focused on business litigation, local government litigation, and real estate litigation.



financing urban renewal projects. After 1952, other states have followed, seeking a similar tool for local governments allowing them to partner with private interests to invest in the future development or re-development of their communities. The same concept exists in other states under terms such as “metropolitan districts” in Colorado and “general improvement districts” in Nevada. The two most common reasons that state legislatures enact forms of tax increment financing (TIF) is to reduce areas with blight or to increase affordable housing.

Throughout the 1970s, 80s, and 90s the popularity of using TIF’s heightened, “TIF[s] provided a way of supporting redevelopment projects without increasing taxes, without requiring a popular vote, and, usually, without impacting a city’s debt limit or financial stability.” Larry Marks, *The Evolving Use of TIF*, 18 DEV. STRATEGIES REV. 1 (2005). California disbanded the concept of TIFs and Redevelopment Agencies in 2012,¹ and in 2014, California adopted legislation allowing for Enhanced Infrastructure Financing Districts and modified the already existing Infrastructure Financing Districts. *See generally* Christopher Lynch, Jones Hall, & Jim Morales, *Redevelopment 2.0: Existing*

Laws, Pending Legislation and Legal Theory, Presentation to the League of California Cities, Long Beach, C.A. (Oct. 18, 2019); *see also* Cal. Code §§ 53395–53398.88. These changes ultimately barred cities from tapping into property taxes that would normally fund education and required the local government entities to approve any project for which its share of the tax increment was being used.

Utah has had forms of TIFs, financing mechanisms used to encourage economic development or redevelopment and access to housing. So, it comes as no surprise that, in the 2019 General Session, the Utah Legislature passed Senate Bill 228, which “create[d] a new form of the local district, a public infrastructure district, it is an option for local governments to create a separate district to finance public improvements without burdening existing property owners and taxpayers.” House Floor Debate Audio, S.B. 228, Day 45 (Mar. 14, 2019), <https://le.utah.gov/av/floorArchive.jsp?markerID=108440>. Inspired by Colorado, this new financing tool is an additional tax or fee that is levied to pay the debt and is limited to the geographic boundaries that the new district is created to enhance.

Essentially, as House Sponsor James A. Dunnigan explained, “it allows new growth to pay its own way for public infrastructures and facilities” and “[i]t allows the use of tax-exempt interest rates for long-term financings and is significantly less expensive for developers than traditional commercial lending.” *Id.* But, haven’t they always done so? Yes, but through traditional lending.

“It allows the use of tax-exempt interest rates for long-term financing that significantly less expensive than traditional, commercial lending. The District can be used to pay for water, or sewer, roads, electrical, housing, transit, and more.” *Id.* To be creative, the Legislature explained that the local government and those property owners within a PID can create a district to pay for the infrastructure that will ultimately be owned by the creating entity (i.e., the local government that created the PID).

The legislature then passed another broader form of a tax increment financing concept, the infrastructure financing district, akin to a PID but the creation is slightly different and located in different areas of the Utah Code. *See* H.B. 13, 65th Leg., Gen. Sess. (Utah 2024).



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Public Infrastructure District or Infrastructure Financing District: Title 17B and 17D of the Utah Code, the Similarities and Differences

The Public Infrastructure District Act is in Title 17D, Chapter 4, of the Utah Code, but had previously been housed under Title 17B, Chapter 2a, Part 12. On the other hand, IFDs, are housed under Title 17B, Chapter 2a, Part 13. Another difference between the two is how they are created. A PID requires “the creating entity [to] agree[] before the creation” – the creating entity is defined by statute as the county, municipality, or development authority that approves the creation. Utah Code Ann. § 17D-4-102(6). An IFD is created by a petition “signed by 100% of the owners of surface property within the applicable area.” *Id.* § 17B-2a-1303. The difference here being, an applicant for an IFD is only required to obtain the consent of all of the property owners. Under a PID, an applicant must have the consent of all property owners and the local government to which they are turning the public improvements over.

Both require that the bond funds only be utilized for public infrastructure. *See id.* §§ 17B-2a-1302, 17D-4-203(2)(a), 11-14-103. They are similar in nature because they both allow for bond funds to be payable for public infrastructure and improvements. Both restrict the debt repayable to the property owners who have agreed to the PID or IFD (and their assigns and successors, made known in disclosures to the future purchasers). Both allow for the bond debt to be repaid through a property tax levied on those properties or a fee. *See id.* §§ 17B-1-103(2)(g), 17D-4-303(1), 17D-4-302.

The expense to create and maintain generally favors larger commercial and/or residential projects. Since 2019, some examples include the Utah Inland Port Authority (a PID created for the new airport); the Medical School Campus PID (part of the campus encompasses the former Novell tower in South Provo); and the Black Desert PID (located in Ivins and hosting part of the PGA Tour FedEx Cup for 2024). PIDs and IFDs are not limited to new development but a mixture of new and old.



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For instance, the City of South Salt Lake approved a PID specifically to improve the sewer infrastructure affecting development (Downtown East Streetcar Sewer PID).

Checks and Balances: Open and Public Meeting Act, GRAMA, Procurement, Required Disclosures to Buyers, and Other Safeguards

There are checks and balances put into place by the Utah Legislature for an IFD or PID Board of Trustees; after all they are governmental entities. Specifically, both PIDs and IFDs are Limited Purpose Local Government Entities. *See* Utah Code Ann. § 17B-1-102(31). Just like other limited purpose local government entities, PIDs and IFDs must follow the record keeping and request processes of GRAMA, open and public meetings rules, procurement rules and processes, ethics rules, and other statutes and rules that may apply. This also includes disclosing conflicts of interests, establishing an ethics hotline and guidelines, procurement rules, among other requirements for these limited local governmental entities.

There are also other reporting and transparency requirements. PIDs have a separate duty to file “annual reports with the creating

entity regarding the public infrastructure district’s actions” as detailed in the PID’s governing document. *Id.* § 17D-4-205. There is a specific section in each governing document listing what is required for the annual report. For an IFD, it is required to send an annual report to the state auditor, clerk or recorder of the municipality it is located within, and the clerk of the county within which it is located. *Id.* § 17B-2a-1307 (providing in Subsection (2)(b) that the details of the annual report are found in statute rather than the governing document).

The bond financing documents also require reporting from these districts, as well, which is available online at the Electronic Municipal Market Access (EMMA), at emma.msrb.org. This is where one could find information related to the bond continuing disclosures for each financing district.

At the time of purchasing the property, a future owner will be made aware of the PID or IFD through a title search. For initial purchasers into PIDs, most cities and counties have also included requirements in the PID’s governing documents that those initial purchasers are given a disclosure on a separately colored page at closing and acknowledge that they are aware of the additional PID tax, among other disclosures. *See, e.g.,* Black Desert Public Infrastructure District Governing Document, Article XI, Disclosure to Purchasers, 17, https://ivins.granicus.com/MetaViewer.php?view_id=2&event_id=949&meta_id=140326. Then, at least annually thereafter, the districts are typically required to send, by mail, a notice to the applicable property owners of the PID’s existence and the next scheduled board meeting. *Id.*

Best Practices Moving Forward, Looking to Other’s Failures and Successes

There is a lot of conversation in Southern Utah about public infrastructure districts. Southern Utah will see some of its largest growth in the next decade because of the newly approved PIDs (likely future PIDs too). Hurricane City alone approved four separate PID projects (some with multiple PIDs, including Gateway at Sand Hollow PID No. 1, No. 2, and No. 3, each of which can bond for public funds for public improvements). The potential impact to Hurricane City has created a lot of conversation, including nationally, *see* Elainna Ciaramella, *Misinformation Surrounding PIDs in Hurricane City: Mayor Nanette Billings Rallies Landowners, Developers, Council Members, and Community to Understand the Facts* (Mar. 14,



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2022), <https://finance.yahoo.com/news/misinformation-surrounding-pids-hurricane-city-210000569.html>.

The controversy or support surrounding PIDs and IFDs in Utah is going to be an ongoing conversation as we watch approved PIDs gain residents or commercial lessors (noting that some PIDs are a mix of commercial and residential, but can also be just one or the other). Moving forward, looking to other states as examples, some best practices for Utah (most of which Utah has implemented) include: limiting the tax increment to those residents in the area receiving the benefit, complete public transparency with the districts governing boards, requiring local governmental approval, and ensuring it is a tax in addition to other taxes (not utilizing the tax increment in property taxes to pay the debt but a separate tax).

Utah is on track in most of these areas, but the lack of local governmental approvals under the new IFDs is concerning. Many of these PIDs are massive projects, such as Black Desert, that are intended to become master planned communities within these local governments. With IFDs, these local governments

will have less control on what types of master planned communities will be coming to their town, city, or county.

Conclusion

The next decade will really be telling for this new concept of financing public infrastructure. If property owners are going to utilize the IFD route, it would be wise to model the governing documents like those of its counterpart, PIDs. For the most part, Utah has implemented many of the best practices that caused California to redirect. This new frontier is sure to shape the way our communities look, in every part of the state.

1. The California Supreme Court recognized the stress of redevelopment agencies on the California public finance system noting that in creating these financing tools, it was taking away from other taxing entities the ability to capture on this new redevelopment. This type of TIF was no longer working for California, and the Governor of California in 2011 declared a fiscal emergency. *See California Redevelopment Assn. v. Matosantos*, 53 Cal. 4th 231, 247, 267 P.3d 580, 591 (2011) (“In essence, property tax revenues for entities other than the redevelopment agency are frozen, while revenue from any increase in value is awarded to the redevelopment agency on the theory that the increase is the result of redevelopment.”); *see also* George Lefcoe & Charles W. Swenson, *Re-Development in California: the Demise of TIF-Funded Redevelopment in California and its Aftermath*, 67 NAT'L TAX J. 3, 719–44.

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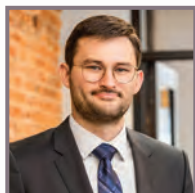


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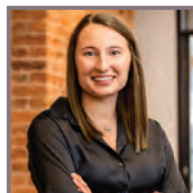
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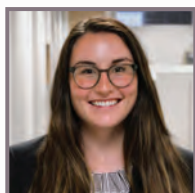
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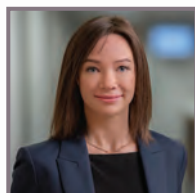
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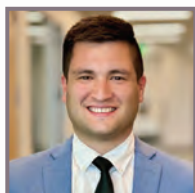
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Time for a Change: Modernizing Utah's Guardianship and Voting Laws to Align with Federal Standards and Best Practices

by Kathie Brown Roberts

In 2022, Utah took a significant step forward by enacting “Rights of a person alleged to be incapacitated” in Utah Code Section 75-5-301.5. This legislation clarified the personal and fundamental rights retained by individuals subject to guardianship in Utah. Under Utah Code Section 75-5-301.5(2)(k), an incapacitated person for whom a guardian has been appointed may “engage in any activity that the court has not expressly reserved for the guardian, including marriage or domestic partnership, traveling, working, or having a driver license.”

However, this code section does not explicitly mention voting rights, due to language in Article IV, Section 6 of the Utah Constitution that restricts voting by

“incompetent” persons. This discrepancy presents an opportunity for Utah to review and update its approach to voting rights for individuals under guardianship.

Article IV, Section 6 of the Utah Constitution states that “[a]ny mentally incompetent person” is not permitted to vote. The word “incompetent” is neither a defined term in Article IV, Section 6 of the Utah Constitution nor Utah’s guardianship statutes. Assuming that at the time of drafting the Utah Constitution, the use of the word “incompetent” was synonymous with the definition of “incapacitated” currently set forth under Utah Code Section 75-1-201(24), this blanket disenfranchisement based on guardianship status fails to account for the varying capabilities of individuals under guardianship and conflicts with

more modern understandings of capacity and disability rights. Many states have already amended their constitutions and guardianship statutes to better protect this fundamental right by requiring a specific finding of fact by clear and convincing evidence by the court. This article considers Utah’s current approach, reviews developments in federal law and best

practices from other states, and proposes specific reforms to bring Utah’s laws into alignment with contemporary standards.

Considerations Regarding Utah’s Current Approach

Utah’s constitutional provision regarding voting rights for people under guardianship raises several points for consideration:

1. It fails to recognize that guardianship is not an all-or-nothing status and that many people under guardianship retain significant decision-making abilities. *See* Sally Balch Hurme & Paul S. Appelbaum, *Defining and Assessing Capacity to Vote: The Effect of Mental Impairment on the Rights of Voters*, 38 McGEORGE L. REV. 931, 960 (2007).

KATHIE BROWN ROBERTS is a Certified Elder Law Attorney (National Elder Law Foundation) and the only Utah member of the Special Needs Alliance, an invitation-only national alliance of Special Needs Practitioners. She practices in the areas of estate planning, special needs planning, and adult guardianships.



2. It creates an irrebuttable presumption of incapacity to vote based solely on guardianship status, violating due process. *See Doe v. Rowe*, 156 F. Supp. 2d 35, 56, 59 (D. Me. 2001). Additionally, the failure of Utah's guardianship statutes to impart notice that a ward could face disenfranchisement is a failure of procedural due process. *See Utah Code Ann. § 75-5-312*.
3. It is overbroad, potentially disenfranchising people who have the capacity to vote. *See Missouri Prot. & Advoc. Servs., Inc. v. Carnahan*, 499 F.3d 803, 808–09 (8th Cir. 2007).
4. It conflicts with the Americans with Disabilities Act's integration mandate by unnecessarily segregating people with disabilities from the voting process. *See 28 C.F.R. § 35.130(d); Olmstead v. L.C.*, 527 U.S. 581, 592 (1999).
5. It is out of step with modern guardianship practice, which emphasizes tailored orders and retained rights. *See UNIF. GUARDIANSHIP, CONSERVATORSHIP, & OTHER PROTECTIVE ARRANGEMENTS*

ACT § 301(b) (UNIF. L. COMM'N 2017); *see also* Accessible Voting Act of 2024, S. 3748, 118th Cong. (2024), <https://www.congress.gov/bill/118th-congress/senate-bill/3748/text/is#id82E539A400334C3CB31DAC61616AD72D>.

In addition to the problems set forth above relating to the Utah Constitution's outdated wording, the Utah Code's outline of a guardian's powers provides that “[e]xcept as provided in this Subsection (1), *a guardian has the same powers, rights, and duties respecting the ward that a parent has respecting the parent's unemancipated minor.*” Utah Code Ann. § 75-5-312(1)(c) (emphases added). This vague sentence is the backbone of plenary guardianships in Utah, which allows for the divesting of *all* fundamental rights of a protected person without a specific finding of lack of capacity to engage in fundamental rights such as voting or possibly even marriage contrary to U.C.A. section 75-5-301.5 (2)(k). Currently in Utah, the guardianship statutes provide no requirement that the court find by clear and convincing evidence that an adult lacks the ability to engage in voting, marriage, or travel.

Developments in Federal Law and Best Practices

Federal courts have struck down similar state laws disenfranchising broad categories of people under guardianship. *See, e.g., Doe*, 156 F. Supp. 2d at 59. The Help America Vote Act of 2002 also requires that state programs allow “the same opportunity for access and participation (including privacy and independence) as for other voters.” 52 U.S.C. § 21081(a)(3)(A).

The Accessible Voting Act of 2024 introduced as H.R. 7389 in Congress this year provides:

A State shall not determine that an individual lacks the capacity to vote in an election for Federal office on the ground that the individual is subject to guardianship, unless a court of competent jurisdiction issues a court order *finding by clear and convincing evidence that the individual cannot communicate, with or without accommodations, a desire to participate in the voting process.*

S.3748, 118th Cong. (2024) (emphasis added), <https://www.congress.gov/bill/118th-congress/senate-bill/3748/text/is#id82E539A400334C3CB31DAC61616AD72D>. Many states have updated their laws to better protect voting rights while still

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allowing for individualized determinations of capacity when warranted. The Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (UGCOPAA), approved by the Uniform Law Commission in 2017, provides that:

The court shall grant a guardian . . . only those powers necessitated by the demonstrated needs and limitations of the respondent and issue orders that will encourage development of the respondent's maximum self-determination and independence. The court may not establish a full guardianship if a limited guardianship, protective arrangement instead of guardianship, or other less restrictive alternatives would meet the needs of the respondent.

UGCOPAA § 301(b). Regarding voting rights specifically, the UGCOPAA requires that a court order establishing guardianship for an adult must:

state whether the adult subject to guardianship retains the right to vote and, if the adult does not retain the right to vote, include findings that support removing that right [which must include a finding that the adult cannot communicate, with or without support, a specific desire to participate in the voting process].

Id. § 310(a)(3) (alteration in original). In 2006, experts from the University of the Pacific, McGeorge School of Law, the Borchard Foundation Center on Law and Aging, and the American Bar Association Commission on Law and Aging met at a symposium, in part, to develop a standard on removal of voting rights for people with cognitive impairments. *See Symposium, Facilitating Voting As People Age: Implications of Cognitive Impairment*, 38 McGEORGE L. REV. 843, 845 (2007). This symposium recommended:


To promote the democratic process to the fullest extent possible, no governmental entity should exclude any otherwise qualified person from voting on the basis of medical diagnosis, disability status, or type of residence. A person's capacity to vote should be presumed regardless of guardianship status.

Recommendations of the Symposium, 38 McGEORGE L. REV. 861, 862–63 (2007).

The symposium further recommended that if states do allow for exclusion based on incapacity, such exclusion should only occur after:

1. A determination by a court of competent jurisdiction;

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2. Appropriate due process protections; and
3. A finding by clear and convincing evidence that the person cannot communicate, with or without accommodations, a specific desire to participate in the voting process. *Id.* at 863.

Potential Reforms for Utah to Consider

Based on these developments and best practices, Utah should consider making the following changes to its constitution and guardianship laws:

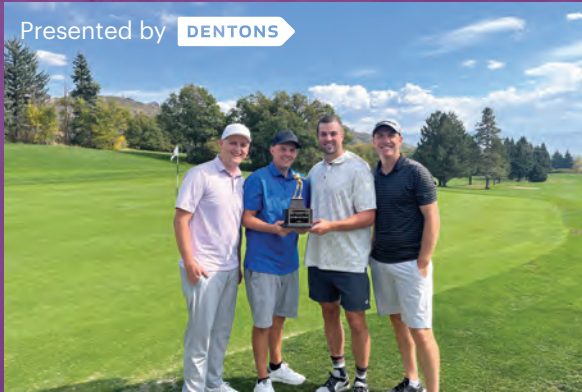
1. Amend Article IV, Section 6 of the Utah Constitution to remove the categorical ban on voting by “mentally incompetent” persons. Replace the categorical ban with language more in line with the Accessible Voting Act of 2024 providing that there is no presumption that an individual lacks the capacity to vote in an election for federal office on the ground that the individual is subject to guardianship, unless a court of competent jurisdiction

issues a court order finding by clear and convincing evidence that the individual cannot communicate, with or without accommodations, a desire to participate in the voting process.

2. Amend the Utah Uniform Probate Code to:
 - a. Require that guardianship orders specifically address whether the right to vote (and other fundamental rights) is retained or removed.
 - b. Establish a clear standard for removal of voting rights, such as: “The court may remove the right to vote only upon a finding by clear and convincing evidence that the person cannot communicate, with or without accommodations, a specific desire to participate in the voting process.”
 - c. Require that the court consider less restrictive alternatives before removing voting rights.
 - d. Create a process for restoration of voting rights if capacity improves.
3. Develop training and guidelines for judges, guardians, and long-term care facilities on preserving voting rights and providing assistance.
4. Ensure that voter registration and voting processes are accessible to people with disabilities, including cognitive impairments.

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Conclusion

Utah has an opportunity to review its approach to voting rights for people under guardianship. By considering the reforms outlined above, Utah could further protect the fundamental right to vote while still allowing for removal of voting rights in appropriate individual cases. These changes would align Utah’s laws with federal requirements and national best practices, recognizing that many people under guardianship may retain the capacity to participate in the democratic process.

The views and opinions expressed in this article are those of the author and do not necessarily represent the views or opinions of the Utah State Bar or the Utah Bar Journal.

Traversing the Treacherous Path of Controversy

by Keith A. Call

April 8, 2024, Las Vegas, Nevada. Dennis Prince, a prominent Nevada trial lawyer, was defending his wife's deposition in a difficult custody battle when the opposing lawyer, the ex-father-in-law of Prince's client-wife, pulled a gun and fatally shot Prince, his wife, and then himself. The Las Vegas Bar went into shock. See Brett Clarkson, *'One of a kind': Slain Lawyer Dennis Prince Remembered in Packed Funeral Service*, LAS VEGAS REV. J. (Apr. 16, 2024), <https://www.reviewjournal.com/local/local-las-vegas/one-of-a-kind-slain-lawyer-dennis-prince-remembered-in-packed-funeral-service-3035170/>.

July 13, 2024, Butler, Pennsylvania. A twenty-year-old gunman shot and nearly killed former President Donald Trump near the beginning of a campaign rally speech. One person was killed, and at least two others were injured. See Associated Press, *Trump Survives Assassination Attempt at Campaign Rally, as It Unfolded*, (July 15, 2024), <https://apnews.com/live/election-biden-trump-campaign-updates-07-13-2024>.

September 20, 2024, Whitesburg, Kentucky. Letcher County Sheriff Shawn Stines shot and killed District Court Judge Kevin Mullins after an apparent heated argument in the judge's chambers. See Bruce Schreiner, *Tiny Kentucky Town Is Rocked as Sheriff Is Jailed in the Killing of Prominent Judge*, (Sept. 20, 2024, 1:50 PM), <https://www.ksl.com/article/51134025/tiny-kentucky-town-is-rocked-as-sheriff-is-jailed-in-the-killing-of-prominent-judge>.

This is not America, at least not the America we all know and love. And we *cannot* allow this to become Utah.

I'm a firm believer that big things start with small things. I'm also a firm believer in focusing on what we can control. And what we as lawyers can control is our own behavior in the sphere of practicing law. We can also use our influence for promoting civility in those around us. As lawyers, we should all be actively engaged in promoting thoughts and behaviors that promote civil discourse, even when we disagree.

Being civil in the practice of law is hard. Heaven (and several of you reading this) know I am far from perfect. I will continue to make mistakes. But here are a few things I have learned and am still learning about how to maintain civility in a difficult job.

Assume the best, not the worst.

The Utah Standards of Professionalism and Civility mandate, "Lawyers shall not, without an adequate factual basis, attribute to other counsel or the court improper motives, purpose, or conduct." Your opposing counsel is a human trying his or her best to zealously advocate for their client. Give space. Allow for grace.

Do not fear disagreement.

Psychologists will tell you that anger is a secondary emotion that often follows fear. Individuals who express anger may fear they have lost control of a particular situation, circumstance, or individual. Disagreement is at the root of legal work. It's what we do. We have the distinct professional privilege of taking on our clients' disagreements with others and resolving them according to the rule of law. We need to get used to the idea that we will face disagreement most days of our professional lives. Disagreement is not to be feared. If we can learn to not fear disagreement with others, we will be much more in command of our other emotions.

Listen with real intent.

It's possible that your opponent is angry at you for a reason. Ultimately, you can be a better advocate for your client if you understand your own weaknesses and mistakes. At a minimum,

KEITH A. CALL is a Partner at Spencer Fane LLP. His practice includes professional liability defense, IP and technology litigation, and general commercial litigation.



try not to interrupt. I have seen more than one storm blow over when people silently listened to a tirade to its completion, followed by a calm but firm response.

Don't mistake my words here or in any part of this article. Disagreeing better never means shying away from disagreement or always giving in. (See "Do not fear disagreement," above.) You cannot be a zealous advocate without engaging in disagreement. But we can listen and be introspective and still maintain a fierce resolve to zealously represent our clients.

Keep your eye on the prize.

"Patience can persuade a prince, and soft speech can break bones." Proverbs 25:15 (New Living Translation). Sometimes during the fog of war, we forget what our most important goal is and the best battle plan for getting there. For example, our goal in a deposition should never (or at least rarely) be winning an argument over an objection. Our goal should be developing the evidence and making a record that will ultimately persuade a judge or jury that our client's position is the right one. Keeping laser focused on the real goal can help us cut through all the riffraff we may have to cut through to get there.

Words matter.

We are fortunate to live in a society where we can use words, rather than swords, fists, or guns, to resolve disputes. Our words have power. Our words are power. Words can be used to build or destroy, lift or put down. The best, most mature lawyers, in my opinion, are those who master the art of persuasion without using words that demean or dehumanize others.

Slow down. Call time out.

During turbulent encounters, airplane pilots slow down, resulting in a smoother ride and less chance of damage. The same principle applies to lawyers. If the temperature begins to rise in a deposition, calling time out is an effective way to reduce tension. When responding to an email that offends you, take twenty-four hours (or more) to respond, and ask a trusted friend to review your response before you hit "send."

Recognize that anger never persuades. I have never once persuaded my opponent – or anyone else – with an angry argument. Anger never persuades.

Don't be afraid to apologize.

A few of you have heard me say, "I'm sorry." There are many more who should have heard me say those words. I have never felt weakened or compromised in my advocacy after admitting a mistake and trying to make amends.

What we say, what we do, and how we act matters. Our society has entrusted lawyers to help people traverse the treacherous paths of controversy. That is a special trust, and we can choose to do it in a way that builds and promotes our democracy, or one that chips away at its foundations. For the sake of our civil society, we must exercise our licenses to practice law with dignity, civility, *and* zeal.

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 author.

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Nominating petitions are available at <https://www.utahbar.org/bar-operations/election-information/>. Completed petitions must be submitted to Christy Abad (cabad@utahbar.org), Executive Assistant, no later than February 3, 2025 by 5:00 p.m.

I N M E M O R I A M

The Jan/Feb 2025 issue of the *Utah Bar Journal* will include an in memoriam list of Utah legal professionals who passed away during 2024. If you are aware of any current or former members of the Utah State Bar, including paralegals and judges, whose deaths occurred during 2024, please let us know. Email their name(s) and, if possible, a link to their obituary to: BarJournal@utahbar.org.

To be included in the list, names must be received by December 13, 2024.



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- Breakout sessions including the Litigation Section Trial Academy, the Innovation in Law Committee, Utah Center for Legal Inclusion (UCLI), and other community organizations/sections of the Bar

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2024 Fall Forum Awards Recipients

Congratulations to the following people who will be honored during the 2024 Utah State Bar Fall Forum!



Judge Jeffrey J. Noland
Professionalism Award



Patricia W. Christensen
Charlotte L. Miller Mentor Award



Adrienne Bell
Paul T. Moxley Mentor Award



J. Michael Bailey
James B. Lee Mentor Award



Margaret Plane
Lawyer of the Year



Kim M. Russo
Community Member
of the Year

Margaret D. Plane Honored as Lawyer of the Year by the Utah State Bar

Margaret D. Plane, an accomplished legal professional and dedicated public servant, has been named the Utah State Bar's Lawyer of the Year. This prestigious recognition reflects her extensive contributions to the legal profession, her commitment to public service, and her leadership in a variety of important legal roles.

Currently serving as the City Attorney for Park City Municipal Corporation, Plane advises on all legal matters affecting city government, playing a key role in shaping the future of one of Utah's most vibrant communities. Before her appointment in Park City, she served Salt Lake City Corporation as its City Attorney, providing legal counsel under two mayors and representing the city in general civil litigation. During her tenure, she also provided crucial guidance to Salt Lake City's human resources department.

Plane's career is deeply rooted in her passion for civil liberties. Prior to her municipal work, she served as the legal director of the American Civil Liberties Union (ACLU) of Utah. In this role, she litigated landmark civil liberties cases and spearheaded the ACLU's lobbying efforts, advancing critical issues related to individual rights and freedoms.

Her professional service extends far beyond her legal practice. Plane served as the Utah Delegate to the American Bar Association's policy-making body, the House of Delegates, where she contributed to national discussions on legal policy. She also served as President of the Aldon J. Anderson American Inn of Court, fostering professionalism and ethical standards among Utah's legal practitioners. Her leadership continues through her service on the Utah Supreme Court's Oversight Committee for the Office of Professional Conduct, a role in which she helps maintain the integrity of the legal profession.

Plane's dedication to ethics and mentorship has been widely recognized. She chaired an Ethics and Discipline Committee screening panel and co-chaired the Utah Supreme Court Committee on the New Lawyer Training Program. She also served as president of Women Lawyers of Utah (WLU), supporting the advancement of women in the legal profession. Her numerous awards include the Christine M. Durham Woman Lawyer of the Year from WLU,



Margaret D. Plane

the Utah State Bar's Professionalism Award, and recognition as Mentor of the Year by WLU.

Plane's educational journey began at Rollins College in Winter Park, Florida, where she earned her bachelor's degree cum laude in Philosophy and German. She went on to earn a master's degree in philosophy from the University of Utah and a law degree from the S.J. Quinney College of Law, where she distinguished herself as managing editor of the *Journal of Land, Resources, and Environmental Law*. Following law school, she clerked for Judge Pamela T. Greenwood on the Utah Court of Appeals, a formative experience that laid the foundation for her remarkable legal career.

With an impressive legacy of service, leadership, and mentorship, Plane exemplifies the values of the Utah legal community. Her recognition as Attorney of the Year highlights her tireless work to uphold the rule of law, foster professional ethics, and advocate for the rights of individuals and communities across Utah.

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.

Family Justice Center

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Lindsey K. Brandt
Cam Bronson
Camille Buhman
Carlee Cannon
Craig Day
Caroline Kneedler Despain
Dave Duncan
Jacob Esplin
Densie George
Michael Harrison
Amanda Jackson
Jefferson Jarvis
Stephen Johnson
Steven Johnson
Madison Kurrus
Maggie Lajoie
Alexis Long
Allie Larmouth
Tatenda Makanza
Sarah Martin
Sallie McGuire
Maureen Minson
Manuel D Moxley
Victor Moxley
Cameo Petersen
Dailyah Rudek
Stacy Runia
Jessica Smith
Babata Sonneneberg
Scott Swain
Dylan Thomas
Rachel Whipple

Private Guardian ad Litem

Jonathan Felt
E. Jay Overson
Virginia Sudbury
Amy Williamson
A Leilani Whitmer

Pro Bono Initiative

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Jessica Arthurs
Amanda Bloxham Beers
Jonathan Benson
Alexander Chang
Brent Chipman
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Karin Fojtik
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Earl Roberts
Sean Robison
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Ethan Smith
Jake Smith
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Jay Springer
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Anthony Tenney
Leilani Whitmer
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Oliver Wood

Pro Se Debt Collection Calendar

Miriam Allred
Mark Baer
Alex Chang
Megan Connelly
Yuchen Cook
Travis Corbin
Ted Cundick
KC Decker
Jeremy Eveland
Kimberly Farnsworth
Leslie Francis
Denise George
Russell Griggs
Corey Hunter
Zachary Lindley
Vaughn Pedersen
Davis Pope
Brian Rothschild
Zachary Shields
George Sutton
Amanda Todd
Brian Tucker
Alex Vandiver
Angela Willoughby

SUBA Talk to a Lawyer Legal Clinic

Thomas Crofts
Lauren DeMarco
Rebekah-Anne Duncan
Jenny Jones
Maureen Minson
Chantelle Petersen
Matthew Richards
Ben Ruesch
Colby Winsor
Marshall Witt

Timpanogos Legal Center

McKenzie Armstrong
Steve Averett
Amirali Barker
Bryan Baron
Ryan Beckstrom
Lindsay Brandt
Ashlee Burton
Nathan Carroll
Dave Duncan
Adrienne Ence
Keil Meyers
Maureen Minson
Grace Nielsen
Dallas Tate
Elizabeth Tyler
Anne-Marie Waddel

Utah Legal Services Pro Bono Case

Jennifer Archibeque
Jennifer Arganbright
Brian Burn
Cleve Burns
James Cannon
Charles Carlston
Carolina Duvanced
Randall Gaither
Jonathan Good
Chase Hansen
Matt Johnson
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Utah Law and Justice Center: Exclusive Facilities for Legal Professionals

The Utah State Bar is pleased to announce a new benefit for active Utah Bar licensees in good standing: **complimentary use of facilities at the Utah Law and Justice Center** for quick, law, practice-related meetings of up to two hours (for example, notarization, client meetings, signings). Licensees can enjoy free parking, Wi-Fi, and basic room setup. However, please note that any additional requirements, such as a notary or witnesses, will need to be arranged independently.

Additionally, the center is a great place to host your law-related events or meetings with a variety of rooms to choose from, including a boardroom, suitable for an array of configurations to accommodate your specific needs. We regularly host Continuing Legal Education (CLE) sessions and can also set up law-related banquets, board meetings, one-on-one consultations, legal signings, mediations, and other legal activities. Check out our updated and simplified room rates – starting at \$125 for half a day and \$200 for the full day – on our website: utahbar.org/uljc-rental-info/ or by scanning the code below.

With your guidance, we handle all the details to ensure the space meets your requirements. Room rates include setup, tables, chairs, AV equipment, free parking, and Wi-Fi. We can also assist with catering orders and delivery, adding the food cost to your invoice with no extra surcharge.



For information, contact Travis Nicholson at travis@utahbar.org or visit: utahbar.org/uljc-rental-info/

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2025 Spring Convention Awards



The Board of Bar Commissioners is seeking applications for three Bar awards to be given at the 2025 Spring Convention. These awards honor publicly those whose professionalism, public service, and public dedication have significantly enhanced the administration of justice, the delivery of legal services, and the improvement of the profession.

Please submit your nomination for a 2025 Spring Convention Award no later than Friday, January 31, 2025. Use the Award Form located at <https://www.utahbar.org/awards/> to propose your candidate in the following categories:

1. **Dorothy Merrill Brothers Award**
For the Advancement of Women in the Legal Profession.
2. **Raymond S. Uno Award**
For the Advancement of Minorities in the Legal Profession.
3. **The Utah Legal Well-Being Impact Award**
For contributions to the mental, physical, and emotional health and well-being of members of the Utah legal community.

The Utah State Bar strives to recognize those who have had singular impact on the profession and the public. We appreciate your thoughtful nominations.

<https://www.utahbar.org/awards/>

Tiffany D.W. Shimada Appointed as ABA Delegate

The Utah State Board of Bar Commissioners unanimously appointed Tiffany D.W. Shimada as the Bar's ABA Delegate.



Tiffany D.W. Shimada

Tiffany is a member of the Intellectual Property & Technology and Trademark & Brand Management Group in Greenberg Traurig's Salt Lake City office. Her practice focuses on helping clients with trademark, copyright, advertising, social media, and complex brand protection and management issues. She works with brand owners and managers nationally and globally to protect their intellectual property across a wide array of industries.

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2024 Access to Justice Summit

How can the civil justice system incorporate community voice in its design to be more responsive to the public?

What is the impact of conflict and stress on the body?

How can technology help close the access to justice gap?

How are we measuring fairness and accountability in the courts?

More than 100 lawyers, advocates, and community change-makers came together on October 4th at the Utah Law & Justice Center to discuss these and other big questions at the Access to Justice Summit. The sixth annual event was hosted by the Utah State Bar, in partnership with the Access to Justice Commission.

The theme of the summit this year was “Be Well, Do Good.” During the free, full-day event, speakers offered presentations on a wide range of access to justice topics. Attendees were

encouraged to explore new ways to ensure meaningful access to the civil justice system for all Utahns.

The summit kicked off with a keynote address by Sarai Cook, an attorney and advocate from the National Trauma Awareness Initiative. Ms. Cook is a member of the Muscogee Nation and has been directly impacted by cycles of oppression and poverty. Through these experiences, she has made it her life’s work to empower and encourage others by modeling the possibilities of overcoming the layers of oppression that exist in society.



Just a few of the more than 100 Access to Justice Summit attendees.



Keynote speaker, Sarai Cook, an attorney and advocate from the National Trauma Awareness Initiative.

Ms. Cook discussed a trauma informed service model for legal work and presented Utah-specific scenarios to help the audience apply her ideas to their own practice. She emphasized how trauma-informed practices help make survivors feel more comfortable within our system and lessen the need for further accommodations, which in turn alleviates burdens on the courts. For audience members, her presentation was an invaluable opportunity to see the legal system in Utah through the eyes of trauma survivors and take their insights back to their law practices, legal service organizations, and courtrooms.

Other programming included:

- **A plenary on “Innovation in Service Delivery: Meeting People Where They Are”** with:
 - o Judge Clemens Landau, Salt Lake City Justice Court
 - o Judge Jeanne Robison, Salt Lake City Justice Court
 - o Nathanael Player, Utah State Courts’ Self-Help Center and Law Library
 - o Moderated by Emogene Hennick-Dunn, Special Projects Analyst with the Salt Lake City Justice Courts

The plenary explored different models including Homeless Court and Kayak Court that have adopted principles of active judging and restorative justice to increase empathy and understanding, protect due process, and expand access to resources for pro se respondents.



Attendees completed cards about what Access to Justice means to them.

2024 Access to Justice Summit

Breakout session topics of discussion and presenters included:

- **Avoiding Burnout: Emotional Development and the Thriving Practitioner** featuring these presenters –
 - o Martha Knudson, Utah State Bar Well-Being Committee for the Legal Profession
 - o Diane Musho Hamilton, Author of *The Zen of You and Me*
 - o Justice Paige Petersen, Utah Supreme Court
 - o Moderated by Professor Clifford Rosky, SJ Quinney School of Law



David McNeil and former Justice Christine Durham.

- **Technology and Innovation for the Greater Good** with presenters –
 - o Ransom Wydner, Vice President for pro bono and social impact at SixFifty
 - o Gabriela Elizondo-Craig, Project Lead, Innovation for Justice
 - o Justice Diana Hagen, Utah Supreme Court
 - o Moderated by Anastasia Boyko, SJ Quinney School of Law
- **Fairness and Accountability in Access to Justice Work** with presenters –
 - o Jonathan Puente, Director of the Office of Fairness and Accountability
 - o Justice Christine Durham, Utah Access to Justice Commission
 - o Rodolfo Sanchez, DNA People's Legal Services
 - o Moderated by Wayne Latu, Utah Minority Bar Association



Nathanael Player, winner of the inaugural Professional Legal Services Award.

The Access to Justice Commission presented its inaugural Professional Legal Services Award to the very deserving, Nathanael Player, for extraordinary service in public interest and community advocacy.



The plenary on 'Innovations in Service Delivery: Meeting People Where They Are' included a special appearance by Quincy Landau.

Always a crowd favorite, the “One Minute Blitz” allowed organizations to pitch their work for prizes. Awards went to:

- Wasatch Immigration Project
- Ogden Branch NAACP



David McNeil of the Access to Justice Commission (right) with Angel Castillo of the Ogden Branch NAACP, winner of the One Minute Blitz.

The Utah State Bar’s Access to Justice Office, working under the direction of the Access to Justice Commission, is tasked with ensuring that all Utahns receive the promises and protections of the legal system.

The yearly Access to Justice Summit was developed to help facilitate this important goal by bringing together likeminded people throughout the state to learn from each other, connect with each other, and support each other in providing access to justice.

The summit’s purpose is to highlight the critical unmet need for legal services for low- and moderate-income families across Utah, but also to foster creative solutions. Each year’s summit helps attendees develop their ideas, form connections, and receive encouragement that helps them remain committed to their important but emotionally demanding work. By bringing people together, the summit transforms isolated access to justice providers into an interconnected network of friends and colleagues who are prepared to take on the daunting task of ensuring access to justice for all.

This year’s summit would not have been possible without the generous support of our sponsors Snell & Wilmer, Kirkland & Ellis, the Utah Bar Foundation, and Harley Hull Lending



Free headshots were provided, courtesy of the Utah Bar Foundation.

Services. Their generosity and commitment to access to justice allowed the Access to Justice Office to recruit extraordinary speakers, bring attendees from across the state, and keep the summit free for all attendees. The Utah State Bar and the Access to Justice Commission expresses their heartfelt gratitude to everyone who made this year’s summit a reality.



Many thanks to all this year’s sponsors for continuing to make the Summit a free event for all!

Utah Law Related Education Celebrates Fifty Years of Shaping Civic-Minded Youth



Utah Law Related Education (LRE) celebrated its fiftieth Anniversary in September at the Utah Law & Justice Center, highlighting speakers from its renowned programs: Salt Lake Peer Court, We the People, and Mock Trial. For five decades, LRE has empowered Utah's youth and communities to understand the legal system and engage in civic life through interactive educational experiences.

Founded in 1974 by Scott and Norma Matheson, along with J. Thomas and Kay Greene, Utah Law Related Education was created to provide law-related and citizenship education to Utah's youth. Their goal was to ensure that students had a deeper understanding of their rights, responsibilities, and the essential role the law plays in society. Today, LRE serves all forty school districts in Utah, reaching students from kindergarten through high school, and many communities across the state.

Respect for the law is a cornerstone of civil society, yet it can be challenging for youth to grasp. Young people often see laws as restrictions imposed by adults, rather than as essential safeguards to protect their own rights and the rights of others. Law Related Education programs help students appreciate the importance of the law and its role in creating a fair and just society. By participating in hands-on activities and working alongside legal professionals, students learn how legal processes and principles can be applied to everyday problems.



Since its incorporation in 1989 as the Law-Related Education Project, Inc., LRE has trained thousands of students, educators, attorneys, court employees, juvenile justice professionals, and community leaders. Programs like Mock Trial, Salt Lake Peer Court, and We the People help youth become civically engaged, law-abiding citizens by promoting respect for authority, increasing self-esteem, and encouraging community participation. These programs also play a vital role in violence prevention and restoring mutual respect and civility in society.

Participants in LRE programs are not passive learners but active, hands-on participants. Legal professionals serve as valuable community resources, guiding students through real-world legal scenarios. The Salt Lake Peer Court allows students to engage directly with restorative justice practices, while We the People teaches the principles of democracy and constitutional law. Mock Trial sharpens students' critical thinking, public speaking, and advocacy skills, offering a platform to simulate courtroom proceedings.

As Utah Law Related Education marks its milestone anniversary, it continues to be a crucial part of educating and preparing the next generation of engaged citizens. This fifty-year legacy reflects LRE's enduring mission: to promote civic responsibility, respect for the law, and a commitment to community, ensuring a brighter, more just future for all of Utah's youth.

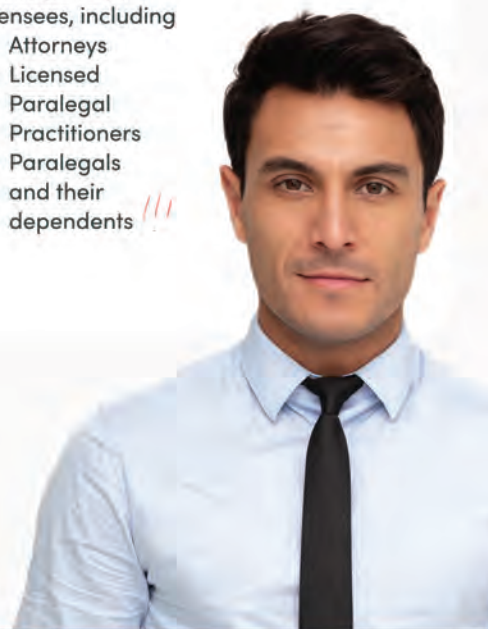


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Utah Supreme Court Implements Key Changes to Sandbox Project

The Utah Supreme Court announced a series of policy changes to the Utah Legal Regulatory Sandbox aimed at adjusting the court's approach to legal services regulation. These changes, detailed in a letter from Chief Justice Matthew B. Durrant and the full court to the Legal Services Innovation Committee, aim to narrow the scope of the Sandbox while ensuring it continues to serve its core goal of increasing access to legal services without increasing the risk of consumer harm.

The Sandbox, a pilot project launched four years ago, allows non-traditional legal service providers to operate in Utah under less restrictive regulatory conditions. It has been an experimental approach designed to test whether changes in regulation can improve access to justice. Based on data gathered from the project, the court is now refining the scope and focus of the Sandbox to concentrate on entities offering innovative solutions with potential to substantially impact the access-to-justice gap in Utah.

After considering feedback from the Legal Services Innovation Committee, the court will continue with the existing Sandbox model but has adopted the following key recommendations:

Restarting Audits

The court will immediately resume audits of mid- to high-innovation entities using experienced Utah-licensed attorneys as paid auditors. The audit process is a critical component for assessing consumer harm and ensuring compliance with Sandbox guidelines.

Replacing the Website Authorization Badge with Feedback Solicitation

To address concerns about the misuse of the Sandbox badge, which was sometimes perceived as a court endorsement, the court will now require entities to display prominent language inviting consumer complaints or feedback.

Rejection of For-Profit Immigration Services Applications

The court has chosen to no longer accept applications from for-profit entities offering immigration-related services. This decision stems from concerns about the ability to detect consumer harm and the limited potential for innovation the court has seen from for-profit applicants in this space.

Processing New Applications

The court will continue to process applications for new Sandbox entities, particularly those showing innovative service models that can help bridge the access-to-justice gap in Utah.

Recognizing that many low-innovation entities are consuming resources disproportionate to their potential benefit to Utah consumers, the court has introduced two major policy changes:

Utah Innovation Requirement

Going forward, all Sandbox entities must demonstrate that their service models will significantly benefit Utah consumers. National or international entities that only incidentally serve Utah clients will no longer qualify. This "Utah innovation requirement" aims to ensure that Sandbox resources are used to support entities that have the potential to make a meaningful impact on legal service accessibility in Utah.

Judge Richard D. McKelvie (ret.)

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Entities that Do Not Meet the Utah Innovation Requirement

Existing Sandbox entities that do not meet the new Utah innovation requirement, such as entities offering minimal innovation or those with no significant presence in the Utah legal market, will end their Sandbox participation.

These changes are expected to reduce the number of low-innovation entities in the Sandbox significantly, allowing the court and the Innovation Office to focus their efforts on mid- to high-innovation models that, based on what the court and the Innovation Office has seen during the first four years of tracking Sandbox projects, are more likely to benefit Utah consumers and advance the access-to-justice mission.

By narrowing the scope of the Sandbox, the court hopes to maximize its effectiveness in increasing legal service availability. Roughly three-quarters of current Sandbox participants are low-innovation, Alternative Business Structure-only entities. Moving to phase 2, the court aims to redirect resources toward mid- and high-innovation entities with the greatest potential for meaningful consumer impact.

The Utah Supreme Court expressed optimism about these changes, noting that the revised focus will allow for more meaningful data collection and analysis. This, in turn, will help inform the court's future decisions. The court remains committed to using the Sandbox as a platform for fostering innovative approaches to legal services that can address the persistent access-to-justice challenges in Utah.

The Legal Services Innovation Committee, the Innovation Office, and the court will continue to work together to implement these new policies and evaluate their impact on the Utah legal market. The success of the Sandbox will ultimately depend on the ability to balance innovation with the protection of consumers, a challenge the court is keen to address through its ongoing regulatory experimentation.

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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.

PRIVATE ADMONITION

On August 26, 2024, the chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Private Admonition against a lawyer for violating Rules 1.4(a)(2) (Communication) and 1.5(a) (Fees) of the Rules of Professional Conduct.

In summary:

A client was injured in an automobile accident. The client retained a law firm to represent them. The firm obtained a settlement offer for less than the policy limits. The client rejected the offer and hired a new lawyer – the respondent in this matter – to assist her. The client communicated with the staff of the respondent's firm for approximately nine months, during which time they provided the firm with medical records and bills as well as updates on their medical condition and treatment. The client had very little contact with the respondent during that time and ultimately decided to terminate the respondent's representation. Suspecting that the client would be hiring new counsel, the respondent sent a settlement demand letter to the insurance company seeking the policy limits without the client's knowledge or authorization. The insurance company responded, stated that more information was required, and reiterated the offer it had made to the client's prior counsel.

The client then hired a third law firm to represent them. The new firm advised the respondent that they would be taking over the client's personal injury matter. The new firm settled with the insurance company for the policy limits. When the respondent found out about the settlement, the respondent sent an email to the insurance company asserting an attorney's lien for an amount that was based on the settlement obtained by the third firm as opposed to the reasonable value of the respondent's services.

Aggravating circumstances:
Self-interest.

Mitigating circumstances:
No prior discipline.

PUBLIC REPRIMAND

On May 22, 2024, the chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Lloyd D. Rickenbach for violating Rules 1.3 (Diligence), 1.4(a) (Communication), 1.16(d) (Declining or Terminating Representation), and 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct.



The Disciplinary Process Information Office is available to all attorneys who find themselves the subject of a Bar complaint. Catherine James will answer your questions about the disciplinary process, reinstatement, and relicensure. Catherine is happy to be of service to you.

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In summary:

Mr. Rickenbach was retained by three clients to represent them in a civil rights matter. The opposing lawyer served Mr. Rickenbach's clients the first set of interrogatories and request for production of documents. Three months later, the opposing lawyer emailed Mr. Rickenbach regarding a telephone conference wherein Mr. Rickenbach said that he would comply with Rule 26 of the Utah Rules of Civil Procedure and provide initial disclosures and respond to the first set of interrogatories and requests for production of documents in two days' time.

Three days later, Mr. Rickenbach emailed the opposing lawyer regarding receipt of the Rule 26 disclosures. The opposing lawyer informed Mr. Rickenbach that he had not received the Rule 26 disclosures. He also informed Mr. Rickenbach that, unless he sent the disclosures within twenty-four hours, he would file a motion to compel. Eight days later, the opposing lawyer filed a motion to compel. The Court entered an order requiring the defendants to respond to the opposing party's discovery requests. Mr. Rickenbach failed to do so.

Mr. Rickenbach's client was asked in a deposition whether the plaintiffs had met with Mr. Rickenbach regarding discovery requests. The client said that they had left that up to Mr. Rickenbach. Months later, Mr. Rickenbach failed to attend a status conference, at which his client said that he had not spoken to him in a month, and that Mr. Rickenbach had not returned his calls or texts.

In advance of the status conference hearing, Mr. Rickenbach filed a statement with the court admitting that he had "failed to zealously advocate for the defendants in the last year" due to long Covid. He also admitted to leaving his clients in a lurch without communication and representation. Mr. Rickenbach failed to provide documentation to support his statement.

Mr. Rickenbach failed to respond to multiple requests for information from the OPC. When the OPC called Mr. Rickenbach, he confirmed that the address and email on record were correct. Mr. Rickenbach submitted a response on the day prior to the screening panel hearing.

Mitigating circumstances:

Absence of prior record of discipline, personal or emotional problems, acknowledgement of his conduct, expression of remorse, and efforts to minimize the consequences of his conduct.

RECIPROCAL DISCIPLINE

On September 16, 2024, the Honorable Adam T. Mow, Third Judicial District Court, entered an Order of Reciprocal Discipline: Suspension and Probation against Kamille R. Dean, suspending Ms. Dean for a period of sixty days and placing her on probation for a period of one year upon reinstatement. Ms. Dean was found to

have violated Rules 1.6 (Confidentiality), 1.8(b) (Conflict of Interest), 3.1 (Meritorious Claims and Contentions), and 8.4(d) (Misconduct) of the Rules of Professional Conduct.

In summary:

On June 6, 2024, the Arizona Supreme Court entered an Order of Suspension, suspending Ms. Dean from the practice of law for sixty days and placing her on Probation for one year upon reinstatement. The Order was predicated on the following facts:

While representing a client in a family court matter, Ms. Dean sent numerous "demeaning and unprofessional" text messages to the client and disclosed the client's personal information to the opposing party.

Aggravating circumstances:

Multiple offenses, vulnerability of victim, and substantial experience in the practice of law.

Mitigating circumstances

Absence of prior discipline, personal and emotional problems, full and free disclosure to disciplinary board or cooperative attitude toward proceedings, character or reputation, and remorse.

SUSPENSION

On July 9, 2024, the Honorable Judge Eric Gentry, Fifth Judicial District Court, entered an Order of Suspension against Nicholas Chamberlain suspending his license to practice law for a period of one year. The court determined that Mr. Chamberlain violated Rules 1.3 (Diligence), 1.4(a) (Communication), 8.4(c) (Misconduct), and 8.4(d) (Misconduct) of the Rules of Professional Conduct.

In summary:

A client retained Mr. Chamberlain for a family law matter. Mr. Chamberlain failed to fulfill the objective for which he was hired. His failure to file documents, including a petition to modify custody, caused injury to his client by delaying her case for two and a half years and requiring her to hire another attorney to start and finish the work that Mr. Chamberlain was retained to carry out. He engaged in a pattern of misconduct in this case and deceived his client repeatedly. Mr. Chamberlain also conditioned the return of money he did not earn on his client's agreement not to report his misconduct to the OPC.

Aggravating circumstances

Dishonest and selfish motive, pattern of misconduct, and multiple offenses.

Mitigating circumstances:

No prior disciplinary history, personal or emotional problems, effort to make restitution, cooperation with the OPC and the Court, remorse, and offenses being remote as they occurred some time ago.

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A Tribute to Leann Hepworth

by Warren H. Peterson

Leann Hepworth succumbed to complications of Merkel Cell Carcinoma on January 15, 2024, well into the 44th year of her career as a paralegal. Leann worked in the same office from the time I hired her in June 1981 until her death. She worked during her final illness until the week before her death.

Quiet, Humble, Proficient

Snow College awarded Leann with an associate degree in May 1981. I hired her upon graduation because of her high grades and her mother's reputation as a local bank employee.

Leann's first position was to support former Utah State Bar president and fellow Snow College alumnus, A. Thorpe Waddingham, and me. During her first week she was too shy to answer telephone calls, but a fellow staff member took an immediate liking to her and coached her past that obstacle.

Thorpe had an aversion to the use of dictation equipment, instead needing assistance from someone able to take and transcribe shorthand. Leann had nearly perfect transcription skills, backed by typing speed of 120+ words per minute. She had the rare ability to type while carrying on a conversation.

Within her first month on the job, I brought in an Olivetti TES 401 word processor, a state-of-the-art machine that was the first interchangeable storage media word processor in our rural town. Leann refused to use it at first, favoring the IBM Selectric typewriter, but she quickly became proficient. She could turn out documents with beautiful formatting using only the tiny thirty-character LED screen, and her own mental imaging. Once

she had mastered use of the Olivetti, her reputation spread and she spent considerable time responding to requests from various organizations to demonstrate the word processor and train their staff members in automated word processing.

Subject Matter Proficiency – Meeting Client Needs

From this modest beginning, Leann overcame her natural shyness

and quickly developed a positive reputation among local government officials and agency staff members. The community was in a time of rapid growth due to development of the Intermountain Power Project, so our office evolved to meet community needs and she did likewise. For instance, many local municipalities did not have codes of ordinances or training in how to use them. With a vision of how city officials could create and use a municipal code to meet the needs of the time, Leann used this then-new word processor technology and

her newly acquired knowledge of municipal ordinances to help city and town officials in drafting their city codes.

During this time, she also supported the city prosecutors' office, learning to draft criminal court pleadings from police reports and interacting with court personnel in docket management and use of calendaring systems. Upon finding that the local courts had only rudimentary tracking systems, she created a system to effectively keep cases moving. She provided reliable litigation support on the full variety of municipal court cases, including about 300 DUI cases. Her already favorable reputation grew stronger among court personnel at the municipal and district court levels.



Leann also learned the skills essential to our water rights and real estate niche practice. She learned how to take notices of water rights filings published by the Utah Division of Water rights, research the affected water rights, and then draft protests and other filings used in the Division of Water Rights administrative proceedings. She managed those filings for the office for over thirty years. On her own initiative, she created a comprehensive index of the 232-page Cox Decree on the Sevier River.

Water rights and agricultural real estate work closely together, and she became proficient in water rights title searches, land title searches, and real estate transactions. She created a distinctive style of formatting and drafting land deeds and other real estate documents. The local county recorder's office staff used her documents as examples of style and completeness in meeting statutory standards.

When I served a term as Millard County Attorney, our practice and Leann's areas of focus changed, and again, she rose to the need. While continuing to work in the other areas of practice noted above, she also supported the county attorney's office. She was part of a team charged with creating the first code of ordinances for Millard County, which had somehow functioned for 127 years without one. Two horrific homicide cases, including a death penalty case, became part of the workload. She worked on those cases (and four protracted trials arising out of them) alongside investigators from the Millard County Sheriff's office and the Utah Attorney General's office. She also supported two special prosecutors who were brought in as co-counsel. She helped create and was then responsible for maintaining a system to manage a large number of trial exhibits consisting of documents, photographs, diagrams, maps, weapons, and things too gruesome to mention. She worked tirelessly through two years of trial preparation, followed by five months of jury trials and the sixteen-hour days that came with them. She was first on task early in the mornings, and on many days the last trial team member working at night.

When the trials were concluded, both special prosecutors invited her to apply for positions with their organizations. The district court judge who presided over two of the trials succinctly summed up a familiar trademark of Leann's work: after presiding over two of the trials, back-to-back, ending with the death penalty case, he waited until the jury had been released and the warrant signed, then called the prosecution staff together to tell us these two trials were the best prepared and best presented cases in his twenty years on the bench. The trial team gave primary credit for this to Leann and three other team members.

Paralegal Certification

When Utah Valley State College began its paralegal training program, Leann expressed interest and entered the program. She did so while working full time and commuting about 100 miles each way for classwork. (No Zoom at that time.) She completed certification in the spring of 1990 while working on the last of the homicide trials. The paralegal training program director told me Leann's work experience, humble nature, and willingness to mentor enhanced the experience of younger program participants. She described Leann as quiet, helpful, and academically sound, saying she was one of director's top two students.

Ethical Standards

Though quiet in nature, Leann possessed a backbone of steel on ethical issues. She had an innate sense for ethics and also learned the Bar's ethical codes. She did not hesitate to call out anyone on ethical matters. She was the epitome of discretion. Her closest friends say she never talked about the events of her professional life or the clients she served.

Public Service and Community Engagement

Consistent with her personality, Leann lived a life of effective public service and community engagement, representing her profession very well, though in her quiet and unassuming way.

She worked closely with the Millard County treasurer, assessor, recorder, and clerk's staff through the years. She developed a rapport with each, including those newly-elected to the office, and kept in contact with them through the years. They would often call her with questions about systems and processes to improve their offices.

Through her work with the law enforcement community, she became involved in community emergency preparedness. She completed Community Emergency Response Team (CERT) training and served as the commander for Hinckley, the town where she lived. She could be found, usually working in the background, at most Millard County CERT events. As time went on, she would be called on as a guest speaker on personal, family, and community emergency preparedness. Her presentations addressed such diverse topics such as personal identification records, emergency fuel sources, solar cooking devices, water storage and purification, medical needs, seventy-two-hour kits, and organizing community response teams.

Leann participated in local sports recreation leagues both as a participant and as a spectator. She participated in a local bowling league for over thirty years. In that sport, she traveled with thirty other women from the Millard County area to take part in twenty-four national tournaments across the United States. She helped, of course, to manage logistics for these events.

She also supported school sports teams through every season, spending many hours sitting in the stands cheering for the many children known to her from her church activities, as well as her nieces and nephews from across the state. Delta High School honored her as an outstanding booster with free admission to all DHS events for a year.

Conclusion

In 2007, I left the law practice to which I had hired Leann to take an executive position in an international investment company. Naturally, I asked for and received permission to invite Leann to join the company as my assistant. She declined,

preferring to stay in the community she served so well and to take care for her best friend – her mother.

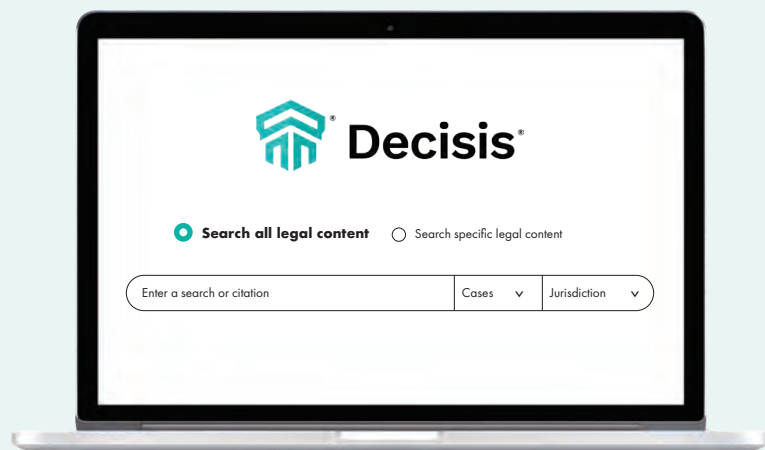
She continued on staff at the same office, in all working with at least fifteen attorneys. At least six of these were first-year or early career attorneys who owe thanks for her excellent contributions to their training. I called on her in recent years for my own legal work. Her professionalism, skills, and client orientation remained strong as ever – including care to have her work product reviewed by the firm's attorneys before delivering it to me, her client attorney.

Then came the small lesion on her left cheek, eventually diagnosed as Merkel Cell Carcinoma. Probably brought on by exposure to the sun. Perhaps exposure from sitting in the spectator stands at numerous athletic events. She received aggressive treatment for this aggressive cancer, to no avail. Leann truly leaves behind a legacy of community engagement, excellence, professionalism, and service.



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